

allowability of IR&D/B&P costs on contracts for foreign military sales not wholly paid for from funds made available on a nonrepayable basis shall be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

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PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205–18 is revised to read as follows:

231.205–18 Independent research and development and bid and proposal costs.

(a) *Definition.* Major contractor, as used in this subsection, means a contractor with more than \$11,000,000 in IR&D/B&P costs in the preceding fiscal year allocated to DoD prime contracts and subcontracts whose values exceed the simplified acquisition threshold, except for fixed-price contracts and subcontracts without cost incentives.

(c) *Allowability.* (i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See 225.7303–2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors (see paragraph (a) of this subsection), the following limitation applies—

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts' allocable share of total incurred IR&D/B&P costs; or

(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to the DoD, including activities intended to accomplish any of the following—

(1) Enable superior performance of future U.S. weapon systems and components;

(2) Reduce acquisition costs and life-cycle costs of military systems;

(3) Strengthen the defense industrial and technology base of the United States;

(4) Enhance the industrial competitiveness of the United States;

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522;

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies;

(7) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(iv) For major contractors, the contracting officer will—

(i) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(ii) Provide the results of the determination to the contractor.

(v) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (see also 242.771–3(a)).

PART 242—CONTRACT ADMINISTRATION

4. Sections 242.771 through 242.771–3 are revised to read as follows:

242.771 Independent research and development/bid and proposal.

242.771–1 Scope of subpart.

This section implements 10 U.S.C. 2372, Independent research and development and bid and proposal costs: payments to contractors.

242.771–2 Policy.

Defense contractors are encouraged to engage in IR&D/B&P activities of potential interest to DoD, including activities cited in 231.205–18(c)(iii)(B).

242.771–3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine cost allowability of IR&D/B&P costs as set forth in 231.205–18 and FAR 31.205–18.

(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205–18(a)) are of potential interest to DoD. Notify the contractor promptly of any IR&D/B&P activities which are not of potential interest to DoD.

(b) The Defense Contract Management Command of the Defense Logistics Agency or the Military Department responsible for performing contract administration functions is responsible for—

(1) Providing contractors with guidance on financial information needed to support IR&D/B&P costs.

(2) Providing Defense Contract Audit Agency (DCAA) with IR&D/B&P statistical information, as necessary, to assist DCAA in its annual reporting requirement (see paragraph (c) of this subsection).

(c) The Defense Contract Audit Agency is responsible for submitting an annual report to the Director of Defense Procurement (USD (A&T) DP) setting forth required statistical information relating to the DoD-wide IR&D/B&P program.

(d) The Director, Defense Research and Engineering (USD (A&T) DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. 94–35; Notice 2]

RIN 2127–AF37

Minimum Driving Range for Dual Fueled Electric Passenger Automobiles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In this document, NHTSA proposes to set the minimum driving range only for dual fueled electric passenger automobiles, otherwise known as hybrid electric vehicles (HEVs), at 17.7 miles when operating on electricity alone. The purpose of establishing the range is to meet a statutory requirement intended to encourage the production of HEVs. An HEV which meets the range requirement would qualify to have its fuel economy calculated according to a special procedure that would facilitate the efforts of its manufacturer to comply with the corporate average fuel economy standards. NHTSA is also proposing to

establish a procedure through which manufacturers of HEVs that do not meet the minimum driving range requirements may petition the agency for relief.

DATES: Comments must be received by March 4, 1997.

ADDRESSES: Comments on this document must refer to the docket and notice numbers set forth above and be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. P. L. Moore, Office of Planning and Consumer Programs, NPS-32, Room 5315, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-5222.

SUPPLEMENTARY INFORMATION:

Background

A. Alternative Motor Fuels Act of 1988

Section 6 of the Alternative Motor Fuels Act of 1988 (AMFA) (P.L. 100-494) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 513, "Manufacturing Incentives for Automobiles." Section 513 contained incentives for the manufacture of vehicles designed to operate on alcohol or natural gas, including dual fuel vehicles; i.e., vehicles capable of operating on one of those alternative fuels and either gasoline or diesel fuel.

Section 513 provided that dual fuel vehicles meeting specified criteria

qualify for special treatment in the calculation of their fuel economy for purposes of the corporate average fuel economy (CAFE) standards. The fuel economy of a qualifying vehicle is calculated in a manner that results in a relatively high fuel economy value, thus encouraging its production as a way of facilitating a manufacturer's compliance with the CAFE standards. One of the qualifying criteria for passenger automobiles was to meet a minimum driving range, which was to be established by NHTSA.

