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Title: Passenger Automobile Average Fuel Economy Standards, Model Year 1989

Action: Denial of petition for reconsideration.

Agency

FEDERAL REGISTER

DEPARTMENT OF TRANSPORTATION > National Highway Traffic Safety Administration

Identifier: [Docket No. FE-88-01; Notice 5] > RIN No. 2127-AB75

Administrative Code Citation

49 CFR Part 531

Synopsis

SUMMARY: On September 30, 1988, NHTSA issued a final rule setting the passenger automobile average fuel economy standard for model year 1989 at 26.5 miles per gallon (mpg). The standard represented an increase of 0.5 mpg over the 1988 level, and a decrease of 1.0 mpg from the statutory level of 27.5 mpg. The Center for Auto Safety and Public Citizen jointly submitted a petition requesting the agency to reconsider its decision to lower the statutory standard. This notice denies the petition

Text

SUPPLEMENTARY INFORMATION: Title V of the Motor Vehicle Information and Cost Savings Act specifies a CAFE standard of 27.5 mpg for each model year after 1984. (Title V was added to that Act by the Energy Policy and Conservation Act.) However, the Act permits NHTSA to amend the statutory standard to a level determined to be the "maximum feasible average fuel economy level." *15 U.S.C. 2002*(a)(4). In determining the "maximum feasible average fuel economy level," the agency is required to consider the following 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.

NHTSA commenced the rulemaking proceeding regarding the model year (MY) 1989 standard on August 25, 1988 with the issuance of a notice proposing to reduce the standards for MYs 1989-90 from the statutory level of 27.5 mpg to some level from 26.5 mpg to 27.5 mpg *(53 FR 33080,* August 29, 1988).

On September 30, 1988, NHTSA issued a final rule *(53 FR 39275,* October 6, 1988) setting the MY 1989 corporate average fuel economy (CAFE) standard for passenger cars at 26.5 mpg. While this level represented a lowering of the statutory standard, it also represented a first step in returning to the statutory level of 27.5 mpg. NHTSA noted that its raising of the standard from the MY 1986-88 level of 26.0 mpg was thus consistent with the fact that the nation's conservation needs were greater then than they had been in 1985, when the agency first set the standard at 26.0 mpg.

On November 7, 1988, the Center for Auto Safety (CFAS) and Public Citizen (PC) jointly submitted a petition requesting the agency to reconsider its decision to lower the statutory standard. The petitioners alleged that NHTSA erred in reducing the standard for a number of reasons, including "(1) erroneously finding that Congress' energy conservation goals have been met, (2) finding General Motors' maximum feasible fuel economy as 26.5 mpg when it is at least 27.5 mpg, (3) falsing (sic) blaming General Motors' declining sales on CAFE standards, (4) misconstruing the Energy Policy and Conservation Act (EPCA) and its requirement that manufacturers split their fleet into domestic and foreign, and (5) erroneously finding CAFE standards will result in foreign companies selling more large cars."

The petitioners' arguments regarding the reduction of the MY 1989 standard are addressed below.

The agency notes that in MY 1990 the standard will return to the statutory level of 27.5 mpg. See NHTSA's notice terminating its rulemaking regarding the proposed reduction of the MY 1990 standard *(54 FR 21985,* May 22, 1989). NHTSA relied, in large measure, on the continuing increase in imports of foreign petroleum in taking this action.

Energy Conservation Goals

CFAS/PC's first contention is that "NHTSA incorrectly stated that Congress' energy conservation goals have been met since 1988 overall CAFE was 28.7 mpg." The petitioners argued that Congress intended energy conservation to be maximized by setting CAFE standards higher than 27.5 mpg if feasible. CFAS/PC also argued that even the statutory 27.5 mpg has not been met in actual use because actual on-road CAFE is at least 15 percent below that calculated under the statute. Finally, citing legislative history, the petitioners asserted that, at the time EPCA was adopted, Congress' express purpose was to improve actual on-road new car fuel efficiency over 1974 levels by 100% to 27.5 mpg by 1985 and reduce U.S. oil consumption by 3 million barrels per day (MMB/D) by 1985. CFAS/PC contended that the actual savings in 1985 when new car CAFE averaged 27.6 mpg was 1 MMB/D less than that, and that even the 1987 vehicle fleet with a CAFE of 28.3 mpg still missed Congress' 3 MMB/D goal and consumed 2.35 MMB/D less gasoline than what it would have if the fleet had the same fuel economy as in 1975.

