structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

[FR Doc. 96–8158 Filed 4–2–96; 8:45 am]

BILLING CODE 4910–22–P

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

49 CFR Part 533

[Docket No. 94–20; Notice 4]

RIN 2127–AF16

Light Truck Average Fuel Economy Standard, Model Year 1998

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) 1998. The issuance of the standard is required by statute. Pursuant to section 330 of the fiscal year (FY) 1996 DOT Appropriations Act, the light truck standard for MY 1998 is 20.7 mpg.

DATES: The amendment is effective May 3, 1996. The standard applies to the 1998 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 SW., 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. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added 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 1997. See 49 CFR 533.5(a). The standard for MY 1997 is 20.7 mpg. 59 FR 16312 (April 6, 1994).

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.

Subsequent to reviewing the comments submitted in response to the ANPRM, the agency decided to defer rulemaking for MY's 1999–2006. NHTSA thereafter issued a notice of proposed rulemaking (NPRM) limited to MY 1998, which proposed to set the light truck CAFE standard for that year at 20.7 mpg. 61 FR 145 (January 3, 1996). 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.

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 1998 standard is approximately April 1, 1996. However, the agency cannot promulgate such a standard without the expenditure of funds, and it may not spend any funds in violation of the terms of section 330 of the FY 1996 Appropriations Act. Therefore, to ascertain the limits of its authority to promulgate CAFE standards during FY 1996, NHTSA must interpret the phrase ''differs from standards promulgated for such automobiles prior to enactment of this section.''

In the agency's view, the most compelling meaning of the phrase is to preclude the expenditure of funds to adopt a CAFE standard for any model year at any level other than the level of the CAFE standards previously established for MY 1997; i.e., 20.7 mpg for light trucks and 27.5 mpg for passenger cars.

The agency examined the legislative history of section 330 to seek additional insight into Congressional intent. Section 330 was reported out of the House Committee on Appropriations in its enacted form as part of H.R. 2002. The original Committee print of the House Report to accompany H.R. 2002 stated, at page 112, that the section precluded NHTSA from prescribing CAFE standards that ''differ from those previously enacted:''

> The Committee has adopted a general provision (Sec. 330) that prohibits NHTSA or the Department from prescribing corporate average fuel economy standards for automobiles that differ from those previously enacted.

This language was modified somewhat in the final version of the House report to accompany H.R. 2002, but repeated the command that CAFE standards promulgated in FY 1996 should not ''differ from those previously enacted.'' The report stated:

> The Committee has adopted a general provision (Sec. 330) that prohibits funds to be used to prepare, prescribe or promulgate corporate average fuel economy standards for automobiles that differ from those previously enacted. The limitation does not preclude the Secretary of Transportation, in order to meet

lead time requirements of the law, from preparing, proposing and issuing a CAFE standard for model year 1998 automobiles that is identical to the CAFE standard for such automobiles for model year 1997.

H.R. Rep. 104–177, at 113.

The addition of the second sentence to this report language suggests that the Committee wanted to clarify that, regardless of what the maximum feasible average fuel economy level might be for MY 1998 light trucks, NHTSA was not precluded from setting the CAFE standard for such automobiles at a level ''identical'' to the MY 1997 level of 20.7 mpg. There is no indication that the Committee intended to authorize the MY 1998 light truck standard to be set at any other level.

The next relevant item of legislative history is the remarks during the House floor debate on H.R. 2002 by Congressman DeLay, who originally offered this provision during consideration of the bill by the Transportation Subcommittee of the Appropriations Committee. Congressman DeLay began by describing the section as imposing ''a 1-year freeze on the ability of NHTSA to increase the CAFE standards for passenger cars and light trucks and vans.'' He added:

[I]t was my intent that NHTSA would withhold any further action directed toward increasing CAFE standards, and that *the CAFE standards for light trucks and vans for the 1998 model year,* which must be issued during fiscal 1996 to meet industry's lead time requirements, *should be identical to the standard that is currently in effect for those vehicles for the 1997 model year.* This intent is clearly stated in the committee report which accompanies the legislation.