NHTSA was required to establish two minimum driving ranges, one for "dual energy" (alcohol/gasoline or diesel fuel) passenger automobiles when operating on alcohol, and the other for "natural gas dual energy" (natural gas/gasoline or diesel fuel) passenger automobiles when operating on natural gas. In establishing the driving ranges, NHTSA was to consider the purposes of AMFA, consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and any other factors deemed relevant.

The AMFA and its legislative history made it clear that the driving ranges were to be low enough to encourage the production of dual fuel passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternative fuels. The agency accordingly promulgated driving range regulations at 49 CFR Part 538 (55 FR 17616).

B. Energy Policy Act of 1992

The Energy Policy Act of 1992 (Pub. L. 102-486) amended section 513 of the Cost Savings Act to expand the scope of the alternative fuels it promotes. The

amended section provided incentives for the production of vehicles using, in addition to alcohol and natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), and any fuel NHTSA determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

Section 513 continued to provide incentives for the production of dual fuel vehicles; i.e., vehicles that operate on one of a now expanded list of alternative fuels, including electricity, and on gasoline or diesel fuel. For example, the calculated fuel economy of a dual fueled vehicle is based on the harmonic average of the fuel economy when operated on gasoline or diesel fuel and the credited fuel economy when operated on the alternative fuel. A hybrid electric vehicle operating on gasoline may have a combined city/highway fuel economy average of 28.5 miles per gallon, and a combined city/highway energy consumption of 422 watt-hours/mile when operated on electricity. Using the petroleum equivalency factor of 38322 watt-hours per gallon (Wh/gal) proposed by the Department of Energy on February 4, 1994 (59 FR 5336) to derive a miles per gallon equivalent, the mpg of such an electric vehicle with no petroleum powered accessories is derived by dividing the petroleum equivalency by the electric energy consumed per mile:

$$38322/422 = 90.81 \text{ miles/gallon}$$

The harmonic average of 90.81 mpg and 28.5 mpg is:

$$\frac{1}{\frac{0.5}{28.5} + \frac{0.5}{90.8}} = 43.4 \text{ miles / gallon}$$

NHTSA notes that some statutory terminology was changed by the 1992 amendments. Among other things, the terms "dual energy" and "natural gas dual energy" were dropped, and the

terms "alternative fueled automobile," "dedicated automobile," and "dual fueled automobile" were added.

Section 513 also continued to require dual fueled passenger automobiles to

meet specified criteria, including meeting a minimum driving range, in order to qualify for the special treatment in the calculation of their fuel economy for purposes of the CAFE standards. The

1992 Energy Policy Act necessitates amending Part 538. The agency must establish a minimum driving range for the expanded scope of dual fueled vehicles. Minimum driving range standards for all dual energy vehicles except electric vehicles were established by a final rule issued on March 21, 1996 (61 FR 14507). Pursuant to the 1992 amendments, the March 21, 1996, final rule also eliminated the exemption from the minimum driving range requirements for all non-electric dual fueled vehicles. Establishment of a minimum driving range for HEVs requires reinstating the availability of an exemption for these vehicles.

On July 5, 1994, the Cost Savings Act was revised and codified "without substantive change." The provisions formerly found in section 513 of the Cost Savings Act are now at 49 U.S.C. 32901, 32905, and 32906. In setting the minimum driving range for dual energy electric vehicles, NHTSA is required by 49 U.S.C. 32901(c)(3) to consider the purposes set forth in section 3 of the AMFA as amended by the Energy Policy Act:

(1) To encourage the development and widespread use of methanol, ethanol, natural gas, other gaseous fuels, and electricity as transportation fuels by consumers; and

(2) To promote the production of alternatively fueled motor vehicles.

Section 32901(c)(3) also requires that the agency consider consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other relevant factors in setting a minimum driving range.

Proposal

In this document, NHTSA is proposing to amend Part 538 pursuant to the Energy Policy Act. As discussed below, the agency is proposing to set the minimum driving range for all hybrid electric dual fueled passenger automobiles while operating on electricity alone at 17.7 miles and to establish application procedures for manufacturers of HEVs seeking exemption from the minimum range requirement.

To encourage the development and production of alternative fuel vehicles, the AMFA provides that such vehicles meeting an appropriate minimum driving range will qualify for special treatment in the calculation of their fuel economy for the purpose of their manufacturers' compliance with CAFE standards.