NHTSA believes its statements that Congress' statutory goal of reaching an average fuel economy of 27.5 mpg for new cars has been met and exceeded are correct, given that MY 1988 industrywide CAFE is 28.7 mpg. In setting the 27.5 mpg goal, Congress included a requirement that CAFE be measured according to "the procedures utilized by the EPA Administrator for model year 1975 (weighed 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results." *15 U.S.C. 2003*(c). The agency's statements that Congress' statutory goal has been met and exceeded were made in the context of that "measuring stick." Use of that measuring stick in gauging progress is common. NHTSA has previously noted that the 27.5 mpg goal is roughly twice the MY 1974 CAFE. Even Clarence M. Ditlow, Executive Director of CFAS, stated in the 1989 edition of *The Car Book* that "Federal gas mileage standards are one of the most successful government programs ever adopted, with 1989 cars getting more than twice the fuel economy of 1974 cars." Thus, in at least one context, one of the petitioners apparently embraced the use of that measuring stick.

NHTSA notes that the primary purpose of its statements was to draw attention to two points: (1) The significant progress that has been made in improving automotive fuel efficiency since 1975, and (2) the fact that GM's and

Ford's difficulties in achieving the 27.5 mpg statutory standard are partly an artifact of the "two fleet rule." As discussed below, the two fleet rule prevents GM and Ford from including their smallest, most fuel-efficient cars in their domestic CAFE (since those cars are largely imports). The country of origin of a car, however, has no effect on its contribution to energy conservation.

NHTSA notes that the point made in the MY 1989 decision that Congress' statutory goal of reaching an average fuel economy of 27.5 mpg for new cars has been met and exceeded should *not* be confused with a belief that energy conservation is no longer important. That decision expressly recognized that there is a continuing need to conserve energy. *53 FR 39297.* In addition, contrary to the implication of the CFAS/PC petition, the decision to reduce the MY 1989 standard was not based on the point that Congress, 1975 energy conservation goals have been met. Even if there is more than one reasonable interpretation concerning how those goals should be quantified, this is not an issue that was material to the agency's MY 1989 decision.

GM's MY 1989 CAFE Capability

CFAS/PC's second contention is that NHTSA erred in finding that General Motors' CAFE capability was 26.5 mpg instead of at least 27.6 mpg, the level that company achieved in MY 1988. The petitioners made several arguments in support of this position.

First, CFAS/PC argued that NHTSA relied on a net CAFE reduction of 0.5 mpg for use of airbags and daytime running lights. According to the petitioners, however, GM is not offering daytime running lights on any 1989 models, and the market penetration of optional airbags is not projected to reach the 33 percent level that would trigger inclusion of an option in fuel economy ratings. (See 40 CFR Part 86.) The petitioners also argued that even if actual sales of an option unexpectedly exceed 33 percent, there is no adjustment to CAFE for that model year.

Second, CFAS/PC argued that NHTSA erroneously lowered the CAFE standard to permit GM to boost performance and acceleration so that its sales would improve, while GM could instead improve performance *and* fuel economy by use of 4-valve per cylinder engines. The petitioners argued that NHTSA did not adequately assess use of this technology either in assessing GM's fuel economy capabilities or in evaluating whether that company made "reasonable efforts" to meet the 27.5 mpg standard.

Third, CFAS/PC argued that NHTSA had concluded that EPA testing resulted in lower fuel economy for individual models from 1988 to 1989 due to uncertainty in EPA testing. The petitioners asserted that comparison of the 1988 and 1989 EPA test car lists do not show fuel economy reductions for the same vehicle which can be attributed to EPA testing variation, and requested that NHTSA make a model and configuration comparison to show this.

