

trailing position when the locomotive is occupied, shall be sanitary.

(d) Where the railroad uses a locomotive pursuant to § 229.137(e) in switching or transfer service with a defective toilet facility, such use shall not exceed 10 calendar days from the

date on which the defective toilet facility became defective. The date on which the toilet facility becomes defective shall be entered on the daily inspection report.

(e) Where it is determined that the modesty lock required by § 229.137(a)(2)

is defective, the railroad shall repair the modesty lock on or before the next 92-day inspection required by this part.

6. Appendix B of part 229 is amended by adding entries for §§ 229.137 and 229.139 to the Schedule of Civil Penalties to read as follows:

APPENDIX B TO PART 229.—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation <sup>1</sup>
* * * * *		*
<b>Subpart C—Safety Requirements</b>		
* * * * *		*
229.137 Sanitation, general:		
(a) Sanitation compartment in lead unit, complete failure to provide required items .....	\$5,000	\$10,000
(1) Ventilation .....	2,500	5,000
(2) Door missing .....	2,000	4,000
(2)(i) Door doesn't close .....	1,000	2,000
(2)(ii) No modesty lock .....	1,000	2,000
(3) Not equipped with toilet in lead .....	5,000	10,000
(4) Not equipped with washing system .....	1,000	2,000
(5) Lack of paper .....	1,000	2,000
(6) Lack of trash receptacle .....	1,000	2,000
(b) Exceptions:		
(1)(i) Commuter service, failure to meet conditions of exception .....	2,500	5,000
(1)(ii) Switching service, failure to meet conditions of exception .....	2,500	5,000
(1)(iii) Transfer service, failure to meet conditions of exception .....	2,500	5,000
(1)(iv) Class III, failure to meet conditions of exception .....	2,500	5,000
(1)(v) Tourist, failure to meet conditions of exception .....	2,500	5,000
(1)(vi) Control cab locomotive, failure to meet conditions of exception .....	2,500	5,000
(2) Noncompliant toilet .....	5,000	10,000
(c) Defective/unsanitary toilet in lead unit .....	2,500	5,000
(1-5) Failure to meet conditions of exception .....	2,500	5,000
(d) Defective/unsanitary unit; failure to meet conditions for trailing position .....	2,500	5,000
(e) Defective/sanitary unit; failure to meet conditions for switching/transfer service .....	2,500	5,000
(f) Paper, washing, trash holder; failure to equip prior to departure .....	2,500	5,000
(g) Inadequate ventilation; failure to repair or move prior to departure .....	2,500	5,000
(h) Door closure/modesty lock; failure to repair or move .....	1,000	2,000
(i) Failure to retain/maintain of equipped units .....	2,500	5,000
(j) Failure to equip new units/in-cab facility .....	2,500	5,000
(k) Failure to provide potable water .....	2,500	5,000
229.139 Servicing requirements:		
(a) Lead occupied unit not sanitary .....	2,500	5,000
(b) Components not present/operating .....	2,500	5,000
(c) Occupied unit in switching, transfer service, in trailing position not sanitary .....	2,500	5,000
(d) Defective unit used more than 10 days .....	2,500	5,000
(e) Failure to repair defective modesty lock .....	1,000	2,000

\* \* \* \* \*

Issued in Washington, DC, on March 22, 2002.

Allan Rutter,  
Administrator.

[FR Doc. 02-8077 Filed 4-3-02; 8:45 am]

BILLING CODE 4910-06-P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 533**

[Docket No. NHTSA-2001-11048]

RIN 2127-AI68

**Light Truck Average Fuel Economy Standard, Model Year 2004**

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the average fuel economy standard for light

trucks manufactured in the 2004 model year. Chapter 329 of Title 49 of the United States Code requires the issuance of this standard. The standard for all light trucks manufactured by a manufacturer is set at 20.7 mpg for the 2004 model year.

**DATES:** The amendment is effective May 6, 2002. Petitions for reconsideration must be submitted within 30 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:** For non-legal issues, call Ken Katz, Office of Planning and Consumer Programs, at (202) 366-0846, facsimile (202) 493-2290, electronic mail [kkatz@nhtsa.dot.gov](mailto:kkatz@nhtsa.dot.gov). For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202-366-5263.

**SUPPLEMENTARY INFORMATION:**

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**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 a new title, title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks. Title V has been codified without substantive change as Chapter 329 of Title 49 of the United States Code.

Section 32902(a) of Chapter 329 requires the Secretary of Transportation

to issue light truck fuel economy standards for each model year. Standards are required to be set at least 18 months prior to the beginning of the model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 32902(f) of the Act to consider four factors: technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. (The Secretary of Transportation delegated responsibility for the automotive fuel economy program to the Administrator of NHTSA (41 FR 25015, June 22, 1976)).