The inclusion of electricity in the list of alternative fuels covered by the AMFA necessitates that a minimum driving range be established for HEVs

for fuel economy purposes. The AMFA specifies a minimum driving range of 200 miles for dual fueled passenger cars (other than dual fueled electric) when operating on the alternative fuel, but allows the Secretary of Transportation to establish the minimum driving range for HEVs.

The AMFA and Energy Policy Act provisions, which are now codified at 49 U.S.C. sections 32901(c) and 32905, require the Secretary of Transportation to establish a minimum driving range for HEVs. This minimum range requirement applies to passenger automobiles only. It does not apply to dual fueled light trucks.

In seeking to carry out its goals, the Act attempts to balance two competing objectives:

(1) Encouraging the production of alternatively fueled vehicles by offering CAFE standard compliance incentives, and

(2) Encouraging the purchase of alternatively fueled vehicles by consumers by providing the incentives only to those vehicles whose range of operation is large enough to meet consumer needs.

The setting of a minimum driving range for HEVs must balance the needs of the consumer with the technical and economic considerations that are faced by the manufacturers. A low minimum driving range eligibility criterion might encourage the production of dual fueled cars, but lead to HEVs being designed with such a low alternative fuel driving range that consumers do not buy them or, if they buy them, infrequently operate them on the alternative fuel. Conversely, an excessively high minimum driving range eligibility criterion might discourage the production of dual fueled electric cars and unnecessarily compromise other vehicle attributes and aspects of performance. Manufacturers would be discouraged by an overly-stringent minimum range because a vehicle which does not meet the minimum driving range for its type is unlikely to be built since the manufacturer would not receive any of the benefits or incentives provided by the Act.

From the viewpoint of the consumer, the necessary driving range may be dictated by the convenience of a range that corresponds to a typical workweek travel distance, or a daily travel distance for a fleet car. Also, if the majority of consumers would use an HEV in an urban area with more recharging stations or in a fleet application with a central recharging station, a large driving range may be less critical.

To aid the agency in relating the data on driving range for HEVs to the unique

characteristics of dual fueled passenger automobiles, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) on September 22, 1994 (59 FR 48589). In the ANPRM, the agency posed a number of questions on the use of HEVs relating to the determination of a driving range that would serve the purposes of Alternative Motor Fuels Act and the Energy Policy Act.

A. Response to the ANPRM

The agency received four comments in response to the September 22, 1994, ANPRM. Comments were submitted by Volvo Cars of North America, Inc. (Volvo), National Automobile Dealers Association (NADA), Mitsubishi Motors America, Inc. (Mitsubishi), and American Automobile Manufacturers Association (AAMA). NADA did not provide responses to the individual questions; Volvo commented on most of the questions, and Mitsubishi and AAMA commented on all questions.

One of the questions contained in the ANPRM requested views on the minimum driving range for HEV passenger cars when operating on electricity. Volvo stated that a minimum driving range of approximately 60 to 80 miles would be appropriate. Mitsubishi declined to recommend an explicit minimum driving range, but did recommend that the agency consider the application of a driving cycle that is at a lower speed than the current EPA urban/highway driving cycle since the EPA urban/highway driving cycle's speeds (60+ mph) are too high for some HEVs. AAMA recommended that NHTSA set a zero minimum driving range for HEVs so that no HEV technologies (including those with little or no all-electric range) that still offer energy and/or emissions benefits will be excluded by regulatory design. AAMA believes that this approach to setting minimum driving range is consistent with the intent of the Energy Policy Act.

The ANPRM also solicited comments on what the appropriate method for determining minimum driving ranges should be, whether the EPA driving cycle should be used to determine the range and whether driving range measurements should be undertaken with the vehicle using electric power alone or a combination of electricity and other fuels. Volvo stated that dual fueled vehicles should incorporate the same driving range on the two fuels combined as a normal gasoline fueled vehicle, which is 350-400 miles. However, Volvo believes that it is possible for a hybrid vehicle to complete the EPA driving cycle solely on electric power. Mitsubishi believes

that the minimum driving range should be determined based on the hybrid vehicle's role and purpose; e.g., in a high pollution urban area, the range should be based on all electric operation and in suburban or rural areas the range should be based on operation with the other power source running as well. Mitsubishi also stated that whether the hybrid can operate solely on electricity depends on the design and purpose of the vehicle. AAMA stated that the range should be determined on the combination of both power sources and it believes that there may be vehicles that can operate solely on electricity while others may require the auxiliary power source as well. AAMA also noted that a hybrid with electric power and an alternative fueled engine is a dedicated alternative fueled automobile since it operates entirely on alternative fuels, albeit two types of alternative fuel.

