

trading would improve the CAFE program by offering manufacturers a means of dealing with unexpected conditions and events. For example, AIAM noted that credit averaging between classes and between companies could provide manufacturers with increased compliance flexibility in dealing with unanticipated market shifts. AIAM also argued that a broad credit trading system would provide a strong incentive for manufacturers to earn credits through voluntary fuel economy improvements since there would be a strong likelihood that buyers would exist for the earned credits.

DaimlerChrysler and Toyota supported credit trading for the same reasons. In addition, Honda believes that credit trading between companies in other sectors of the market would increase competitive bidding and pricing of the credits. However, Ford opposed a credit trading system on the basis that such a system would likely cause a transfer of wealth from domestic full line manufacturers to foreign companies.

Although GM expressed reservations about NHTSA's authority to permit credit trading, the company indicated that a broad credit trading system would prompt all manufacturers to exceed CAFE standards. Nissan and Honda both applauded the flexibility that a broad-based credit-trading program would introduce into the CAFE program. Nissan believed that credit trading would encourage innovation by allowing manufacturers the ability to risk the use of new technologies.

E. Two-Fleet Rule

Under what is known as the "two-fleet rule," manufacturers must, for CAFE purposes, place their domestically manufactured vehicles and non-domestically manufactured vehicles in separate fleets. Commenters, especially domestic manufacturers, generally expressed the view that the elimination of the two-fleet rule would not have major impacts on manufacturer actions. More specifically, the Alliance of Automobile Manufacturers suggested that this scheme might have encouraged the sourcing of non-domestic parts. Foreign manufacturers and trade associations generally believe the two-fleet rule is outdated and may constitute a trade barrier.

F. Separate Standards for Cars and Light Trucks

All public interest groups and individuals who commented believe that separate standards for cars and light trucks do not have any practical value under the CAFE standards. Sierra Club,

ACEEE, IIHS, and PIRG called for the elimination of separate standards and advocated combining passenger automobiles and light trucks into a single class. IIHS suggested a single CAFE standard indexed to weight and cargo capacity. Public Citizen recognized that the car and truck fleets might not be combined absent Congressional authority, but stated that the loophole could be closed by substantially increasing the fuel standards for light trucks. If the rule is not eliminated, Public Citizen recommended utilizing a different set of criteria in distinguishing passenger automobiles from light trucks, such as ground clearance, four-wheel drive capacity, and/or tow weight.

G. Uniform Percentage Increase

While not addressed specifically in the RFC, the NAS study discussed a Uniform Percentage Increase (UPI) approach that would require every manufacturer to increase its current CAFE level by a specific percentage. Toyota, AIAM and AIADA opposed any efforts to adopt a uniform percentage improvement format. Toyota argued that UPI encourages manufacturers to "rush to the bottom" and violates that concept of "same vehicle, same standard." AIAM stated that a system that is fair and equitable to all manufacturers is one that applies the same standards to all manufacturers at the same time. AIADA argued that the UPI approach penalizes auto manufacturers who historically have made the greatest commitments to improving fuel economy.

Similarly, the Alliance and DaimlerChrysler asserted several negatives to a UPI approach including penalizing manufacturers for early CAFE improvements, not accounting for fleet mix changes, focusing only on new vehicles, not affecting consumer behavior, and impacting manufacturers differently.

IV. The EPCA and CAFE Reform

In its January 2002 report, the NAS suggested a number of reforms, including: applying an attribute-based system to a combined car and light truck fleet, creating a credit trading program between manufacturers, and eliminating the two fleet rule for foreign and domestic content. The agency does not believe that the EPCA provides it with the authority to implement such reforms. However, on February 1, 2002, Transportation Secretary Norman Mineta wrote a letter to Congress requesting the necessary authority to reform the CAFE program, guided by the NAS report's suggestions. While

Congress has not yet provided such express statutory authority, there have been legislative proposals that would require the agency to consider the NAS report when establishing CAFE standards.

Unlike many statutes, the EPCA is a particularly prescriptive one. It contains a number of provisions providing specific definition and structure to the CAFE program. We set forth below those aspects of any CAFE program we tentatively believe to be required by the EPCA. However, we seek comment on whether the EPCA provides us with more or less authority to implement potential reforms to the CAFE program.

Our review leads us to believe that the language and structure of the EPCA requires that we state any CAFE standard in terms of "miles per gallon," that a CAFE standard for a class of any particular model year be considered as an "average," and that we apply a single standard for all passenger automobiles. The statute provides more flexibility to establish classes of vehicles within the light truck category than is the case with passenger automobiles.

The statute defines "fuel economy" in Section 32901(10) as the average number of miles traveled by an automobile for each gallon of gasoline used. The fuel economy of individual vehicle models is measured in accordance with procedures established pursuant to Section 32904(c).⁸ For passenger automobiles, but not light trucks, Section 32904(c) commands that testing and measurement procedures be the same as used in 1975. This data is then used to derive a manufacturer's average fuel economy level for each fleet. For passenger automobiles, Section 32904(a)(1)(B) requires use of a formula that results in derivation of the harmonic sales weighted average of a manufacturer's fleet. For light trucks, Section 32904(a)(1)(A) provides that a manufacturer's average fuel economy shall be calculated pursuant to a formula established by regulation.⁹

⁸ Credit, penalty and alternative fuel incentive provisions are all predicated on the use of miles per gallon as a basic measure of fuel use. Because the statutory scheme relies on mpg as a basic unit of measure, we tentatively believe that any standard should either rely on mpg or be readily converted to a mpg measurement.

⁹ The House Report for the Cost Savings Act suggests that Congress, while not mandating it, expected that a similar procedure would be used for light trucks: "Average fuel economy (except when used with non-passenger automobiles) is a production-weighted average of the fuel economy of the manufacturer's entire production of passenger automobiles in a model year (subject to the special rules for imports). It is intended that the rules of the Secretary would provide for a similar computation for each class of non-passenger automobile."