



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 531, 533 and 536

[Docket No. NHTSA-2016-0135]

Corporate Average Fuel Economy Standards; Credits

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

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice partially grants a petition for rulemaking submitted by the Alliance of Automobile Manufacturers and the Association of Global Automakers (hereinafter collectively referred to as “Petitioners”) on June 20, 2016, to consider amending various aspects of the light vehicle Corporate Average Fuel Economy (CAFE) regulations. The Petitioners requested that NHTSA issue a direct final rule to implement the requested changes, but NHTSA believes that the issues and questions raised by the Petitioners are worthy of notice and comment. NHTSA will address the changes requested in the Petition in the course of the rulemaking proceeding, in accordance with statutory criteria.

DATES: December 21, 2016.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Mr. James Tamm in the Fuel Economy Division of the Office of Rulemaking at (202) 493-0515. For legal issues, you may call Ms. Rebecca Yoon in the Office of Chief Counsel at (202) 366-2992. You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

On June 20, 2016, the Petitioners submitted a Petition to the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) requesting that the agencies issue a direct final rule to amend various aspects of the Corporate Average Fuel Economy (CAFE) and light-duty greenhouse gas (GHG) regulations. The Petitioners stated that these amendments are necessary to “address various inconsistencies between” NHTSA’s CAFE program and EPA’s GHG emissions program, and to “address additional inefficiencies” in the programs.

Specifically, Petitioners requested that NHTSA (and EPA)¹ modify the CAFE regulations as follows:

- 1) Include “off-cycle” credits in the calculation of manufacturers’ fleet fuel economy levels for model years 2010 through 2016;
- 2) Include air conditioning efficiency credits in the calculation of manufacturers’ fleet fuel economy levels for model years 2010 through 2016;
- 3) Apply the “fuel savings adjustment factor” for all uses of CAFE credits;
- 4) Apply the same estimate of Vehicle Miles Traveled for model years 2011 through 2016 that that the EPA GHG program uses;
- 5) Change the definition of “credit transfer” in 49 CFR Part 536 to state that the statutory cap on credit transfers applies at time of transfer rather than at time of use;
- 6) Amend regulations to clarify that manufacturers may manage and apply their credits regardless of their origin;
- 7) Amend 49 CFR 531(d) so that minimum domestic passenger car standards represent 92 percent of the overall passenger car CAFE standard for the fleet as a whole

¹ This decision addresses only those portions of the Petition that are within NHTSA’s jurisdiction and responsibility. It does not address aspects of the Petition that are exclusively under EPA’s jurisdiction.

- calculated at the end of each model year, rather than 92 percent of the overall standard as calculated at the time that the standards are/were originally issued;
- 8) Adjust the “multiplier” for full electric vehicles, plug-in hybrid electric vehicles, fuel cell vehicles, and compressed natural gas vehicles; and
 - 9) “Improve” the off-cycle credit approval process and reaffirm several provisions.

Some aspects of the Petition were directed to NHTSA, some to both NHTSA and EPA, and other requests were directed exclusively to EPA. The sixth item, seeking clarification that manufacturers may manage and apply their credits regardless of their origin, requests a change in an EPA regulation (40 CFR 86.1865(k)(5)) that does not appear applicable or relevant to the CAFE program. Calculation procedures for CAFE compliance are located at 40 CFR 600.510-12. Credits for CAFE over-compliance are determined based on the difference between a manufacturer’s calculated “achieved” CAFE value and the manufacturer’s calculated “required” CAFE value. NHTSA believes that this request was not intended to be directed at the CAFE program, but NHTSA would welcome Petitioners’ clarification if this is incorrect.

Similarly, the eighth item, which addresses the “multiplier” for alternative fuel vehicles, applies exclusively to EPA’s GHG program. NHTSA does not speak for EPA in this decision, and will not address this item in the upcoming rulemaking.

The remaining items will be addressed in conjunction with the Agency’s upcoming proposal for setting future CAFE standards. NHTSA believes that these issues are best considered concurrently with that rulemaking for both procedural and substantive reasons. Procedurally, reducing the number of rulemaking actions increases administrative efficiency and improves the ability to evaluate cumulative program impacts comprehensively. Substantively, while Petitioners’ requests nominally focus on credit and flexibility issues, NHTSA believes that

the underlying questions of whether and how to expand compliance flexibilities is closely related to the question of what CAFE standards are maximum feasible in future model years, which NHTSA will determine in the upcoming rulemaking as required by statute. The Petitioners appear to agree with this, as the Petition suggests that if a lack of compliance flexibilities leads manufacturers to pay civil penalties for CAFE non-compliance, the CAFE standards may be beyond maximum feasible levels. While NHTSA does not agree that the fact that any manufacturer would face civil penalties alone would suggest that CAFE standards would be beyond maximum feasible, the Agency does agree that manufacturers' ability to comply with standards is a vital consideration in any CAFE rulemaking.

Thus, NHTSA finds that considering these questions concurrently, as part of the same action, will best allow the Agency to maintain a well-structured program that maximizes fuel economy gains in the most cost-effective way possible. NHTSA further concludes that a direct final rule would not be an appropriate mechanism for responding to Petitioners' requests, because: (i) the opportunity for notice and public comment on the Agency's response is important and valuable, particularly given (ii) the linkage between compliance flexibilities and the maximum feasible levels of CAFE standards. Moreover, NHTSA regulations do not allow for a direct final rule to be issued as such if the rule may be controversial or is likely to result in adverse comment. NHTSA is aware that various stakeholders have strong views for and against the expansion of compliance flexibilities in the CAFE program, and the Agency would expect those stakeholders to comment to a direct final rule accordingly, which would require the Agency per its own regulations to initiate notice and comment. See 49 CFR 553.14. Thus, NHTSA denies the petition to the extent that it seeks a direct final rule.

NHTSA's fuel economy standards are final through 2021 and the upcoming rulemaking is required in order to set standards for 2022 and subsequent years. However, in streamlining consideration of the Petitioners' inquiry with the required NPRM, NHTSA will fully evaluate the items relevant to the CAFE program and standards, including their impacts on the program if applied prior to 2022. If in considering the Petitioner's inquiry, NHTSA finds it appropriate to initiate a separate rulemaking, NHTSA may do so. NHTSA is updating its analysis for the NPRM and welcomes input from all stakeholders, including in advance of developing its notice of proposed rulemaking. NHTSA encourages stakeholders to submit comments and to meet with the Agency to discuss their comments, concerns, and suggestions. . NHTSA and EPA remain committed to working together to harmonize the CAFE and GHG program provisions to the extent possible under the agencies' statutes.

Considering all of the information before the Agency, including but not limited to the information referenced in the petition, NHTSA grants the petition in part and denies it in part. The Agency expects to initiate a rulemaking proceeding in the coming months that will address those of the Petitioners' requests that are within the Agency's jurisdiction and power to address. The granting of the petition does not mean that the Agency will issue a final rule. The determination of whether to issue a rule will be made after study of the requested actions and the various alternatives in the course of the rulemaking proceeding, in accordance with statutory criteria.

Authority: 49 U.S.C. 32901, 32902, and 32903; delegation of authority at 49 CFR 1.95.

Issued on December 21, 2016, in Washington, DC, under authority delegated in 49 CFR 1.95, 501.5, and 501.7.

Raymond R. Posten,
Associate Administrator for Rulemaking.

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