From 1995 until very recently, the standards-setting process for light truck CAFE standards was affected by restrictions imposed in the Department of Transportation's annual Appropriations Acts. These Acts provided that none of the funds were available to prepare, propose, or promulgate any regulations prescribing CAFE standards in any model year that differed from standards previously promulgated. This meant that the agency was unable to spend any funds for the collection and analysis of data relating to CAFE levels. During this time period, the agency established the required light truck CAFE standards at the level of 20.7 mpg, the level of the last light truck CAFE standard it had previously promulgated under the usual statutory criteria. Because we had no other course of action, we determined that issuing notices of proposed rulemaking (NPRMs) during this time period was unnecessary and contrary to the public interest.

On July 10, 2001, U.S. Secretary of Transportation Mineta sent a letter to Congress requesting that the Department be allowed to begin the rulemaking process for future CAFE standards immediately. The restrictions ended with the enactment of the Department of Transportation and Related Agencies Appropriations Act for FY 2002. However, this did not take place until December 18, 2001, a time so close to the April 1, 2002 date by which the MY 2004 light truck CAFE standard must be issued as to preclude the agency from preparing the customary detailed factual and analytical foundation for a CAFE rulemaking.

On January 24, 2002, we published in the **Federal Register** (67 FR 3470) an NPRM to establish the MY 2004 light truck fuel economy standard at 20.7 mpg, the level of the MY 1996-2003

standards. This proposed standard reflected the absence of any current information or analysis regarding the impact of any change in CAFE standards and the capabilities of manufacturers. We nonetheless invited comments on the maximum feasible level of average fuel economy, including comments as to whether motor vehicle manufacturers could, with the limited leadtime available and product plans essentially established, achieve a level higher than 20.7 mpg in MY 2004.

We note that on February 7, 2002, we published in the **Federal Register** (67 FR 5767) a request for comments relating to a variety of issues concerning fuel economy improvements for MY 2005-2010. The purpose of this request is to acquire detailed information to assist the agency in developing a proposal for model years beyond 2004. In that document, we also requested comments concerning the recent National Academy of Sciences (NAS) study on the effectiveness and impact of CAFE standards. Through the request for comments and other means we anticipate preparing the customary detailed factual and analytical foundation for establishing fuel economy standards in future years.

In response to the January 24, 2002 NPRM concerning the MY 2004 light truck CAFE standard, the agency received comments from General Motors (GM), Ford, DaimlerChrysler (DC), the National Automobile Dealers Association (NADA), a number of public interest groups, including Public Citizen, and one religious organization.

**II. Summary of Decision**

Based on our analysis, we are establishing an average fuel economy standard of 20.7 mpg for MY 2004 light trucks. As we indicated in the NPRM, we were precluded from collecting and analyzing information regarding potential changes in fuel economy standards from 1995 to mid-December 2001. This factor, along with the statutory requirement to issue the 2004 model year standard not less than 18 months before the model year begins, limited the information we were able to gather and the analysis we were able to perform in setting the MY 2004 standard. Additionally, we note that the relatively short leadtime for the 2004 model year precludes significant changes beyond those that manufacturers have already planned.

In evaluating manufacturers' fuel economy capabilities for the 2004 model year, we have been largely restricted to publicly available information, the information contained in the manufacturer comments submitted in

response to the NPRM, and the information contained in comments submitted by other interested parties. As the agency was foreclosed until mid-December 2001 from collecting the detailed information regarding manufacturer capabilities and product capabilities that are required to perform an in-depth analysis of manufacturer capabilities, future product plans, and the measures that can be implemented to improve fuel economy that are normally examined in the process of establishing fuel economy standards, much of our analysis is based on the comments submitted by vehicle manufacturers. Nonetheless, we have analyzed the information available to us and applied the four factors we are required by statute to consider in determining the maximum feasible fuel economy level for the 2004 model year.

### III. Comments in Response to the NPRM

NHTSA received approximately 130 public comments in response to the NPRM. Private citizens submitted the overwhelming majority of these comments. As indicated above, Ford, GM, and DC submitted comments. While these manufacturers produce the majority of light trucks sold in the United States, a number of other light truck producers, including Nissan and Toyota, did not submit comments. Similarly, smaller light truck manufacturers, who would also be affected by the 2004 model year standard, did not provide comments. Comments were also received from the National Automobile Dealers Association (NADA), Public Citizen, Frontiers of Freedom (FOF), The Small Business Survival Committee (SBSC) and The Environmental Ministries of Southern California (EMSC).