The ANPRM also requested comments regarding the suitability of the Society of Automotive Engineers (SAE) J1711 Hybrid Electric Vehicle Test Procedure. This test procedure, which is still under development, might be used in the future for determining range. Among other requests, the NPRM sought information regarding the adaptability of the SAE procedure for use with the EPA driving cycle, and the appropriateness of other tests. Mitsubishi's opinion was that the SAE procedure should be adopted, but with lower speeds since the EPA cycle speeds are too high for hybrids. AAMA stated that the SAE procedure could be used once it is fully developed since it does contain procedures for computing an all-electric range. AAMA further added that it was unaware of other test procedures that would be applicable in determining the range for hybrid vehicles.

In addition to addressing the basic concerns of how to determine a driving range for HEVs and what the potential ranges for such vehicles may be in light of existing technology, the ANPRM also solicited information relating to consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, and performance. Comments received in response to the ANPRM as well as the agency's own research indicate that consumer expectations and requirements for range, safety, drivability and performance place a great burden on existing HEV technologies, particularly when the economic practicability of these vehicles is considered. In regard to consumer demands and expectations, Volvo thinks that hybrid vehicles will be used mainly in urban areas and recharging will take

place at the consumer's residence or, for fleets, at central recharging facilities. Mitsubishi believes that the primary use will be in urban areas and for fleets with central recharging. AAMA expects that hybrids will be used in urban areas for commuting and fleet use. Recharging is expected to be at residences and centralized stations or parking garages.

In response to questions directed at specific consumer expectations of minimum driving range, Volvo commented that the consumer can accept a shorter driving range if the hybrid or dual fueled vehicle incorporates an auxiliary power unit as opposed to a vehicle solely powered by an electrical source. Volvo also stated that the minimum driving range for a vehicle operating on electricity should be defined so that the majority of people who commute, for example in the Los Angeles metropolitan area (or any other mandated metropolitan area), have the capability to get to work and then back home (and with some margin) using the vehicle's stored electrical energy supply. Mitsubishi offered the fact that 90% of daily round-trip commutes are less than 60 miles in urban areas. AAMA commented that the minimum driving range should be based on convenience to the customer. Volvo, Mitsubishi, and AAMA all indicated that until technology allows more rapid recharging and electric recharging facilities become widely available, that the range of HEVs operating on electricity alone will be constrained by the need to recharge vehicles at their base of operations.

Consumer requirements such as performance, utility and comfort also have an impact on range. Mitsubishi noted that about 1 kW of electrical power is expected to be needed to operate normal heating and cooling systems in Electric passenger cars. With a heat pump system, driving in the city may decrease the range by 15 to 20%. Using a heater adequate to meet FMVSS 103 requirements would consume more than 5 kW of electricity. Mitsubishi stated that such a heater would easily meet the defrosting requirements, but heating the interior could reduce the driving range in half. AAMA indicated that heaters and air conditioners reduce the range of the vehicle depending on the ambient temperature and type of system. While new technology is being developed, it cannot be considered at this time because of high cost and unknown reliability. While NADA did not comment on this question specifically, it submitted information about the GM Impact electric vehicle cold weather experience and noted that minimum HEV range calculations must

also reflect climate variations. Results of prototype tests in colder ambient air temperatures indicated that these vehicles suffered drastically reduced driving range with the expected 55 mile range reduced by 40% when the temperature falls from 70 degrees Fahrenheit to 20 degrees and a 55% reduction when the temperature falls to 0 degrees.

In offering its comments on utility and space Mitsubishi indicated that if the minimum driving range is set too high, there may not be enough space for the batteries in a typical sedan-type vehicle. AAMA stated that there is always a trade-off between appearance and aerodynamics versus function when designing a vehicle and that with current technology, storage space is likely to be reduced if a large minimum driving range is required. Passenger and cargo space must be utilized to increase range to higher levels.

In examining the economic practicability of HEVs, the range of the vehicle appears to be directly related to its cost. AAMA stated, and the responses submitted by Volvo and Mitsubishi indicate, that even without significant driving range requirements, one of the HEVs most serious issues is battery cost. High driving range requirements can lead to excessive cost and weight of powertrains and energy storage devices. The increased weight due to the dual fuel capability of HEVs requires increased vehicle structural strength and additional chassis components which increase the overall weight and cost of the HEV and reduce energy efficiency.