141 Cong. Rec. H7605 (daily ed. July 25, 1995) (emphasis supplied).

These comments, offered by the sponsor of the provision in question, clearly reflect Congressman DeLay's intent that NHTSA should set the MY 1998 light truck standard ''identical to'' the 20.7 mpg level in effect for MY 1997, without regard to any determination the agency might otherwise have reached with respect to the maximum feasible average fuel economy level for MY 1998. His remarks also characterize the Committee report as reflecting the same intent.

In its original consideration of H.R. 2002, the Senate deleted section 330. See S. Rep. No. 104–126, at 145. However, the provision was restored by the Conference Committee, which described its action as follows:

Amendment No. 155: Restores House language deleted by the Senate that prohibits the use of funds to prepare, propose or promulgate any regulations that prescribe changes in the corporate average fuel economy standards for automobiles.

H.R. Rep. 104–286, at 73.

Numerous courts have held that, compared to other items of legislative history, the Conference Report is generally the most authoritative source of Congressional intent. In this case, that report unambiguously describes section 330 as prohibiting the use of FY 1996 funds to promulgate ''any regulations that prescribe changes'' in CAFE standards.

As described above, each of the relevant items of legislative history supports the agency's view that section 330 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MY 1997. Accordingly, NHTSA is setting the MY 1998 light truck CAFE standard at the MY 1997 level of 20.7 mpg.

NHTSA recognizes that setting the MY 1998 standard at 20.7 mpg without making a determination as to the maximum feasible average fuel economy level for that model year could be inconsistent with the second sentence of 49 U.S.C. § 32902(a), which states that ''[e]ach [light truck] standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.''

However, the only other possible interpretation of the language ''differs from standards promulgated for such automobiles prior to enactment of this section'' in section 330 is that NHTSA may issue CAFE standards at a level equal to that of *any* previously promulgated standard. Under this interpretation, during FY 1996 NHTSA would be able to set the ''combined'' (i.e., two-wheel drive and four-wheel drive) light truck CAFE standard for MY 1998 (and for future model years) at one of 10 specific levels as follows (see 49 CFR 533.5(a)):

Combined Standard (MPG)	Model Years
17.5	1982
19.0	1983
19.5	1985
20.0	1984, 1986, 1990
20.2	1991, 1992
20.4	1993
20.5	1987, 1988, 1989, 1994
20.6	1995
20.7	1996, 1997
21.0	*1985

*In model year 1985, the combined standard was originally promulgated as 21.0 mpg before it was amended to 19.5 mpg.

Similarly, under this interpretation, the agency would be authorized to amend the passenger car CAFE standard to one of seven specific levels, ranging from 18.0 mpg to 27.0 mpg, but to no points in between. See 49 CFR 531.5(a).

Such an interpretation, however, could also conflict with the ''maximum feasible'' provision of 49 U.S.C. § 32902(a) because the maximum feasible level calculated by NHTSA under the criteria it has traditionally applied might not be identical to one of the previously promulgated standards. Moreover, those previously promulgated standards include 21.0 mpg, a level in excess of the MY 1997 standard, which would clearly contravene the intent, expressed in every item of relevant legislative history, to ''freeze'' NHTSA's ability to increase the CAFE standards above the MY 1997 level of 20.7 mpg.

