

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 533**

[Docket No. 97-15; Notice 1]

RIN 2127-AG64

Light Truck Average Fuel Economy Standard, Model Year 1999**AGENCY:** National Highway Traffic Safety Administration (NHTSA).**ACTION:** Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1999. The issuance of the standard is required by statute. Pursuant to section 323 of the fiscal year (FY) 1997 DOT Appropriations Act, the light truck standard for MY 1999 is 20.7 mpg.

DATES: The amendment is effective May 5, 1997. The standard applies to the 1999 model year. Petitions for reconsideration must be submitted within 45 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Otto G. Matheke, III, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590 (202-366-5263).

SUPPLEMENTARY INFORMATION:**I. Background**

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, Congress enacted the Energy Policy and Conservation Act. 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 and recodified without substantive change as Chapter 329 of Title 49 of the 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).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that "[e]ach standard shall be the maximum feasible average fuel economy level that the

Secretary decides the manufacturers can achieve in that model year." (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, NHTSA shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Pursuant to this authority, the agency has set light truck CAFE standards through MY 1998. See 49 CFR 533.5(a). The standard for MY 1998 is 20.7 mpg.

NHTSA began the process of establishing light truck CAFE standards for model years after MY 1997 by publishing an Advance Notice of Proposed Rulemaking (ANPRM) in the *Federal Register*. 59 FR 16324 (April 6, 1994). The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996 was enacted. Pub. L. 104-50. Section 330 of that Act provides:

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.

NHTSA thereafter issued a final rule limited to MY 1998, which set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 was enacted. Pub. L. 104-205. Section 323 of that Act provides:

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.

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for NHTSA to set the MY 1999 standard is approximately April 1, 1997, a date falling within FY 1997. Since the

issuance of a standard requires the expenditure of funds, the agency's ability to promulgate a standard for MY 1999 at a level other than the level specified for MY 1998 is prohibited by the terms of section 323 of the FY 1997 Appropriations Act.

The language contained in Section 323 of the FY 1997 Appropriations Act is identical to that found in Section 330 of the FY 1996 Appropriations Act. The adoption of identical language in the FY 1997 Act compels the conclusion that Congress considered the agency's prior interpretation of this language to be correct: the limitation precludes NHTSA from setting a light truck standard that differs from one adopted in the previous year.

Examination of the legislative history of the FY 1997 Act further supports this view. The language contained in Section 323 remained unmodified as part of H.R. 3675, which was eventually enacted as the FY 1997 Act. Section 323 was reported by the House Committee on Appropriations as part of H.R. 3675. The Committee print of the House Report to accompany H.R. 3675 stated that the section precluded NHTSA from prescribing CAFE standards that differ from those set for the 1998 model year.

As explained above, section 323 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MY 1998. In NHTSA's view, the express directive contained in the FY 1997 Appropriations Act precludes the agency from exercising any discretion in setting CAFE standards for the 1999 model year. The agency has not issued a Notice of Proposed Rulemaking (NPRM) and has therefore not offered an opportunity for notice and comment prior to issuance of the MY 1999 light truck standard. As NHTSA cannot expend any funds to set the 1999 standard at any level other than the MY 1998 standard, providing an opportunity for notice and comment would be superfluous. Accordingly, NHTSA is setting the MY 1999 light truck CAFE standard at the MY 1998 level of 20.7 mpg.

II. Impact Analyses**A. Economic Impacts**

All past fuel economy rules have had economic impacts in excess of \$100 million per year. Although the agency has no discretion under the statute (as well as with respect to the costs it imposes), NHTSA is treating this rule as "economically significant" under Executive Order 12866 and "major" under 5 U.S.C. 801.

B. Environmental Impacts

NHTSA has not conducted an evaluation of the impacts of this action under the National Environmental Policy Act. There is no requirement for such an evaluation where Congress has eliminated the agency's discretion by precluding any action other than the one announced in this notice.

C. Impacts on Small Entities

NHTSA has not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. As Congress has eliminated the agency's discretion by precluding any action other than the one taken in this notice, such an evaluation is unnecessary. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a "small business" under the Regulatory Flexibility Act.

D. Impact of Federalism

This action has not been analyzed in accordance with the principles and criteria contained in Executive Order

12612. The preparation of a Federalism Assessment is not required where Congress has precluded any action other than the one published in this notice. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 49 U.S.C. § 32902(j), NHTSA submitted this final rule to the Department of Energy for review. That Department made no unaccommodated comments.

III. Conclusion

Based on the foregoing, the agency is establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 1999 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR part 533 is amended as follows:

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. § 533.5(a) is amended by revising Table IV to read as follows:

§ 533.5 Requirements.

* * * * *

TABLE IV

| Model year | Standard |
|------------|----------|
| 1996 | 20.7 |
| 1997 | 20.7 |
| 1998 | 20.7 |
| 1999 | 20.7 |

Issued on: March 31, 1997.

Philip R. Recht,

Deputy Administrator.

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