Higher range requirements have other costs as well, particularly when existing technologies are considered. Greater range under electric power requires larger and heavier battery packs. Volvo indicated that the bigger the battery, the longer the range, since battery pack size is in direct proportion to the consumer's available driving range. Volvo also stated that the bigger the battery, the heavier the vehicle, thus providing a shorter driving range when a non-electric source of energy is used to propel the vehicle. Mitsubishi reasoned that if the battery pack is larger, it may take longer to discharge the battery, which would result in a longer HEV driving range. However, Mitsubishi believes that HEVs may actually have a shorter driving range since the reduction in fuel economy resulting from the increased weight may not offset the amount of energy gained by a larger battery pack.

AAMA indicated that batteries occupying the same space as a gasoline fuel tank would weigh about 1.7 times

as much while providing only a fraction of the operating range (approximately 3%). In an HEV, an oversized energy storage device reduces the space available for the gasoline or diesel fuel storage.

Higher range in the electric-only mode of operation would also invoke penalties affecting performance and safety. Mitsubishi believes that the balance of the vehicle, and consequently the vehicle's handling, will be affected if a large number of batteries are used to provide longer driving ranges. Mitsubishi indicated that an HEV with the range of a standard gasoline powered vehicle would weigh approximately 5000 lbs. Mitsubishi further added that while the majority of driving performance depends on the vehicle weight and the motor's power capacity, the most important parameter is weight balance to improve handling. In addition to performance and handling, Mitsubishi indicated that it did not have sufficient data regarding the safety risk related to longer driving ranges on electric power, but believed that if the battery capacity is smaller, the safety risk is lower, and the driving range is shorter. AAMA explained that an electric powertrain can be made to produce the same performance capability as a gasoline vehicle, but, like a gasoline vehicle, increased performance generally results in decreased range when holding all other variables constant. If longer range requires larger battery storage, then cost and packaging constraints will lead toward smaller engines, which, if the battery is near depletion, leads to performance and drivability degradation.

B. The Proposed Minimum Driving Range

The setting of a minimum driving range for HEVs must carefully balance what the potential purchaser expects from the vehicle and what technical and economic considerations the manufacturer will encounter in successfully bringing these vehicles to the marketplace. The agency's goal is to allow maximum flexibility to manufacturers of this emerging technology while encouraging the purchase of alternatively fueled vehicles by consumers, with the expectation that those vehicles produced will satisfy vehicle performance requirements and contain attributes desired by the purchaser.

In comparison to a normal gasoline fueled vehicle driving range of 350-400 miles, the typical electric-only vehicle has a driving range of 60-80 miles or less. Recent developments in electric

vehicle technology appear to be extending driving ranges. New battery types, such as the fiber-nickel-cadmium battery previously used only in the aerospace industry, may change existing constraints on range. Vehicles based on these batteries are expected to have a range of 100 to 150 miles, can partially recharge in as little as five minutes, and have a battery life of more than 200,000 miles. These batteries, however, along with a host of other advanced-technology batteries are still in the developmental stage, and are not expected to be available on a commercial scale for many years. Meanwhile, lead-acid and possibly nickel-cadmium are the only commercially available and economical battery technologies suitable for electric vehicles in the near term. Therefore, for the immediate future, it is expected that the battery used in electric and hybrid vehicles will be the lead-acid battery. This battery configuration has considerable constraints, such as an extremely low charge density and a long recharge time. Based on NHTSA's review of comments forwarded in response to the ANPRM, a review of current literature, studies of current industry capabilities, an assessment of the available technology, and existing statutory requirements, the agency is proposing to set the minimum driving range for HEVs, when operating solely on electricity at 17.7 miles—the range required to complete one EPA urban/highway cycle under the current Federal Test Procedure (FTP).

In the agency's view, setting a minimum driving range at 17.7 miles ensures that HEVs will have sufficient driving range to meet the needs of consumers while also encouraging HEV development. A 17.7 mile minimum range is not so stringent as to foreclose the development of vehicles relying on new technologies or entry into the market without unduly large expenditures of capital resources. The proposed range is also sufficient to meet the needs of many vehicle users. According to the 1990 National Personal Transportation Survey (NPTS), a 17.7 mile range would be adequate for 85% of daily vehicle trips and 45% of daily vehicle miles traveled. In addition, setting the minimum driving range at 17.7 miles allows use of EPA test procedures, where one complete highway and urban cycle consists of 17.7 mi. The agency is, therefore, proposing that those vehicles that finish one complete circuit of the EPA highway and urban cycle in the electric-only mode without recharging shall be

deemed to have met the minimum range requirement.

