

1994; interim approval expires December 9, 1996.

(i) Yakima County Clean Air Authority (YCCAA); submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires December 9, 1996.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA-2001-8977]

RIN 2127-AI35

Light Truck Average Fuel Economy Standard, Model Year 2003

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the corporate average fuel economy standard for light trucks manufactured in model year (MY) 2003. The issuance of the standard is required by statute. As required by section 320 of the fiscal year (FY) 2001 DOT Appropriations Act, the light truck standard for MY 2003 is identical to the standard for MY 2002, 20.7 mpg.

DATES: This final rule becomes effective on May 2, 2001.

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: For non-legal issues, call Henrietta Spinner, Office of Consumer Programs, at (202) 366-0846, facsimile (202) 493-2290, electronic mail

“hspinner@nhtsa.dot.gov” For legal issues, call Otto Matheke, Office of the Chief Counsel, at 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 from time to time 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, we 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. Using this authority, we have set light truck CAFE standards through MY 2002. See 49 CFR 533.5(a). The standard for MY 2002 is 20.7 miles per gallon (mpg) (65 FR 17776).

We 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 the model years from 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.

We then 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, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). This 20.7 mpg standard was adopted by a final rule issued on March 29, 1996. 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.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for the 1999 model year. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards other than the standard set for the 1998 model year. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

We followed that same procedure for following years and did not issue an NPRM prior to establishing the 2000, 2001, and 2002 light truck fuel economy standards. The agency concluded, as it had when setting the 1999 standard, that the restrictions contained in the appropriations acts prevented us from issuing any standards other than the standard set for the prior model year. We also determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

On October 23, 2000, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2001 was enacted. Pub. L. 106-346. This law contained the appropriations provisions for the Department of Transportation for the 2001 fiscal year. Section 320 of that Act provides:

None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act prescribing corporate average fuel economy standards for automobiles, as defined in such title, 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 us to set the MY 2003 standard is approximately April 1, 2001. As the agency cannot spend any funds in violation of the terms of Section 320, it cannot undertake any work in preparation of a standard for MY 2003 unless it is identical to the MY 2002

standard.¹ Preparation of any fuel economy standard requires the agency to spend money to determine what the appropriate fuel economy level would be, to analyze the costs and benefits of that standard and to prepare documents and studies regarding the standard. Incurring these costs when the legislation dictates the fuel economy level would not be a productive use of resources. Accordingly, the agency is foregoing any analysis of what the appropriate fuel economy level for MY 2003 might be.

We note that the language contained in section 320 of the FY 2001 Act is identical to that found in section 330 of the FY 1996 Appropriations Act, section 323 of the FY 1997 Appropriations Act, section 322 of the FY 1998 Appropriations Act, section 322 of the FY 1999 Appropriations Act, and section 321 of the FY 2000 Appropriations Act. The adoption of identical language in these acts leads us to conclude that Congress considered our prior view of this language to be correct: the limitation precludes NHTSA from setting a light truck standard that differs from one adopted for the previous year.

As explained above, section 320 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MYs 1998, 1999, 2000, 2001, and 2002. We are therefore establishing the MY 2003 light truck standard through the issuance of this final rule. In our view, the express directive in the FY 2001 Department of Transportation and Related Agencies Appropriations Act stops us from considering a different CAFE standard for the 2003 model year. As we cannot expend any funds to set the 2003 standard at any level other than the MY 2002 standard, issuing a notice of proposed rulemaking and providing an opportunity for notice and comment would be unnecessary and contrary to the public interest. Accordingly, this final rule sets the MY 2003 light truck CAFE standard at the MY 2002 level of 20.7 mpg.

II. Final rule

These regulations are being published as a final rule. Accordingly, the fuel economy standards in part 533 are fully

¹ NHTSA notes that while the language in section 320 of the FY 2001 Appropriations Act is identical to that contained in prior appropriation acts, the Conference Committee Report for the FY 2001 Act directs the National Academy of Sciences (NAS) to conduct a study to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106-940, at 117-118). The NAS study, to be completed by July 1, 2001, will not affect the MY 2003 CAFE standards.

in effect 30 days after the date of the document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

These regulations have been published as a final rule without prior issuance of a notice of proposed rulemaking because section 320 of the FY 2001 Department of Transportation and Related Agencies Appropriations Act prevents us from issuing any fuel economy standard for the 2003 model year that differs from those in effect for the 2002 model year. Because of this, providing for prior notice and opportunity for comment would have been superfluous.

In the agency's view, vehicle manufacturers and other parties will not be harmed by the agency's decision not to issue an NPRM before issuing a final rule to establish the MY 2003 light truck fuel economy standard. The applicable fuel economy standards established in this final rule do not differ from those established for the prior model year. As these standards cannot be modified by the agency, use of a final rule without a prior NPRM has no impact on the positions of any interested party.

III. Impact Analyses

A. Economic Impacts

We have not prepared a final economic assessment because of the restrictions imposed by Section 320 of the FY 2001 DOT Appropriations Act. All past fuel economy rules, however, have had economic impacts in excess of \$100 million per year. 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. Although we have no discretion under the statute (as well as with respect to the costs it imposes), we are treating this rule as "economically significant" under Executive Order 12866 and "major" under 5 U.S.C. 801.

B. Environmental Impacts

We have 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 document.

C. Impacts on Small Entities

We have not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. The agency notes that this final rule, which was not preceded by a Notice of Proposed Rulemaking, is

not a "rule" as defined by the Regulatory Flexibility Act and is, therefore, not subject to its provisions. As Congress has eliminated the agency's discretion by precluding any action other than the one taken in this document, we would not be able to take any action in the event such an analysis supported setting the light truck fuel economy at a different level. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a "small business" under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

E.O. 13132 (64 FR 43255, August 10, 1999), revokes and replaces E.O.s 12612 "Federalism" and 12875 "Enhancing the Intergovernmental Partnership." E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance

costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

The agency notes that section 320 of the FY 2001 Department of Transportation and Related Agencies Appropriations Act precludes the agency from the expenditure of any funds to prepare, propose or promulgate any fuel economy standard that differs from those currently in effect. This directive forbids NHTSA from studying any alternative fuel economy standards other than those presently in force. The agency cannot consider any other alternative standards that may result in lower costs, lesser burdens, or more cost-effectiveness for state, local or tribal governments or the private sector. Furthermore, as we are precluded from expending any funds to prepare an alternative fuel economy standard, it cannot embark on any studies of such alternatives. We have therefore not prepared a written assessment of this final rule for the purposes of the Unfunded Mandates Act.

F. Paperwork Reduction Act

There are no information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the

planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting fuel economy standards for light trucks.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards² in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

In establishing this fuel economy standard, the agency is simply establishing a goal for manufacturers to meet. Therefore, setting this standard does not involve the use of any voluntary standards.

K. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this final rule to the Department of Energy for review. That Department did not make any comments that we have not responded to.

² Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

V. Conclusion

Based on the foregoing, we are establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2003 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, 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. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7

TABLE IV—Continued

Model year	Standard
2000	20.7
2001	20.7
2002	20.7
2003	20.7

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Issued on: March 29, 2001.

L. Robert Shelton,

Executive Director.

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