Most of the commenters supported establishing the 2004 light truck standard at a higher level than the 20.7 mpg level proposed in the NPRM. Individuals submitted the majority of the comments supporting a higher standard. Many of these individual commenters also supported higher CAFE standards for passenger cars as well, advocated a single standard for cars and trucks to close what was commonly referred to as the "SUV Loophole," and cited the existence of hybrid vehicles and other technological developments as evidence that manufacturers can achieve higher light truck CAFE levels. Some of these commenters suggested specific CAFE levels for MY 2004, while others suggested future levels and the timeframe for achieving these levels. Individuals advocating an increase in

the standard cited a number of reasons in support of an increase, including environmental, energy and national security concerns. Approximately 15 of the commenters specifically mentioned the events of September 11th and reliance on imported petroleum as support for increasing CAFE levels. Private individuals who did not support an increase in the light truck fuel economy standard indicated their belief that increases in light truck fuel economy would result in decreased safety, reduced utility of light vehicles, a reduced number of available light trucks, and prevent vehicle manufacturers from providing sufficiently powerful vehicles to serve as tow vehicles and work trucks.

Among the trade associations, public interest, and religious groups submitting comments, three—NADA, FOF, and SBSC—agreed with the proposed 2004 standard or advocated a lower standard. The FOF and SBSC cited safety concerns and the economic effects of raising the standard beyond 20.7 mpg as support for not increasing the standard. In addition, FOF stated that Americans living in rural areas have a particular need for sufficiently large and powerful trucks for work, farming and recreation. NADA argued that increasing the standard would also cause economic hardship and would conflict with consumer demand for larger and more powerful vehicles.

Public Citizen and EMSC disagreed with the agency's proposal. EMSC argued that small increases in fuel economy are technologically feasible and desirable. In particular, EMSC argued that hybrid technology used in cars could be applied to light trucks.

Public Citizen argued that the auto industry has the capacity to sell a fleet with an average fuel economy well above the current standard, even within the time constraints imposed by the rulemaking process. In support of this argument, Public Citizen stated that, in July 2000, Ford announced that it planned to improve the average fuel economy of its SUV fleet by 25 percent by 2005. Public Citizen also stated that General Motors and DC echoed that pledge. Assuming that the industry was continuing to adhere to those pledges, Public Citizen stated that manufacturers could comply with a 2004 standard above 20.7 mpg and advocated that the agency set it at 21.5 mpg or, in the alternative, at 20.9 mpg.

Public Citizen stated that certain technological improvements could be made that would improve fuel efficiency. Citing suggestions made by the Union of Concerned Scientists (UCS) in its report "Drilling in Detroit—

Tapping Automaker Ingenuity to Build Safe and Efficient Automobiles," Public Citizen argued that drivetrain improvements, reductions in parasitic losses, decreased rolling resistance and other new technologies could be applied to improve efficiency. Even in the short term, according to Public Citizen, small gains could be made if optional equipment was removed from vehicles that are using increasingly efficient engines and transmissions. In addition, although acknowledging that NHTSA had been constrained by Congress in the past, Public Citizen contended that the agency proposal represented an abdication of the agency's statutory duty to set fuel economy standards at the maximum feasible level.

The comments submitted by DC, Ford and GM all supported the agency's proposal. DC stated it agreed that NHTSA did not, in the case of the 2004 light truck standard, have sufficient time to collect and analyze any new data. The company also indicated that the design and configuration of its product line for the 2004 model year could not be modified to add any technologies to improve fuel efficiency. In addition, DC strongly supported extension of the dual-fuel vehicle credit program and noted that the continuation of this program would have an impact on the company's ability to meet the 2004 model year standard. Finally, citing the National Academy of Sciences CAFE report, DC stated that any modifications to the existing standard of 20.7 mpg would have to be based on a realistic assessment of the lead time needed by vehicle manufacturers to institute design changes to improve fuel economy. Given what was described as an inability to accommodate any change in the 2004 light truck fuel economy standard, DC stated that any changes to the light truck CAFE standard would have a severe financial impact and could cause the company to reduce product offerings, close plants, and lay-off workers.

Ford also supported the agency's proposal, arguing that 20.7 mpg is the maximum feasible light truck CAFE standard for the 2004 model year. Ford concurred in NHTSA's assertion that events did not leave the agency in a position to collect and analyze any new data. Moreover, Ford stated that its 2004 product plans are now fixed and that it would be impossible to add any fuel economy related technology to its 2004 vehicles. The company also stated that any increase in CAFE standards for the 2004 model year would degrade Ford's financial health and cause them to reduce product offerings.