The agency notes that the proposed minimum driving range contemplates operation of the vehicle solely on electric power when some hybrid designs under consideration are full time hybrids. In these vehicles, electric and internal combustion engines are designed to complement each other and may not have sufficient power alone to adequately propel the vehicle. Similarly, other designs in which the vehicle may be operated on electric power alone may not have sufficient range to meet the proposed 17.7 mile minimum range. However, calculation of the fuel economy of a dual fueled automobile under Section 513 of the AMFA (now 49 U.S.C. 32905) requires that the vehicle be operated solely on the alternative fuel and, as set forth in 49 U.S.C. 32904(c), have its energy consumption measured through use of the EPA combined urban and highway cycle. This statutory requirement compels a minimum driving range specifying electric only operation for a distance equivalent to one EPA cycle.

In order to assist the agency in setting the minimum driving range and evaluating the environmental consequences of this proposal, NHTSA requests that vehicle manufacturers provide answers to the following questions: (1) If there were no CAFE incentives for producing dual fuel electric vehicles, how many of these vehicles would you manufacture in the next ten years? What type of battery would the vehicles have? What range do you expect the vehicle to have when operating on electric power, conventional fuels, or both? (2) With CAFE incentives available only for dual fuel electric vehicles that have a range of at least 17.7 miles, how many of these vehicles would you produce in each of the next ten years? What kind of battery would it employ? (3) Is there a minimum driving range different than 17.7 miles that would give you an incentive to build substantially more vehicles? How many vehicles would you manufacture in the next ten years in this case? What types of batteries would you use? (4) What is the highest driving range at which you would manufacture at least 80% of the number of vehicles projected in your answer to question 3, and what type of batteries would you use to achieve that range?

Adopting a range lower than 17.7 miles might provide additional flexibility to manufacturers seeking to develop new technologies. However, it is NHTSA's current view that the agency is precluded by the explicit language of 49 U.S.C. 32905 from setting

a minimum driving range that does not require operation on electricity alone. In addition, determining the fuel economy of a hybrid electric vehicle while operating on electricity alone requires that the vehicle complete at least one EPA driving cycle. In addition, allowing manufacturers to obtain CAFE credits by producing a vehicle that may not be capable of any meaningful operation while using electricity as a fuel, is contrary to the intent of the statute in that credits would be made available without any corresponding benefit. Those manufacturers who are unable, because of technological or other burdens, to produce a vehicle capable of meeting the 17.7 mile range requirement, may apply for exemption under the procedures proposed in this notice.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined that the action is not "significant" under the Department of Transportation's regulatory policies and procedures. In this NPRM, the agency proposes to set the minimum driving range for electric dual fueled passenger automobiles when operating solely on electricity at 17.7 miles. The establishment of a minimum driving range implements statutory incentives to encourage the manufacture of alternative fuel vehicles and does not add any additional burdens. For these reasons, NHTSA believes that any impacts on manufacturers will be so minimal as not to warrant preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed rule, if made final, will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that, to the extent that any passenger automobile manufacturers qualify as small entities, their number would not be substantial. Moreover, conversion of vehicles to dual fuel status with the minimum ranges that would be established by this regulation would be undertaken voluntarily. Therefore, no significant costs would be imposed on any manufacturers or other small entities.

C. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. Civil Justice Reform

This proposed rule would not have any retroactive effect and it does not preempt any State law. 49 U.S.C. 32909 sets forth a procedure for judicial review of automobile fuel economy regulations. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Paperwork Reduction Act of 1995

This proposed rule includes new "collections of information" as that term is defined by the Office of Management and Budget. For Part 538, OMB has previously approved a collection of information (OMB Control Number 2127-00554 "Minimum Driving Range for Dual Energy and Natural Gas Dual Energy Passenger Vehicles—49 CFR 538") for use through June 30, 1996. This approval has now lapsed as the petitioning process for non-electric alternative fuel vehicles was rescinded in the last revision of Part 538 (61 FR 14507). NHTSA will prepare a new request for collection of information approval for the petitioning process proposed in this notice and will include in the request an estimate of the new collection of information burden that would result if this proposed rule is made final. To assist the agency in estimating the new collection of information burden that would result if this proposed rule is made final, the agency requests that potential petitioners provide comments to the following questions: (1) Do you anticipate petitioning the agency for a reduction in the minimum driving range requirement for a particular vehicle? If so, identify yourself as a member of one of the following; household, business, for-profit entity, non-profit entity, and/or federal, state, local, or tribal government. (2) What are the estimated annual reporting and recordkeeping hours required to submit a petition for a model-specific reduction of the minimum driving range? Indicate whether this information could be collected and transmitted electronically either in whole or in part and what percentage of the information could be collected or transmitted electronically. (3) What is your estimate of the annual