Fourth, CFAS/PC argued that NHTSA erroneously lowered GM's fuel economy capability by at least 0.3 mpg on the grounds that GM has been wrong about CAFE projections by this magnitude in the past. The petitioners stated that NHTSA should only look at those years where GM was requesting a CAFE relaxation to "avoid letting GM stack the deck by submitting arbitrarily low estimates."

In addressing the petitioners' arguments concerning GM's MY 1989 fuel economy capability, it is again helpful to the review the agency's presentation of the issue in the MY 1989 preamble. A portion of that discussion follows *(53 FR 39289-90):*

NHTSA has analyzed GM's MY 1989 CAFE projection and underlying plan. As discussed above, GM indicated in its September 1988 comment that its current product plan is expected to result in a MY 1989 CAFE level of 27.2 mpg. If NHTSA focused narrowly on GM's MY 1989 CAFE projection and its MY 1988 CAFE achievement, it would presumably conclude that GM's MY 1989 capability is above that of Ford. While manufacturer product plans are subject to risks, GM's 27.2 mpg projection reflects that company's best estimate of its MY 1989 CAFE, in light of its current product plan.

As discussed above, however, NHTSA believes that too narrow a focus on GM's MY 1988 CAFE achievement and MY 1989 CAFE projection could have the effect of ratifying the significant loss in market share that company has experienced over the past several years and the significant job losses that accompanied that market loss. The

agency believes that its analysis of GM's capability should also consider the CAFE level that company might achieve if it more aggressively seeks to regain, in MY 1989, a portion of its lost market share. As indicated above, GM's current product plan reflects the constraints of a 27.5 mpg standard, and the agency does not believe that it reflects the kinds of actions GM might wish to take to restore market share and jobs if there were a lower MY 1989 CAFE standard.

NHTSA recognizes that it is difficult to estimate what GM's CAFE capability would be under a scenario of seeking to regain lost market share and jobs. Ford's recent CAFE experience suggests that a full line manufacturer can achieve approximately 26.5 mpg, while remaining fully competitive in all market segments. The agency has analyzed GM's product plan and concluded that efforts by that company to restore its market share in less fuel-efficient market segments could, consistent with its capacity restraints, result in a MY 1989 CAFE of 26.5 mpg or below. These efforts could include pricing and other actions to promote sales of compact, intermediate and luxury cars. In light of Ford's experience and NHTSA's analysis of the kinds of actions GM might take to restore lost market share and jobs, the agency concludes that 26.5 mpg appropriately represents GM's MY 1989 CAFE capability."

. . . NHTSA believes that in order for GM to be able to adequately compete in today's intensely competitive market, it must be able to accommodate consumer demand for such attributes as larger engines and larger interior space. These actions come at a CAFE price, however, since they generally reduce the fuel efficiency of a model. To the extent that GM is able to so accommodate consumer demand or otherwise increase the sales of its less fuel-efficient vehicles, including less fuel-efficient compacts as well as larger vehicles, its CAFE will decline, relative to what it achieved in MY 1988. This decline is in addition to that portion of the decline that reflects unexpectedly high EPA test results in MY 1988.

NHTSA believes that several points should be made concerning the petitioners' arguments about GM's MY 1989 CAFE capability. First, the petitioners are incorrect in asserting that the agency lowered GM's CAFE capability by 0.5 mpg due to airbags and daytime running lights and another 0.3 mpg on the grounds that GM has been wrong about CAFE projections by this magnitude in the past.

The Final Regulatory Impact Analysis's (FRIA) discussion of GM's capability did cite possible increased use of daytime running lights and airbags, as well as the uncertainty associated with GM's MY 1989 CAFE projection, including past forecasting errors by that company. However, the FRIA also listed other factors that could result in GM achieving a MY 1989 CAFE below its 27.2 mpg projection, including greater sales of large cars and higher performance compact cars as part of an effort to regain lost market share. Following this discussion, the FRIA noted that "(i)f GM realizes even a portion of the CAFE penalty the agency postulates for increased performance of compact cars or more large cars sales as descibed above, voluntarily adopts half of the safety improvements described above, and realizes its historic CAFE prediction error by overestimating its CAFE, its CAFE could actually be below 26.5 mpg." FRIA, p. V-101. The FRIA then stated that "(r)ecognizing that the actual product and market decisions of GM are likely to differ from the illustrative examples given above, and that the effect on fuel economy may likewise differ from the agency's example, the agency believes its analysis is nevertheless reasonable, given historical inaccuracies in projecting CAFE, the current dictates of consumer demand, and the agency's policy not to have CAFE standards adversely affect safety."