GM also stated that it could not achieve a light truck CAFE higher than 20.7 mpg in the 2004 model year. In fact, GM said that it projects that the average fuel economy of its 2004 light truck fleet will be lower than 20.7 mpg, if CAFE credits resulting from its dual fuel vehicles are excluded. It did not, however, quantify the possible shortfall or explain the reasons for it. As is the case with the other manufacturers submitting comments, GM stated that its product lines and final designs for the 2004 model year are already fixed and not susceptible to change. GM also stated that it believed that sufficient time did not exist for NHTSA to gather data and perform analysis sufficient to show that a standard higher than 20.7 mpg is feasible. GM contrasted the limited information in the record for this rulemaking with the extensive information that NHTSA recently requested to aid it in addressing the light truck fuel economy standards for the 2005–2010 model years. (67 FR 5767)

#### IV. Technological Feasibility

One of the factors that Section 32902(f) directs NHTSA to consider in establishing fuel economy standards is the technological feasibility of the improvements in fuel efficiency that are required for manufacturers to meet that standard. As NHTSA has been foreclosed from collecting detailed information regarding manufacturer capabilities, it may only consider the potential for technological improvements in a general fashion. As a number of commenters have indicated, there are a number of technologies that offer promise for gains in fuel efficiency. These include hybrid-electric drive trains, integrated starter-generators, variable valve timing, improved combustion management, aerodynamic improvements, reductions in friction losses, and advanced transmissions, including continuously variable transmissions (CVT's).

In the absence of detailed information from vehicle manufacturers, including proprietary information that is not otherwise available, the agency is unable to determine which, if any, of these technologies are included in future product plans and either could or would be incorporated in 2004 model year trucks. NHTSA is aware, as Public Citizen pointed out in its comments, that Ford and other manufacturers pledged in 2000 to voluntarily improve SUV fuel efficiency by MY 2005. NHTSA does not know precisely which combination of measures these manufacturers contemplated using to meet this pledge or the degree to which

increasing consumer demand for larger, heavier, and more powerful vehicles impacted on any assumptions that these pledges may have been based on. None of those manufacturers discussed the status of the pledges about SUV fuel economy in their comments. However, all of the manufacturers responding to the NPRM indicated that the maximum level of average fuel economy for all of their light trucks, not just their SUVs, for the 2004 model year would be 20.7 mpg.

NHTSA does not possess the information required to analyze or question the assertions made by Ford, DC, and GM that the maximum average fuel economy their light truck fleets can achieve in the 2004 model year is 20.7 mpg. As already noted, NHTSA lacks detailed information on the extent to which the manufacturers are using the various available fuel efficiency improving technologies in their current light truck models and the extent to which they plan to use them in the 2004 model year. Many commenters indicated a belief that manufacturers could achieve a higher level through the implementation of new technologies. However, NHTSA does not have the information necessary to determine if manufacturers can incorporate these technologies into their MY 2004 light trucks given the short leadtime.

In fact, all the manufacturers stated that one constraint on their ability to improve fuel economy was the lack of leadtime for implementing improvements in fuel economy. The agency recognizes, as it has in the past, that the leadtime necessary to design tools and test components to implement a technological advance once the technology is deemed to be feasible is not less than 30 to 36 months (See 59 FR 16313, April 6, 1994). This is further complicated by the long model lives of vehicles in the light truck segment. The lack of available leadtime before the beginning of the 2004 model year indicates that most, if not all, potential improvements in fuel efficiency that are not already designed into 2004 models could not now be used in these vehicles.

Public Citizen also suggested that rather than use improvements in fuel efficiency to decrease fuel consumption, manufacturers have taken the opportunity to increase vehicle weight and content to boost sales and increase profits. If, as Public Citizen suggests, short-term gains in fuel economy could be gained by basing increases in the fuel economy standard on the removal of optional equipment, NHTSA has not had sufficient time or information to assess the feasibility, practicability or effectiveness of such an approach.

#### V. Effect of Other Federal Standards on Fuel Economy

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability.

##### A. Safety Standards

###### 1. FMVSS 138

On July 26, 2001, NHTSA published in the **Federal Register** (66 FR 38982) a notice of proposed rulemaking containing a proposal to require tire pressure monitoring systems on passenger cars, multipurpose vehicles, trucks, and buses with a gross vehicle weight rating of 10,000 pounds or less. This proposal was issued in response to a requirement contained in the Transportation Recall Enhancement, Accountability and Documentation Act of 2000 (TREAD). The TREAD Act further requires that the tire pressure monitoring system requirements take effect two years after the final rule is issued. Although NHTSA has not yet issued this final rule, it anticipates doing so in the near future. Therefore, the tire pressure monitoring system requirements will apply to 2004 model year light trucks. In its Preliminary Regulatory Evaluation for the tire pressure monitoring system rulemaking, the agency estimated weight increases per vehicle associated with tire pressure monitoring systems as being not more than one pound. As this weight increase is negligible, the tire pressure monitoring system requirements are not likely to have any CAFE impact.

