

technologically feasible for manufacturers to achieve without leading to adverse economic consequences, such as a significant loss of jobs or the unreasonable elimination of consumer choice. The CAFE statute does not compel that fuel savings be gained at the expense of American jobs or competition within the motor vehicle market.

At the same time, the law does not preclude a CAFE standard that poses considerable challenges to any individual manufacturer. The Conference Report makes clear, and the case law affirms, "(A) determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy." CEI-I, 793 F.2d 1322, 1352 (D.C. Cir. 1986). Instead, the agency is compelled "to weigh the benefits to the nation of a higher fuel economy standard against the difficulties of individual automobile manufacturers." *Id.* The statute permits the imposition of reasonable, "technology forcing" challenges on any individual manufacturer, but does not contemplate standards that will result in "severe" economic hardship by forcing reductions in employment affecting the overall motor vehicle industry.<sup>3</sup>

The law permits CAFE standards exceeding the projected capability of any particular manufacturer as long as the standard is economically practicable for the industry as a whole. Thus, while a particular CAFE standard may pose difficulties for one manufacturer, it may also present opportunities for another. The CAFE program is not necessarily intended to maintain the competitive positioning of each particular company. Rather, it is intended to enhance fuel economy of the vehicle fleet on American roads, while protecting motor vehicle safety and the totality of American jobs and the overall United States economy. By the same token,

maximum feasible fuel economy levels must be ones that account for the need to place technologies into mass production and cannot be based on claims of potential technologies that have not been shown to be feasible on such a production level.

The standards established in this final rule fall within our Stage analysis for each of the primary companies in the light truck market for MYs 2005 and 2006, and for all but one for MY 2007. Of those companies, the Stage analysis projects that the current product plans of both DaimlerChrysler and Ford for MY 2007 will produce a light truck CAFE of 22.2. The Volpe analysis, which looks more globally at the industry as a whole, further confirms the feasibility of a CAFE level of 22.2 mpg for MY 2007. Accordingly, while the standard for that model year is being set at a level above the Stage analysis' projection for one of the primary companies in the light truck market, we believe that industry wide considerations and the additional lead time provided confirm that the standard reflects the overall best balance of technological feasibility, economic practicability and the nation's need to conserve energy and reduce our dependence on foreign oil.

## VI. Summary of Public Comments

NHTSA received over 65,000 individual submissions to the rulemaking docket from vehicle manufacturers and associations, environmental and consumer advocacy groups, members of Congress and individual citizens. The majority of the submissions were letters or emails provided to the public by various organizations and submitted by private citizens to the docket. Many contained supplementary thoughts from the individual senders.

The citizenry expressed both support for the proposal and concern that the proposed standards would not be sufficient to meet the nation's need to conserve energy in the short term or to protect natural resources and secure energy independence in the long term. Many of the individual submissions included a letter provided by the Natural Resources Defense Council describing the proposal as "woefully inadequate" and expressing concern that the proposal did not go far enough to help the country reduce our dependence on foreign oil. This letter also pointed out that the proposal was consistent with the preexisting plans of much of the automobile industry.

The Union of Concerned Scientists provided citizens with a form to fill out stating that "I am disappointed

because," with a space for individual comments. Other similar documents were also placed in the docket. Some expressed a belief that technology is available through which manufacturers could exceed the CAFE standards proposed. Many stated that the potential of war in the Middle East warrants more aggressive standards. Other individuals, using either forms or personally developed submissions, expressed support for the proposal. The Coalition for Vehicle Choice urged citizens to submit comments expressing support for the maintenance of consumer choice from amongst a broad array of vehicles.

Members of Congress also differed in their reaction to the proposal. Over 100 members of the House of Representatives wrote to NHTSA urging the agency to increase the standards further, and stating that "a much greater increase can and should be done to take advantage of the many existing technologies in automotive design that can increase fuel economy and reduce our nation's dangerous over-dependence on imported oil." These Congressmen also stated that "it is now unarguable that the fuel efficiency of light trucks can be improved without sacrificing safety," and that automobile manufacturers have boasted of plans to incorporate hybrid electric vehicles in their fleets.

In contrast, the Chairman and Ranking Member of the Committee on Energy and Commerce in the House of Representatives wrote that the proposal was "laudable," and was consistent with the fuel savings goal set forth in H.R. 4, which was adopted by the House of Representatives and the House-Senate conference committee in the last Congress. These members pointed out that while H.R. 4 passed the House of Representatives by a vote of 240 to 189 with a mandate for NHTSA to conduct a multi-year rulemaking resulting in a savings of five billion gallons of gasoline by the year 2010, an amendment statutorily to increase light truck standards "was soundly defeated by a vote of 269 to 160." These members further point out that H.R. 4 would have codified NHTSA's practice of considering any adverse safety and employment impacts. The Chairman and Ranking Member concluded that the "legislative summary of the consideration of H.R. 4, the 'SAFE Act of 2001,' should be instructive on the intent of Congress regarding the CAFE standards for light trucks."

The Competitive Enterprise Institute and Consumer Alert argued that increased CAFE standards have the potential to adversely affect motor vehicle safety. The Mercatus Center and Randall Lutter and Troy Kravitz of the

<sup>3</sup> In the past, the agency has set CAFE standards above its estimate of the capabilities of a manufacturer with less than a substantial, but more than a de minimus, share of the market. See, e.g., *Center For Auto Safety v. National Highway Traffic Safety Administration*, 793 F.2d 1322, 1326 (D.C. Cir. 1986) (noting that the agency set the MY 1982 light truck standard at a level that might be above the capabilities of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler, and further noting that Chrysler had 10-15 percent market share while Ford had 35 percent market share). On other occasions, the agency reduced an established CAFE standard to address unanticipated market conditions that rendered the standard unreasonable and likely to lead to severe economic consequences. 49 FR 41250, 50 FR 40528, 53 FR 39275, *Public Citizen v. National Highway Traffic Safety Administration*, 848 F.2d 256, 264 (D.C. Cir. 1988).