NHTSA thus did not determine GM's MY 1989 CAFE capability by means of a formula that ascribed specific values to the factors cited by the petitioners. The agency also notes that the two factors cited by the petitioners were not even included in the preamble's discussion of GM's capability. (Elsewhere in the preamble, however, the agency noted the potential CAFE impact of airbags and daytime running lights and expressed concern that overly stringent CAFE standards might discourage manufacturers from these and other voluntary safety actions. See *53 FR 39296.* Also, the agency has long recognized the uncertainties associated with manufacturer CAFE projections.)

On the issue of uncertainties associated with manufacturer CAFE projections, the FRIA included an analysis of GM's pre-model-year reports. Like other manufacturers, GM is required to submit the pre-model-year report during December, and include, among other information, the company's projected CAFE, vehicle configuration, base level and model type. These data are submitted to the agency some months into the model year in question. The FRIA's

analysis showed that, over a 10-year period, GM missed its estimated CAFE projection by an average of more than 0.3 mpg. Sometimes GM overestimated and other times underestimated its CAFE. The basic point is that, given the broad range of product offerings sold by GM and the many factors affecting the sales of its different models, that company is unable to predict its *exact* CAFE even at the time of the pre-model-year report.

The petitioners argued that NHTSA "should only look at those years where GM was requesting a CAFE relaxation to avoid letting GM stack the deck by submitting arbitarily low estimates," or "(a)t the very least . . . average the differences rather than use the absolute value." The petitioners also stated that NHTSA should "include the differences for 1987 and 1988 where GM underestimated its CAFE by 0.4 and 0.7 mpg respectively."

NHTSA notes that there is no basis to support the petitioners' suggestion that GM may have submitted arbitrarily low CAFE estimates in support of its request for a lower CAFE standard. In addition, the agency did not merely accept GM's CAFE projections but instead analyzed a great deal of supporting data including GM's detailed product plan and analyses provided by that company concerning how its plan differed from prior model years and why it had exceeded its CAFE estimates for prior model years. Since the purpose of the FRIA's analysis of GM's pre-model-year reports was to show the uncertainties associated with CAFE projections, the agency sees no basis to adopt the petitioners' suggestion to average the differences rather than use the absolute value. The issue is not whether, over a long period, the differences tend to average out but instead to recognize the inherent uncertainty associated with any CAFE projection for a particular model year. With respect to the petitioners' suggestion that NHTSA include the differences for 1987 and 1988, the agency notes that the differences cited by CFAS/PC in fact illustrate the uncertainties associated with CAFE projections. GM exceeded the particular CAFE projections cited by the petitioners. However, NHTSA has always recognized that the uncertainties associated with CAFE projections go in both directions.

NHTSA believes that the preamble's discussion of GM's capability is clear and adequate. The agency noted the difficulty in estimating what GM's CAFE capability would be under a scenario of seeking to regain lost market share and jobs, recognized that Ford's CAFE experience suggests that a full line manufacturer can achieve approximately 26.5 mpg while remaining fully competitive in all market segments and that efforts by GM to restore its market share in less-fuel-efficient market segments could, consistent with its capacity restraints, result in a MY 1989 CAFE of 26.5 mpg or below, and concluded that 26.5 mpg appropriately represents GM's MY 1989 CAFE capability.

NHTSA disagrees with the petitioners' argument that the agency did not adequately assess improving fuel economy by use of multi-valve engines. The FRIA discusses multi-valve engines in its section on technology (at p. IV-12). The agency notes that this technology is one of several means of achieving more efficient fluid flow and combustion in an engine and that the improvement that can be obtained from this technology is also included in Table IV-2 of the FRIA under the more general listings of reduced friction, mechanical and pumping losses.