We note that correct tire pressure improves a vehicle's fuel economy. Thus, the addition of tire pressure monitoring systems will improve real world fuel economy by warning drivers about tires that are significantly underinflated. This will not result in a CAFE improvement for manufacturers, however, as a vehicle's fuel economy for CAFE purposes is determined by a detailed test procedure that includes specifications for tire pressure.

###### 2. FMVSS 201

On April 5, 2000, NHTSA published in the **Federal Register** (65 FR 17482) an NPRM proposing to modify test procedures and to extend the upper interior impact requirements of FMVSS 201 to certain door frames and seat belt mounting structures to passenger car, trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. The agency proposal specified that

the new requirements would become effective 180 days after publication of a final rule. The proposed extension would require that certain vertical surfaces on doors of vehicles with doors that close together without an intervening pillar and vertical seat belt mounting structures meet the same impact requirements applicable to the pillars found on more conventional designs.

The agency has not yet issued a final rule. Comments received in response to the NPRM suggested that the proposed effective date did not provide sufficient leadtime for manufacturers to respond to the new requirements. This request for additional leadtime is presently under consideration by the agency. Although no determination has yet been made regarding this issue, the extension of the impact requirements to door frames and seat belt mounting structures could become effective before or during the 2004 model year. The safety countermeasures required to meet the upper interior impact requirements of FMVSS 201 do not impose a significant weight penalty. The agency's estimate of the additional weight required to meet the requirements of Standard 201 contained in the Final Economic Assessment prepared at the time of the issuance of the final rule establishing the upper interior requirements (60 FR 43031) estimated an increase in total vehicle weight of 2.29 to 5.59 pounds for installation of countermeasures in the entire vehicle. As the proposed extension of these requirements to door frames and seat belt mounting structures applies only to these discrete components rather than the entire upper interior, the weight penalty associated with installing countermeasures on these structures would be less than one pound per vehicle. This added weight will have a minimal impact on vehicle fuel economy.

### 3. FMVSS 225

On March 5, 1999, NHTSA published in the **Federal Register** (64 FR 10786) a final rule establishing a new safety standard requiring the installation of dedicated child restraint anchorage systems in passenger cars, multipurpose vehicles, and trucks with a GVWR of 8,500 pounds or less and buses with a GVWR of 10,000 pounds or less. On July 31, 2000, NHTSA published a response to petitions for reconsideration of the March 5, 1999 final rule that extended the effective date of the new anchorage requirements to September 1, 2004. Because model years for CAFE purposes begin on October 1, these new requirements would apply to vehicles that must meet the 2004 model year

light truck fuel economy standard. The FMVSS 225 requirements are intended to reduce deaths and injuries to children by providing a more effective and standardized means of attaching child restraints. The agency's Final Economic Analysis prepared at the time of the issuance of the March 5, 1999 final rule estimated that compliance with the new child restraint anchorage requirements would result in a weight increase of one pound per vehicle. Accordingly, the agency determined that compliance would have a negligible impact on vehicle fuel economy.

### 4. FMVSS 139

On March 5, 2002, NHTSA published in the **Federal Register** (67 FR 10050) a notice of proposed rulemaking containing the agency's proposal for a new FMVSS establishing performance requirements for tires. The agency's proposal was issued pursuant to a mandate in the TREAD Act requiring that it issue new performance standards for tires on or before June 1, 2002. These tire performance requirements, which would appear in FMVSS 139 and would apply to new pneumatic tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. The agency's proposal sets forth two alternative phase-in schedules for these new requirements. Under one of these phase-ins, tires on MY 2004 light trucks would have to meet the performance requirements of the standard. The proposed performance requirements for tires could have an impact on fuel economy if meeting the requirements altered the rolling resistance of these tires. However, there is no present indication that the proposed performance requirements will have any such impact. Accordingly, the agency believes that this proposal would have a minimal impact on the ability of manufacturers to comply with the 2004 light truck fuel economy standard.