Finally, it is inherently illogical to assume that Congress intended to limit so arbitrarily the possible levels at which NHTSA can set future CAFE standards; i.e., that previously promulgated standards of 20.0 mpg, 20.2 mpg, or 20.4 mpg are permissible, but 20.1 mpg and 20.3 mpg are not permissible, even if one of them were determined to be the maximum feasible level. In contrast, the interpretation adopted by the agency in this notice is logical in the context of the Appropriations Act restrictions. ''Freezing'' the MY 1998 standard at 20.7 mpg comports with Congressman DeLay's declaration that ''[t]he purpose of Section 330 is to establish a pause in this rulemaking process, to give the Congress an opportunity to review the CAFE program,'' 141 Cong. Rec. H7605 (daily ed. July 25, 1995), and the expectation that the established standard for MY 1997 of 20.7 mpg would not be an unreasonable level for the industry to achieve in MY 1998.

The agency is of course aware that repeals by implication of substantive statutory provisions are generally disfavored, particularly where the claimed repeal rests upon language in an appropriations act. However, as demonstrated above, both of the theoretically plausible textual readings of the 1996 DOT Appropriations Act language could conflict with the ''maximum feasible'' requirement, so the agency must choose the one which is most consistent with the legislative intent expressed in the legislative history.

Further, under the present circumstances, where issuance of a light truck standard at a level other than 20.7 mpg is prohibited by a recent Act of Congress, the only other alternative would be to decline to issue any light truck standard at all for MY 1998. That course of action would also constitute a ''repeal'' of the statutory duty set forth in the first sentence of section 32902(a)

to issue annual light truck CAFE standards. It would also do more violence to the statutory scheme of Chapter 329 than the establishment of a 20.7 mpg standard for MY 1998. Finally, failure to set any standard would conflict with Congress's express direction in the House Committee report that NHTSA not be precluded ''from preparing, proposing and issuing a CAFE standard for model year 1998 automobiles that is identical to the CAFE standard for such automobiles for model year 1997.''

II. Impact Analyses

A. Economic Impacts

The agency has not prepared a Final Regulatory Impact Analysis because of the restrictions imposed by Section 330 of the FY 1996 DOT Appropriations Act. The rule was reviewed by the Office of Management and Budget under Executive Order 12866 and is considered significant under the Department's regulatory procedures.

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 been 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 1998 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

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 is revised to read as follows:

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

2. Section 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

* * * * *

Issued On: March 29, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–8156 Filed 3–29–96; 3:38 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 251

[Docket No. 960301056–6056–01; I.D. 021596D]

RIN 0648–AI76

Financial Aid Program Procedures; Removal of Conditional Fisheries Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS abolishes the Financial Aid Program Procedures regulations in accordance with the President's Regulatory Reform Initiative, which directs that unnecessary regulations be abolished.

EFFECTIVE DATE: April 3, 1996.

ADDRESSES: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles L. Cooper, Program Leader, 301–713–2396.

SUPPLEMENTARY INFORMATION: In 1973, NMFS established the regulations contained in 50 CFR part 251 to provide a central statement of NMFS policy related to restricting the use of financial assistance programs in certain fisheries in which the use of these programs has been determined to be inconsistent with the wise use of the fishery resources involved. These fisheries are designated as ''Conditional Fisheries.'' The programs involved are the Fisheries Capital Construction Fund Program (46 U.S.C. 1177) and the Fisheries Obligation Guarantee Program (46 U.S.C. 1271–1279).

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. NMFS has determined that the regulations pertaining to Conditional Fisheries are unnecessary and should be abolished, because NMFS has long-standing practices governing the use of the Fisheries Obligation Guarantee Fund Program and the Fisheries Capital Construction Fund Program that contain adequate safeguards against using these programs in ways that would be inconsistent with the wise use of fisheries resources. To ensure that the Fisheries Capital Construction Fund Program will not be used in ways that would be inconsistent with the wise use of fishery resources, those fisheries which had been designated as ''Conditional Fisheries'' shall continue to be ''closed fisheries'' pursuant to the Interim Capital Construction Fund agreements. The fisheries involved are the fishery for yellowfin tuna in the area regulated by the Inter-American Tropical Tuna Commission, the fishery for American lobster in the Gulf of Maine, the fishery for salmon in Washington, Oregon, and California, the fishery for king crab in