GM's 4-valve-per-cylinder engine, the "Quad 4," is already providing fuel economy gains in the Pontiac Grand Am, Oldsmobile Cutlass Calais, and Buick Skylark. The agency notes that this engine reflects a number of technology improvements in addition to multi-valve technology. The Quad 4 was introduced in MY 1988, and GM noted in an earlier proceeding that it provides a major advance in fuel economy. With the exception of the MY 1989 Ford Taurus SHO, a lower volume premium performance-oriented car, and the high-performance, low-volume Corvette ZK-1, the Quad 4 is the only 4-valve engine offered in domestic cars.

The use of the Quad 4 was, of course, reflected in GM's MY 1989 product plan and considered by NHTSA in its evaluation of GM's capability. The Quad 4 was discussed in several places in the agency's FRIA.

With respect to whether GM could make greater use of multi-valve engines instead of 6- or 8-cylinder engines during MY 1989, the agency notes that leadtime constraints prevent use of the Quad 4 in any models beyond those already included in GM's plans. For the three models where the Quad 4 is offered, the vast majority of the cars already use either the Quad 4 or a less expensive (base) 4 cylinder engine. While GM also offers a 6 cylinder option or turbo 4 cylinder option for these cars, the volumes for these options are sufficiently small that there would be little CAFE impact even if those engines could be replaced by the Quad 4.

NHTSA believes that the Quad 4 represents a significant fuel economy accomplishment for GM and considers its development and use to be part of the reasonable efforts made by that company to achieve the statutory 27.5 mpg standard. The agency recognizes that the introduction of a major new engine involves significant risks, especially if it incorporates new technologies, and that a manufacturer typically needs to ensure its acceptability at low volumes and with a small number of models prior to expanding its use. Accordingly, the agency does not believe that further use of this engine or technology for MY 1989, beyond what GM currently plans, should be expected as part of an asssessment of GM's "reasonable efforts." (A complete discussion of the "reasonable efforts" test was provided in the MY 1989 preamble. 53 FR 39284-86. 39290-92.)

With respect to whether a portion of the decline in GM's projected CAFE for MY 1989, as compared to MY 1988, appropriately reflected uncertainty in EPA testing, CFAS/PC asserted that comparison of the 1988 and 1989 EPA test car lists do not show fuel economy reductions for the same vehicle which can be attributed to EPA testing variation. NHTSA notes that a comparison of the two test car lists shows that of the domestic GM cars that carried over from MY 1988 to MY 1989 with the same specifications, 17 tests showed lower fuel economy, 16 showed higher fuel economy, and 6 were unchanged. The value of such an exercise is limited, however, since the impact on CAFE depends on the relative production volume of each configuration. NHTSA notes that it considered this issue during the MY 1989 proceeding (see FRIA, pp. V-88 to V-89) and does not believe that further evaluation of this issue is warranted at this time.

GM's Loss in Market Share

CFAS/PC's third contention is that NHTSA erroneously concluded that GM's CAFE of 27.6 mpg in MY 1988 caused it to lose sales. The petitioners asserted that GM's lower sales in recent years including MY 1988 are due not to CAFE but instead "to well known GM mistakes including poor quality, failure to differentiate its models in the marketplace, [and] poor styling compared to its competitors."

The petitioners are incorrect in asserting that NHTSA concluded that GM's high domestic CAFE of 27.6 mpg in MY 1988 *caused* that company to lose domestic sales. The agency did recognize that GM's achievement of 27.6 mpg in MY 1988 "can be traced in part to its smaller share of the large car market." 53 FR 39277. In making this point, the agency stated the following:

While the market share loss may have occurred for a variety of reasons, the results were nonetheless dramatic. The decline in market share led both to a high CAFE last year and to the laying off thousands of workers, estimated by GM to be a loss of 75,000 workers in the past three years.

NHTSA also recognized that "it is likely that GM plant closings and the other GM product decisions cover the past few years are due in part to overcapacity in the auto industry generally and in part to the market converging on the medium, 'compact' car." 53 FR 39278. The agency emphasized, however, that "the larger car market, while shrinking, is not disappearing in the short term, and it is clear from Ford's experience that the CAFE of a company that serves that marget segment will be lower than if the company does not serve that market." 53 FR 39278.