### B. Emissions Standards

#### 1. Tier II Requirements

On February 10, 2000, the Environmental Protection Agency (EPA) published in the **Federal Register** (65 FR 6698) a final rule establishing new federal emissions standards for vehicles classified by EPA as passenger cars, light trucks and larger passenger vehicles. These new emissions standards, known as Tier 2 standards, are designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles. These emissions are nitrogen oxides (NO[X]) and non-methane organic gases

(NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). The program also applies the same set of federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles. Under the Tier 2 standards, light trucks include "light light-duty trucks" (or LLDTs), rated at less than 6000 pounds gross vehicle weight and "heavy light-duty trucks" (or HLDTs), rated at more than 6000 pounds gross vehicle weight. For new passenger cars and light LDTs, the Tier 2 standards phase-in beginning in 2004, and are to be fully phased-in by 2007. During the phase-in period from 2004–2007, all passenger cars and light LDTs not certified to the primary Tier 2 standards must meet an interim standard equivalent to the current National Low Emission Vehicle (NLEV) standards for light duty vehicles. In addition to establishing new emissions standards for vehicles, the Tier 2 standards also establish standards for the sulfur content of gasoline.

When issuing the Tier 2 standards, EPA responded to comments regarding the impact of the Tier 2 standard and its impact on CAFE by indicating that it believed that the Tier 2 standards would not have an adverse effect on fuel economy. NHTSA notes that only one of the commenters responding to the agency's proposed 2004 light truck standard indicated that the Tier 2 standards would have any impact on the ability to meet fuel economy standards. DC, while addressing its strong support for continuation of the dual-fuel incentive program, stated that the Tier 2 standards presented special challenges for ethanol-fueled vehicles. The comments, did not, however, indicate the nature of these challenges and the degree to which the Tier 2 standards would impact on DC's ability to meet the proposed 2004 light truck standard.

#### 2. Onboard Vapor Recovery

On April 6, 1994, EPA published in the **Federal Register** a final rule (59 FR 16262) controlling vehicle refueling emissions through the use of onboard refueling vapor recovery (ORVR) vehicle-based systems. These requirements applied to light-duty vehicles beginning in the 1998 model year, and were phased-in over three model years. The ORVR requirements also apply to light-duty trucks with a gross vehicle weight rating of 0–6000 lbs, beginning in model year 2001 and phasing-in over three model years at the same rate as for light-duty vehicles. For light-duty trucks with a gross vehicle weight rating of 6001–8500 lbs, the ORVR requirements first apply in the

2004 model year and phase-in over three model years at the same rate as light-duty vehicles.

None of the commenters addressed the impact, if any, of the ORVR requirements on compliance with CAFE. The ORVR requirements impose a weight penalty on vehicles as they necessitate the installation of vapor recovery canisters and associated tubing and hardware. However, the operation of the ORVR system results in fuel vapors being made available to the engine for combustion while the vehicle is being operated. As these vapors provide an additional source of energy that would otherwise be lost to the atmosphere through evaporation, the ORVR requirements do not have a negative impact on fuel economy.

### 3. Supplemental Federal Test Procedure

On October 26, 1996, EPA issued a final rule (61 FR 54852) revising the tailpipe emission portions of the Federal Test Procedure (FTP) for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The revision created a Supplemental Federal Test Procedure (SFTP) designed to address shortcomings with the existing FTP in the representation of aggressive (high speed and/or high acceleration) driving behavior, rapid speed fluctuations, driving behavior following startup, and use of air conditioning. The SFTP also contains requirements designed to more accurately reflect real road forces on the test dynamometer. EPA chose to apply the SFTP requirements to trucks through a phase-in. Light-duty trucks with a gross vehicle weight rating (GVWR) up to 6000 lbs were subject to a three-year phase-in ending in the 2002 model year. Heavy light-duty trucks, those with a GVWR greater than 6000 lbs but not greater than 8500 lbs, are subject to a phase-in in which 40 percent of each manufacturer's production must meet the SFTP requirements in the 2002 model year, 80 percent in 2003, and 100 percent in the 2004 model year.

The 2004 model year represents the final phase-in year for light trucks subject to CAFE standards. Neither Ford, GM or DC indicated in their comments that the SFTP would have any impact on their ability to meet the proposed 2004 standard.

### 4. California Air Resources Board LEV II

The State of California Low Emission Vehicle II regulations (LEV II) will apply to passenger cars and light trucks in the 2004 model year. The LEV II amendments restructure the light-duty truck category so that trucks with a gross vehicle weight rating of 8,500

pounds or lower are subject to the same low-emission vehicle standards as passenger cars. LEV II requirements also include more stringent emission standards for passenger car and light-duty truck LEVs and ultra low emission vehicles (ULEVs), and establish phase-in requirements that begin in 2004. During the initial year of the four-year phase-in, the LEV II standards require that 25 percent of production comply.

Comments submitted by DC indicated that company's concern that compliance with LEV II requirements may be difficult for dual-fuel vehicles. The company, did not, however, provide any details or data regarding these challenges.