reporting and recordkeeping costs required to petition for a model-specific reduction of the minimum range requirement? (4) What is your estimate of the total annualized capital/startup costs required for submitting a petition for a model-specific reduction? (5) What is your estimate of your total annual costs for reporting and recordkeeping for petitioning for a model-specific reduction?

Pursuant to the Paperwork Reduction Act of 1995 and OMB's regulations at 5 CFR section 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. As of the publication of this notice, there is no valid OMB control number applicable to the collection of information associated with the driving range reduction petition process proposed in this notice. As noted above, the agency intends to obtain a valid OMB control number prior to promulgation of a final rule.

Public Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the NPRM will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late in regard to the final

rule will be considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 538

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 538 is proposed to be revised to read as follows:

PART 538—MANUFACTURING INCENTIVES FOR ALTERNATIVE FUEL VEHICLES

Sec.

538.5 Minimum driving range.

538.6 Measurement of driving range.

538.7 Petitions for reduction of minimum driving range.

Authority: 49 U.S.C. 32901, 32905, and 32906; delegation of authority at 49 CFR 1.50.

§ 538.5 Minimum driving range.

(a) The minimum driving range that a passenger automobile must have in order to be treated as a dual fueled automobile pursuant to 49 U.S.C. 32901(c) is 200 miles when operating on its nominal usable fuel tank capacity of the alternative fuel, except when the alternative fuel is electricity.

(b) The minimum driving range that a passenger automobile using electricity as an alternative fuel must have in order to be treated as a dual fueled automobile pursuant to 49 U.S.C. 32901(c) is 17.7 miles when operating on its nominal storage capacity of electricity.

§ 538.6 Measurement of driving range.

(a) The driving range of a passenger automobile model type not using electricity as an alternative fuel is determined by multiplying the combined EPA city/highway fuel economy rating when operating on the alternative fuel, by the nominal usable fuel tank capacity (in gallons), of the fuel tank containing the alternative fuel.

(b) The combined EPA city/highway fuel economy rating is the value determined by the procedures established by the Administrator of the

EPA under 49 U.S.C. 32904 and set forth in 40 CFR part 600.

(c) The driving range of a passenger automobile model type using electricity as an alternative fuel is determined by operating the vehicle in the electric-only mode of operation through the EPA combined city/highway cycle.

(d) Passenger automobile types using electricity as an alternative fuel that have completed the EPA combined city/highway cycle once without recharging shall be deemed to have a range of 17.7 miles.

§ 538.7 Petitions for reduction of minimum driving range.

(a) A manufacturer of a model type of passenger automobile capable of operating on both electricity and either gasoline or diesel fuel may petition for a reduced minimum driving range for that model type in accordance with paragraphs (b) and (c) of this section.

(b) Each petition shall:

(1) Be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(2) Be submitted not later than the beginning of the first model year in which the petitioner seeks to have the model type treated as an electric dual fueled automobile.

(3) Be written in the English language.

(4) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the petitioner.

(5) Set forth in full data, views, and arguments of the petitioner, including the information and data specified in paragraph (c) of this section, and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

(6) Specify and segregate any part of the information and data submitted under this section that the petitioner wishes to have withheld from public disclosure in accordance with part 512 of this chapter.

(c) Each petitioner shall include the following information in his/her petition:

(1) Identification of the model type or types for which a lower driving range is sought under this section.

(2) For each model type identified in accordance with paragraph (c)(1) of this section:

(i) The driving range sought for that model type.

(ii) The number of years for which that driving range is sought.

(iii) A description of the model type, including car line designation, engine

displacement and type, electric storage capacity, transmission type, and average fuel economy when operating on:

- (A) Electricity, and
- (B) Gasoline or diesel fuel.

(iv) An explanation of why the petitioner cannot modify the model type so as to meet the generally applicable minimum range, including the steps taken by the petitioner to improve the minimum range of the vehicle, as well as additional steps that are technologically feasible, but have not been taken. The costs to the petitioner of taking these additional steps shall be included.

