

capable of affecting the achievable levels of CAFE. These external factors include fuel prices and the demand for vehicles with advanced fuel saving technologies, such as hybrid electric and advanced diesel vehicles. Changes in these factors could lead to higher or lower levels of CAFE, particularly in MY 2007.

Recognizing that the MY 2007 standard may have to be reexamined in light of any significant changes in those factors, the agency plans to monitor the compliance efforts of the manufacturers. To this end, the agency will examine the manufacturers' pre and mid-model year fuel economy reports filed with NHTSA through December 2004 and current market information, and consider the reasonableness of the efforts made by the manufacturers after this final rule to meet the MY 2007 standard. If appropriate, the agency could adjust the standard upward or downward. The CAFE standard for a model year can be increased at anytime before the 18-month period preceding that year, and decreased at anytime before the beginning of that year. Thus, the MY 2007 standard could be increased anytime before April 1, 2005 and decreased anytime before October 1, 2006.

The Final Economic Assessment (FEA) discusses in detail the fuel efficiency enhancing technologies expected to be available during MYs 2005–2007. Some of the technologies discussed in the FEA have been used for over a decade (e.g., overhead camshafts, engine friction reduction, and low friction lubricants). Others have only recently been incorporated into passenger cars, (e.g., 5-speed and 6-speed automatic transmissions and variable valve timing). Still others have been under development for a number of years, but have not been produced in quantity for an extended period (e.g., cylinder deactivation, variable valve lift and timing, continuously variable transmission (CVT), integrated starter/generator, advanced diesels and hybrid drive-trains).

The FEA also details, and this preamble summarizes, the agency's analysis of the costs and benefits of these CAFE standards. The agency has estimated not only the anticipated costs that would have to be borne by General Motors, Ford and DaimlerChrysler and other light truck manufacturers to comply with the standards, but also the significance of the societal benefits anticipated to be achieved through direct and indirect fuel savings. We have concluded that these CAFE standards—while challenging—can be

met in a cost beneficial way, and that they will benefit society considerably.

A final Environmental Assessment (EA) also accompanies this final rule. The agency has determined that the proposed action would not have a significant effect on the quality of the environment.

V. Maximum Feasible Fuel Economy Considerations

The CAFE statute sets forth the parameters within which the agency is required to establish corporate average fuel economy standards. Section 32902(a) provides that “each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.”

As noted above, the agency is required to consider the factors in 49 U.S.C. 32902(f) when determining the “maximum feasible” CAFE standards for any given model year. These are technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. Although the EPCA does not include motor vehicle safety as an express statutory factor, it does not preclude consideration of it. Accordingly, NHTSA should consider safety in accordance with its statutory responsibilities regarding safety and the Administration's emphasis on ensuring motor vehicle safety.

The agency has historically included consideration of numerous public policy concerns, whether considered as part of the enumerated factors or in addition to them. The courts have routinely affirmed the agency's authority to do this and have consistently upheld NHTSA's conclusions. *See, e.g., Center for Auto Safety v. NHTSA*, 793 F.2d 1322 (CAS II) (D.C. Cir. 1986) (administrator's consideration of market demand as component of economic practicability found to be reasonable); *Public Citizen v. NHTSA*, 848 F.2d 256 (D.C. Cir.1988)(Congress established broad guidelines in the fuel economy statute; agency's decision to set lower standard was a reasonable accommodation of conflicting policies).

In particular, consideration of the impact of CAFE standards on motor vehicle and passenger safety has long been recognized as an integral part of the agency's process of examining the various considerations and determining maximum feasible average fuel economy. As the United States Court of Appeals pointed out in upholding NHTSA's exercise of judgment in setting the 1987–1989 passenger car standards,

“NHTSA has always examined the safety consequences of the CAFE standards in its overall consideration of relevant factors since its earliest rulemaking under the CAFE program.” *See, Competitive Enterprise Institute v. NHTSA* (CEI I), 901 F.2d 107, 121 at n.11 (DC Cir. 1990).

As discussed in many past fuel economy notices, it is clear from the legislative history of EPCA that Congress intended NHTSA to take industry-wide considerations into account in determining the maximum feasible CAFE levels, and not necessarily base its determination on any particular company's asserted or projected abilities. This does not necessarily mean that CAFE standards will be set at the level asserted by the “least capable manufacturer” with a substantial share of the market. Instead, it means that we must take particular care in considering the statutory factors with regard to these manufacturers—weighing their asserted capabilities, product plans and economic conditions against agency projections of their capabilities, the need for the nation to conserve energy and the effect of other regulations (including motor vehicle safety and emissions regulations) and other public policy objectives.

This approach is consistent with the Conference Report on the legislation enacting the CAFE statute:

Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer that might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *

S. Rep. No. 94–516, 94th Congress, 1st Sess. 154–155 (1975).

The agency has historically assessed whether a potential CAFE standard is economically practicable in terms of whether the standard is one “within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry.” *See, e.g., Public Citizen v. National Highway Traffic Safety Administration*, 848 F.2d 256, 264 (D.C. Cir. 1988). In essence, in determining the maximum feasible level of CAFE, the agency assesses what is