With respect to GM's MY 1989 CAFE capability, the key point is that efforts by that company to regain a portion of its lost market share would come at a CAFE price. This is particularly true given current consumer demand for larger engines (in cars of all sizes), and since part of the market share lost by GM is in the larger car market, a market segment where that company is traditionally very competitive but which is inherently less fuel-efficient than other market segments. As NHTSA concluded in the MY 1989 proceeding, "(t)o the extent that GM is able to so accommodate consumer demand or otherwise increase the sales of its less fuel-efficient vehicles, including less fuel-efficient compacts as well as larger vehicles, its CAFE will decline, *relative* to what it achieved in MY 1988." 53 FR 39290 (emphasis added).

Impact of the Two Fleet Rule

CFAS/PC's fourth contention is that NHTSA was incorrect in concluding that EPCA's requirement that manufacturers separate their fleets into two categories -- domestic and not domestically manufactured (i.e.,

imported) -- creates a threat to American jobs. The petitioners asserted that Congress established the two fleet rule to protect domestic jobs and that it does just that if NHTSA does not relax CAFE standards. CFAS/PC stated that Congress amended the CAFE law in 1980, at a time well after Japanese imports began capturing a larger market share and started to upscale in the vehicles they were producing, and that "surely" Congress would have amended this provision if it were costing U.S. jobs. The petitioners also asserted that UAW President Owen Bieber "pointed out . . . [that] relaxing CAFE standards costs jobs as it permits the domestic manufacturers to build small cars abroad rather than produce them in the U.S."

NHTSA believes that this issue was fully addressed in the MY 1989 preamble and will not repeat all of that discussion. With respect to Mr. Bieber's comments, the agency notes that while he did state that "(t)he lowering of the standards should not provide the companies with an incentive to outsource smaller vehicles," he also urged the agency "to consider both the implications of *not* lowering the standards and *of* lowering the standards." (Emphasis his.) Mr. Bieber recognized that the manufacturers have said that one option for meeting the standards would be to outsource large vehicles, and expressed concern that "we are faced with the threat of outsourcing large cars and the good paying jobs the manufacture of such vehicles provides for American workers with no improvements in overall fuel economy or environmental benefits."

NHTSA acknowledges, of course, that the *purpose* of the two fleet rule was to attempt to prevent the fuel economy program from directly encouraging the importation of small, fuel-efficient, foreign-produced cars. In 1975, when EPCA was passed, the domestic manufacturers were already importing some fuel-efficient cars, and Congress was concerned that the manufacturers might decide to meet fuel economy standards largely by increasing such imports.

NHTSA does not agree, however, that the two fleet rule is currently meeting its intended purpose. Today, the domestic manufacturers are importing substantial numbers of smaller, fuel-efficient cars for reasons unrelated to CAFE. The introduction of low priced, entry-level cars from countries with low costs has precluded the domestic manufacturers from competing in this segment of the market with domestically produced cars. These low-priced models are produced in such countries as Korea, Mexico, Brazil and Yugoslavia. This competition has affected import manufacturers as well as domestic manufacturers. Western European manufacturers have not competed in the American entry-level market for several years, and Japanese manufacturers are now beginning to lose market share to Korean cars. For example, Mitsubishi is now importing a Korean-produced Hyundai as its lowest priced Mitsubishi Precis.

Since the domestic manufacturers will necessarily continue to import small, fuel-efficient cars in order to remain in that segment of the market, notwithstanding the two fleet rule, the current primary effect of the rule is to create an incentive for the domestic manufacturers to transfer the production of their larger, less fuel-efficient cars to production facilities outside of the United States, in order to meet CAFE standards. This action would result in a higher domestic CAFE value for these manufacturers, making it easier for them to meet CAFE standards. and would not create a compliance problem for the manufacturers' import fleets since the larger, less fuel-efficient cars would be averaged in with the small, more fuel-efficient cars being imported for competitive reasons. Ford commented in the MY 1988 proceeding, for example, that it could improve its domestic CAFE by 0.6 mpg by sourcing sufficient LTD Crown Victoria and Mercury Grand Marquis components outside the United States to transfer these vehicles into its import CAFE fleet. While such outsourcing would increase the manufacturers' domestic CAFE values, it would reduce the number of American jobs while having no effect on energy conservation.

