

Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of Planning and Consumer Standards, at (202) 366-0846, facsimile (202) 493-2290, electronic mail kkatz@nhtsa.dot.gov. For legal issues, call Otto Matheke, Office of the Chief Counsel, at (202) 366-5263, electronic mail omatheke@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Why CAFE Reform?
- III. Comments To Date on CAFE Reform
 - A. Attribute-Based Standards
 - B. Increasing GVWR Limit on Vehicles Subject to CAFE Standards
 - C. Vehicle Classification
 - D. Credit Availability
 - E. Two-Fleet Rule
 - F. Separate Standards for Cars and Light Trucks
 - G. Uniform Percentage Increase
- IV. The EPCA and CAFE Reform
- V. The Structure of Light Truck Standards
 - A. Two or More Classes of Light Trucks
 - B. Functional Attribute-Based System
 - 1. Weight-Based Standard
 - 2. Size-Based Standards
 - 3. Mixed Attribute-Based Standards
 - C. Fixed Attribute System
- VI. Definitional Changes to the Current Vehicle Classification System
 - A. Vehicle Classification Using A Single Attribute
 - B. The Flat Floor Provision
 - C. Open Cargo Bed
 - D. Off-Highway Operation
- VII. Expanding the Application of the CAFE Program
- VIII. Conclusion
- IX. Public Participation
- X. Regulatory Analyses and Notices

I. Background

Congress enacted the Energy Policy and Conservation Act (EPCA Pub. L. 94-163) during the aftermath of the energy crisis created by the oil embargo of 1973-74. The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor

Vehicle Information and Cost Saving Act. Title V has been amended from time to time and codified without substantive change as Chapter 329 of title 49, United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Congress established a statutory corporate average fuel economy standard applicable to passenger automobiles, and NHTSA has from time to time amended that statutory standard. The Secretary of Transportation has the authority to change the standard if it no longer represents the "maximum feasible" standard consistent with the criteria set forth in the statute.¹ Pursuant to that authority, the Secretary amended the passenger car standard with regard to model years (MYs) 1986-1989 to address situations in which, despite manufacturers' good faith compliance plans, market conditions rendered the statutory standard impracticable and infeasible.² Since 1990, the CAFE standard for passenger automobiles has been 27.5 miles per gallon (mpg).

Congress did not establish by statute a CAFE standard for light trucks. Instead, Congress directed the Secretary to consider appropriate CAFE standards applicable to a light truck fleet, or alternatively, to classes of light trucks, and to establish CAFE standards at least 18 months prior to the start of each model year. The first light truck fuel economy standards were established for MY 1979 and applied to light trucks with Gross Vehicle Weight Ratings (GVWR) up to 6,000 pounds. Beginning with MY 1980, NHTSA raised this GVWR ceiling to 8,500 pounds.

In 1977, NHTSA issued regulations indicating which vehicles should be subject to the CAFE program and establishing the distinction, imbued throughout the statute, between passenger and non-passenger automobiles (42 FR 38362). These regulations reflect the vehicle fleet prevalent at that time, and in particular, sought to distinguish between vehicles primarily designed for the transport of passengers and those designed for the transport of cargo. To some extent, that distinction was meant to reflect a difference between personal

transportation and that designed for commercial, agricultural or recreational activity. The regulations accordingly attempt to define vehicles by the type of use to which they were generally put in the mid-1970s (in part in accordance with whether they were usually built on passenger car or truck platforms).

In 1994, the agency departed from its past practice of considering light truck standards for one or two model years at a time and published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** outlining NHTSA's intention to set standards for some, or all, of the model years from 1998 to 2006 (59 FR 16324, April 6, 1994).

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 (Pub. L. 104-50) was enacted. 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.

This prohibition applied to both passenger automobiles and non-passenger automobiles, and language continuing the prohibition was included in the Appropriations Acts for each of FYs 1997-2001.

While the Department of Transportation and Related Agencies Appropriations Act for FY 2001 (Pub. L. 106-346) 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 National Academy of Sciences (NAS) to evaluate the effectiveness and impacts of CAFE standards (H. Rept. No. 106-940, at p. 117-118).

The NAS submitted its preliminary 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, while maintaining vehicle size, weight, utility, and performance. However, their development cycles—as well as future economic, regulatory, safety and consumer preferences—will influence the extent to which these technologies could lead to increased fuel economy in the U.S. market. Recognizing the many trade-offs that must be considered in setting fuel economy standards, the committee took no position on what the appropriate

¹ In setting CAFE standards, the statute directs the Secretary to consider technological feasibility, economic practicability, the effect of other government regulations on fuel economy and the nation's need to conserve energy.

² To date, the agency has not considered whether a more stringent fuel economy standard than 27.5 mpg might better represent the "maximum feasible" level for the passenger car fleet. By statute, NHTSA was prohibited from considering any change between MYs 1996 and 2004.