(3) A discussion of why granting the petition would be consistent with the following factors:

(i) The purposes of 49 U.S.C. chapter 329, including encouraging the development and widespread use of electricity as a transportation fuel by consumers, and the production of passenger automobiles capable of being operated on both electricity and gasoline/diesel fuel;

- (ii) Consumer acceptability;
- (iii) Economic practicability;
- (iv) Technology;
- (v) Environmental impact;
- (vi) Safety;
- (vii) Drivability; and
- (viii) Performance.

(d) If a petition is found not to contain the information required by this section, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is received.

(e) The Administrator may request the petitioner to provide information in addition to that required by this section.

(f) The Administrator publishes in the Federal Register a notice of receipt for each petition containing the information required by this section. Any interested person may submit written comments regarding the petition.

(g) In reaching a determination on a petition submitted under this section, the Administrator takes into account:

- (1) The purposes of 49 U.S.C. chapter 329, including encouraging the development and widespread use of alternative fuels as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;
- (2) Consumer acceptability;
- (3) Economic practicability;
- (4) Technology;
- (5) Environmental impact;
- (6) Safety;
- (7) Drivability; and
- (8) Performance.

(h) If the Administrator grants the petition, the petitioner is notified in writing, specifying the reduced

minimum driving range, and specifying the model years for which the reduced driving range applies. The Administrator also publishes a notice of the grant in the Federal Register and the reasons for the grant.

(i) If the Administrator denies the petition, the petitioner is notified in writing. The Administrator also publishes a notice of the denial of the petition in the Federal Register and the reasons for the denial.

Issued on: December 26, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97-85 Filed 1-2-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 961217359-6359-01; I.D. 121196B]

RIN 0648-AJ11

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule and proposed catch sharing plan.

SUMMARY: NMFS proposes to approve and implement revisions to the Catch Sharing Plan (Plan) for sport harvests of Pacific halibut off Oregon under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). NMFS also proposes sport fishery regulations to implement the Plan in 1997. The proposed rule is intended to carry out the objectives of the Plan for 1997.

DATES: Comments on the changes to the Plan must be received by January 19, 1997; comments on the proposed sport fishery regulations must be received by February 15, 1997.

ADDRESSES: Send comments or requests for the Plan to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut

Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, catch sharing plans to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California) have been developed each year since 1988 by the Pacific Fishery Management Council (Council) in accordance with the Halibut Act. In 1995, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, March 20, 1995) which was revised in 1996 (61 FR 11337, March 20, 1996). The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A-1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors; a directed (traditional longline) commercial fishery that is allocated 85 percent of the 31.7 percent (26.945 percent of the non-Indian commercial harvest), and incidental (troll salmon) commercial fishery is allocated 15 percent of the 31.7 percent (4.755 percent of the non-Indian commercial harvest). The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

Proposed Changes to the Plan

At its August 1996 public meeting, the Council adopted, for public comment, proposed changes to the Plan on: (1) Re-structuring the Oregon sport fisheries from quota managed seasons to fixed-length seasons that are determined and set preseason, and (2) deleting the rollover provisions for unused quota in

the commercial incidental halibut catch (salmon troll) fishery. At its October 1996 public meeting, the Council made final recommendations for modifying the Plan to restructure the May and August seasons in the Oregon Central Coast subarea sport fishery (Cape Falcon to Florence north jetty) from a quota managed to a fixed-length season fishery. At the request of the Oregon Department of Fish and Wildlife (ODFW), the Oregon South Coast subarea sport fishery in May was not recommended for modification based on input from sport users in that area; however, the August season, which is combined with the Central Coast subarea, was recommended for modification to a fixed-length season. The commercial, incidental halibut catch (salmon troll) fishery was not recommended for change because of the Council's desire to maintain its original intent in the Plan to roll over any remaining quota not incidentally harvested during the May/June chinook salmon troll fishery to the directed commercial (longline) fishery.

NMFS is proposing to implement the Council-recommended changes to the Plan.

Proposed Revised Section of the Plan for the Oregon Sport Fisheries

Oregon Central Coast Subarea

If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this Oregon Central Coast subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) and the sport fishery is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea extends from Cape Falcon to the California border and the sport fishery is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide two fixed-length periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charter and larger private boat anglers, and provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed-length seasons will be established preseason for the May and August openings and will not be modified inseason. The average catch per day observed in the previous 3 years in May and August will be used to estimate the number of open days for each fixed season. ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient