

vehicles, Porsche agreed that it was foreclosed from applying for a manufacturer-specific fuel economy standard under the exemption provisions of 49 U.S.C. § 32902(d). However, Porsche argued that worldwide consolidation of the automobile industry indicates that the 10,000-vehicle threshold is no longer appropriate and should be raised. Barring any change to the threshold, which Porsche acknowledged is beyond NHTSA's authority, the company suggested that NHTSA is obligated to ensure that small limited-line manufacturers are not harmed. To fulfill this obligation, Porsche argued that the agency should follow an earlier precedent and establish a separate light truck standard for limited-line manufacturers as it did in 1980 and 1981.

The agency does not agree with Porsche's suggestion that the company's particular circumstances support establishment of a separate fuel economy standard for limited-line manufacturers. We note that both full-line and limited line manufacturers have indicated that their product mix places them at a disadvantage in complying with CAFE. For some, having too many large trucks is a problem. For others, like Porsche, not having other more fuel-efficient trucks is the obstacle. In either case, the challenge of meeting is difficult for both classes of manufacturers.

Porsche stated that it faces a disadvantage because it makes only a single high performance truck and has no "legitimate" opportunity to comply. Although some manufacturers have chosen to participate in market segments that make it easier for them to meet CAFE, we note that all manufacturers must meet particular challenges when complying with a standard. Porsche is correct in pointing out that NHTSA, in the very first years in which CAFE standards were in effect, established a separate light truck standard for light truck manufacturers who did not use passenger car engines in their trucks. This separate standard, promulgated in 1978, offered a degree of relief to International Harvester, a company struggling to meet both CAFE and emissions standards with limited resources.

NHTSA finds it difficult to equate Porsche's present position with that of International Harvester in 1978. Unlike International Harvester, which had been producing a family of larger light trucks whose basic design remained unchanged from the early 1960's, Porsche began the design process knowing that CAFE standards would

apply to its product. Porsche presumably entered the light truck market after determining that the costs of compliance or paying penalties were offset by the benefits of doing so. While the increase in CAFE standards established by this final rule will require that Porsche increase its efforts to build more fuel efficient light trucks, the company cannot state that its designs pre-date CAFE, that an increase in CAFE standards was not foreseeable or that it is not technologically feasible for Porsche to meet the standards.

As indicated above, NHTSA does not believe that present market conditions dictate establishing a separate fuel economy standard for Porsche or other limited-line manufacturers. We are also not convinced by Porsche's argument that doing so would be consistent with Congressional intent. Porsche has correctly observed that NHTSA cannot modify the current statutory threshold for small manufacturers entitled to seek exemption from CAFE under 49 U.S.C. § 32902(d). However, Porsche apparently believes that the existence of the exemption provision supports the larger notion that limited-line manufacturers are entitled to relief. We believe that the more logical conclusion is that in creating the exemption provision and limiting its applicability, Congress intended to restrict rather than expand NHTSA's authority to exempt manufacturers from CAFE.

2. Executive Order 12866

General Motors and the Alliance also commented that neither the NPRM nor the Preliminary Economic Assessment (PEA) identified regulatory alternatives to raising CAFE standards for light trucks as required by Executive Order 12866, Regulatory Planning and Review. General Motors stated that, for example, raising the gas tax by 2.4 cents per gallon would achieve the same fuel savings associated with NHTSA's proposal and would be 50 times less costly than NHTSA's proposal.

NHTSA believes that the statutory structure and regulatory framework narrowly limit the regulatory alternatives that the agency can consider. The statute specifically requires NHTSA to establish the maximum feasible average fuel economy standard accounting for certain, specified considerations. Implicit in that analysis is consideration of the level at which the best balance of the statutory criteria can be achieved. We note that, unlike broader based empowering statutes, EPCA does not contemplate that the agency will address the nation's need to conserve energy through any alternatives other than the

establishment of an average fuel economy standard applicable to a class or classes of non-passenger automobiles. We further note that, while General Motors points out that an increase in the gas tax may be a public policy alternative, it is not a regulatory alternative available under EPCA.

3. Confidential Business Information

Consumer and environmental advocacy groups expressed frustration that they do not have access to the same confidential technological, financial and product data as the agency, and therefore are limited in their ability to critique and comment upon the agency's analysis. Environmental Defense argued that NHTSA's authorizing legislation states that the agency may withhold information only if the Administrator finds that disclosure of information would cause "significant competitive damage."

NHTSA considers EPCA's reference to "significant competitive damage" as being substantively synonymous with Exemption 4 of the Freedom of Information Act. We acknowledge the frustrations expressed by the consumer and environmental advocacy groups that they do not have access to the same confidential technological, financial and product data as the agency, and therefore are limited in their ability to critique the agency's analysis. We note, however, that Congress entrusted the establishment of appropriate corporate average fuel economy standards—and, indeed, the balancing of the express statutory and public policy considerations—to the Secretary of Transportation, who has in turn delegated that responsibility to the expertise of the National Highway Traffic Safety Administration. In the NPRM we provided detailed descriptions of the methodologies employed in our engineering and economic analysis. In doing so, we ensured that sufficient information was available for all to comment on the approach and fundamental assumptions used to conduct the analyses leading to the proposal and, ultimately, to this final rule.

4. Small Business Impacts

The Recreational Vehicle Industry Association stated that the impacts of the required increases in light truck fuel economy on sales and production of trailers, other recreational vehicles that require towing, and conversion vehicles based on light trucks would be disproportionately or exclusively borne by small businesses.

NHTSA does not believe that this standard will have an adverse effect on