### 5. Section 177 States

The term "Section 177 States" refers to states that voluntarily adopt the more stringent California emissions standards. As of November 2000, Massachusetts, New York and Maine had adopted the California Low Emission Vehicle (LEV) program. NHTSA has not received any data showing any impact on the 2004 light truck fuel economy capabilities as a result of states other than California adopting the California emissions standards.

## VI. The Need of the Nation To Conserve Energy

Since the petroleum "shocks" of the 1970s, the inflation-adjusted price of crude oil has generally declined. After the oil shocks of the 1970s, several events have combined to keep oil prices low, including a diminution in the market power of OPEC due to an increase in petroleum production from non-OPEC nations. However, there also has been a growing dependence of the U.S. on imported petroleum since that time period.

Based on information collected by the Energy Information Administration (EIA) in 2001, world crude oil reserves amount to about 1,000 billion barrels, and world natural gas reserves amount to about 5,180 trillion cubic feet. Of this total, the Middle East controls about 65 percent of the world's oil reserves and about 35 percent of the world's natural gas reserves (the former U.S.S.R. controls another 38 percent of the world's natural gas reserves). North American reserves of oil amount to just 5–6 percent of world reserves, and North American reserves of natural gas amount to about 5 percent of world reserves.

Today, the Persian Gulf region holds about two-thirds of the entire world's known oil reserves. The U.S. imports more than 53 percent of its petroleum—

much of it coming from the Persian Gulf region. EIA's Annual Energy Outlook 2002 estimates that this oil importation will increase to 62 percent by the year 2020. EIA projects that Persian Gulf producers are expected to account for more than 45 percent of worldwide trade by 2002, for the first time since the 1980's. After 2002, the Persian Gulf share of worldwide petroleum exports is projected to increase gradually to almost 48 percent by 2020.

## VII. Economic Practicability

The agency's traditional interpretation of the requirement to consider "economic practicability" in deciding maximum feasible average fuel economy is that the agency must set standards that are within the financial capability of the industry, and not so stringent as to threaten substantial economic hardship for the industry (42 FR 33537). Since GM, Ford and DC, whose production represents over 80 percent of the light truck market, did not object to the setting of the model year 2004 light truck standard at 20.7 mpg, the agency concludes that a standard set at that level would be economically practicable.

GM, Ford and DC indicated that they could not meet any standard higher than 20.7 mpg without suffering economic effects. Unfortunately, due to the unique circumstances of this rulemaking, NHTSA is not now in a position to determine the point at which those economic effects would amount to a substantial economic hardship. In the absence of the information needed to make such a determination, the agency concludes that establishing the standard above 20.7 mpg could create a risk of such substantial hardship.

## VIII. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 32902(f) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 32902(f): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

### A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy

level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

#### B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level." The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-55 (1975)) states:

Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer \* \* \*.

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has traditionally set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983-85 light truck standards above Ford's level of capability, Chrysler had only 10-15 percent of the light truck domestic sales,

while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980.

#### C. Petroleum Consumption

The potential savings associated with a 2004 light truck standard above 20.7 mpg are highly uncertain. Assuming that a standard could be set at 21.2 mpg, 0.5 mpg above the capability asserted by GM, Ford and DC, these three companies, whose sales represent approximately 80 percent of all the light trucks sold in the United States, could likely meet the level of the standard only by restricting the sales of their larger or more powerful light trucks. If this occurred, consumers might tend to keep their older, less-fuel-efficient light trucks in service longer. Also, consumers might purchase larger, heavier trucks that are not subject to CAFE standards. Therefore, the agency believes that any additional energy savings associated with alternative higher fuel economy standards above 20.7 mpg (the level the agency has determined to be the capability of GM, Ford and DC) for model year 2004 would be uncertain and speculative.

#### D. The 2004 Model Year Standard

Based on its analysis described above and on manufacturers' projections contained in the comments submitted in response to the January 24, 2002 NPRM, the agency concludes that the major domestic manufacturers can achieve a light truck fuel economy level of 20.7 mpg.

Ford, DC and GM dominate that domestic light truck market with approximately 80 percent of all sales. Other light truck manufacturers, such as Nissan, Toyota, Honda, BMW and others are expected in MY 2004 to have CAFE levels both above and below Ford, DC and GM. However, since these companies have a small market share, NHTSA concludes that setting a standard based on their capabilities would be inconsistent with a determination of maximum feasibility that takes industry-wide considerations into account, as required by statute.

Under the time constraints imposed on the agency and the limited amount of information available, NHTSA's analysis of manufacturer capabilities has been truncated. Given these constraints, NHTSA has concluded that it cannot determine which of the manufacturers with a substantial share of sales is the least capable manufacturer for model year 2004. NHTSA concludes that 20.7 mpg is the maximum feasible standard for the 2004 model year. For the reasons discussed below, this level balances the uncertain petroleum savings associated with a

higher standard against the relatively certain difficulties of manufacturers facing a higher standard.