With respect to the petitioners' suggestion that Congress would "surely" have amended this provision in 1980 if it were costing U.S. jobs, NHTSA observes that the inability of the domestic manufacturers to compete in the entry level small car market with domestically produced cars has primarily occurred after 1980. For example, GM produced the fuel-efficient Chevette from 1975 to 1987. As discussed in the MY 1989 preamble, GM stated at NHTSA's September 14, 1988 public hearing that the Chevette was not redesigned because GM could no longer compete in that market. GM emphasized that its inability to compete in that market is the reason it is working on Saturn at this point in time, and that it has increased its import fleet from zero in 1984 to over 300,000 in 1988 to maintain a presence in that market until it can get Saturn on the street.

Competitive Impacts

CFAS/PC's fifth contention is that NHTSA erroneously concluded that CAFE standards will result in foreign companies selling more large cars. The petitioners argued that the CAFE standards do not give foreign companies an unfair advantage and that the upscale mid-size and luxury cars being sold by foreign manufacturers are priced above comparable domestic cars and compete on the basis of quality.

NHTSA addressed the issue of competitiveness at considerable length in the MY 1989 preamble and will not repeat all of that discussion. A portion of the agency's presentation follows *(53 FR 39276):*

. . . (T)he fleet averaging requirement . . . was originally intended to ensure that manufacturers could continue to offer consumers a wide choice of makes and models, because compliance with the standard would be measured on a fleet average basis. In other words, a manufacturer could continue to offer models that achieved fuel economy levels below the standard, as long as it sold a sufficient number of models that exceeded the standard. While intended as a means to preserve consumer choice, the provision gives a real advantage to Asian and some European manufacturers that generally have not been manufacturing large, family-size or luxury vehicles. The setting of the standards largely based on the capabilities of the major domestic manufacturers results in standards that are well below the capabilities of these foreign manufacturers, giving them substantial latitude in designing and introducing new models to take advantage of changing consumer preferences. While the full-line U.S. manufacturers must struggle to adjust their fleet mixes to meet the standard on a fleet average basis, these other companies are manufacturing fleets that are automatically more fuel efficient by virtue of their sales mix, but not by virtue of any inherent fuel efficiency superiority of their individual models. Thus, they need not be concerned with the adverse CAFE effects of their new, higher performing, less fuel-efficient models that the market now demands. And, as discussed below, they are actively entering the larger and luxury car markets in the U S., posing a real competitive threat to the U.S. manufacturers in this segment.

NHTSA believes that it is obvious that CAFE standards result in uneven impacts on different manufacturers, depending on the market segments they serve. Since the Japanese and other Asian manufacturers have traditionally specialized in smaller cars and, as a practical matter, are not affected by the two fleet rule, they can freely introduce new, higher performance large or luxury models without fear of CAFE noncompliance. Since GM and Ford have traditionally been full-line manufacturers, and cannot average together their most fuel-efficient cars (which are imports) with their larger cars, they have lower (domestic) CAFE values than the Japanese and other Asian manufacturers. Thus, overly stringent CAFE standards could make it difficult or impossible for GM and Ford to adequately compete with the new, higher performance large or luxury Japanese models, since such standards could constrain the domestic manufacturers from selling competitive models.

Conclusion

After carefully considering the arguments raised by CFAS/PC, NHTSA has decided to deny their petition for reconsideration. None of the arguments lead the agency to believe that, on the basis of the record before the agency at the time, it should have declined to exercise its discretion to reduce the MY 1989 passenger car standard, or that the standard should have been set a level other than 26.5 mpg.

(15 U.S.C. 2002; delegations of authority at *49 CFR 1.50* and 501)

Issued on May 23, 1989.

Jeffrey R. Miller,

Acting Administrator.

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