A 20.7 mpg standard will not unduly restrict consumer choice or have adverse economic impacts on the large domestic manufacturers. The comments of GM, DC and Ford all supported setting the 2004 model year light truck CAFE standard at 20.7 mpg. NHTSA believes that the 20.7 mpg standard minimizes the risk of the potentially serious adverse economic consequences for the domestic automobile industry that could result from a higher standard precipitously set on the basis of limited information. The cost of avoiding this risk is, insofar as the 2004 model year is concerned, foregoing any increased petroleum savings that might have been realized from more fuel-efficient light truck production in that model year. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and very uncertain energy savings associated with setting a standard above 20.7 mpg would not justify the potential harm to the industry and the economy as a whole.

FOF and SBSC stated that NHTSA should consider the safety effects of any decision to increase fuel economy standards. Although the agency is not increasing the light truck fuel economy standard for 2004 above the standard for prior years, NHTSA has recognized that CAFE standards could adversely affect safety to the extent that they necessitate significant reductions in car size and/or weight. This issue was discussed at length in the agency's notice terminating rulemaking on the MY 1990 passenger car CAFE standard (see 58 FR 6939, February 3, 1993). As recommended in the NAS report, NHTSA is currently updating its 1997 analysis on the relationship between vehicle size and safety. This study will be completed later this year.

Given that this final rule maintains the light truck CAFE standard at 20.7 mpg, it will not have any impact on safety.

## IX. Rulemaking Analyses and Notices

### A. Economic Impacts

The Office of Management and Budget reviewed this rule under Executive Order 12866, Regulatory Planning and Review. Although the light truck CAFE standard for MY 2004 does not differ from the fuel economy standards for the preceding model years, we are treating this rule as "economically significant" under Executive Order 12866 and "major" under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as

added by the Small Business Regulatory Enforcement Fairness Act of 1996. This rule is also considered significant under the Department's regulatory policies and procedures. As noted above, the agency has been operating under a restriction on the use of appropriations for the last six fiscal years. The restriction has prevented the agency from gathering and analyzing data relating to fuel economy capabilities and the costs and benefits of improving the level of fuel economy. Particularly since that restriction was lifted only on December 18, 2001, the agency has been unable to prepare a separate economic analysis for this rulemaking. The agency notes, however, that the standard it is setting for the 2004 model year will not make it necessary for the manufacturers with a substantial share of the market to change their product plans.

#### B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. NHTSA is setting the 2004 model year light truck CAFE standard at the same level as the standard applicable to the 1996 through 2003 model years. As this rule maintains the fuel economy standard at the same level as prior years, it does not impose change in any environmental impacts. Accordingly, no environmental assessment is required.

#### C. Energy Impacts

NHTSA has not changed the level of the light truck CAFE standards in setting the standard for the 2004 model year. This final rule, which maintains the CAFE standard at its existing level, does not have "a significant adverse effect on the supply, distribution, or use of energy," as defined by Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. At this point, therefore, this action is not a "significant energy action" under Executive Order 13211 and no "Statement of Energy Effects" is required.

#### D. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the rule are classified as a "small business" under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96-354) requires each agency to evaluate the potential effects of a 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 regarding the corporate average fuel economy of light trucks will not have a significant economic impact on a substantial number of small entities.

#### E. Federalism

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 will 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.

#### F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 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. For the same reasons discussed in the section above on economic impacts, the agency has been unable to prepare a separate assessment.

#### G. Paperwork Reduction Act

There are no information collection requirements in this rule.

#### H. 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.

#### I. Plain Language

Executive Order 12866 requires 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.

#### J. 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 a fuel economy standard for light trucks.

*K. 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 standards 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.

We are not aware of any available and potentially applicable voluntary consensus standards, i.e., ones regarding the maximum feasible level of corporate average fuel economy for MY 2004 light trucks. Therefore, this rule is not based on any voluntary consensus standards.

*L. Department of Energy Review*

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

**List of Subjects in 49 CFR Part 533**

Energy conservation, Motor vehicles.

**PART 533—[AMENDED]**

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

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

**Authority:** 15 U.S.C. 2002; 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
2000 .....	20.7
2001 .....	20.7
2002 .....	20.7
2003 .....	20.7
2004 .....	20.7

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Issued on: March 29, 2002.

**Jeffrey W. Runge,**  
*Administrator.*

[FR Doc. 02-8122 Filed 4-1-02; 11:31 am]

**BILLING CODE 4910-59-P**