

ing. That person may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent that the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

§ 152.171 Decisions and notices.

(a) *Procedure on decisions by administrative law judge.* If the hearing is held by an administrative law judge, he shall either make an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision, to the Secretary for a final decision. A copy of the initial decision or certification shall be mailed to the sponsor. If the initial decision is made by an administrative law judge, the sponsor may, within 30 days after the mailing of the notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may on his own motion, within 45 days after the initial decision, serve on the sponsor a notice that he will review the decision. Upon the filing of exceptions or of notice of review, the Secretary reviews the initial decision and issues his own decision thereon including the reasons therefor. In the absence of either exceptions, or a notice of review, the initial decision shall, subject to paragraph (e) of this section, be the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* If a record is certified to the Secretary for decision or he reviews the decision of an administrative law judge under paragraph (a) of this section, or if the Secretary conducts the hearings, the sponsor shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the sponsor and to the complainant, if any.

(c) *Decisions on record if a hearing is waived.* If a hearing is waived under this subpart, a decision is made by the Secretary on the record and a written copy of that decision is sent to the sponsor and to the complainant, if any.

(d) *Rulings required.* Each decision of an administrative law judge or the Secretary sets forth his ruling on each finding, conclusion, or exception presented, and identifies the requirement or requirements of this subpart with which it is found that the sponsor has failed to comply.

(e) *Approval by Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to continue Federal funding, or the imposition of any other sanction available under this subpart, is promptly transmitted to the Secretary personally who may approve the decision, may vacate it, or may remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to continue Federal funding, in whole or in part, for the project involved, and may contain any terms, conditions, and other provisions that are consistent with and will effectuate the purposes of this subpart, including provisions designed to assure that Federal funding will not thereafter be extended for that project to the sponsor in noncompliance with this subpart, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this subpart.

(g) *Post termination proceedings.* (1) A sponsor shall be restored to full eligibility to receive Federal funding under this part if it satisfies the terms and conditions of the order issued under paragraph (f) of this section or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) A sponsor adversely affected by an order issued under paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal funding under this part.

That request shall be supported by information showing that the sponsor has met the requirements of paragraph (g) (1) of this section. If the Secretary determines that those requirements have been satisfied, he restores that eligibility.

(3) If the Secretary denies the request, the sponsor may submit a request for a hearing in writing specifying why it believes that official to have been in error. It shall then be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The sponsor is restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g) (1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 152.173 Judicial review.

In the case of action (not otherwise subject to judicial review) terminating, or refusing to continue funding, upon a finding by the Secretary of failure to comply with any requirement of this subpart, any sponsor aggrieved may obtain judicial review in accordance with Title 5 U.S.C. section 701-706.

§ 152.175 Effect of subpart.

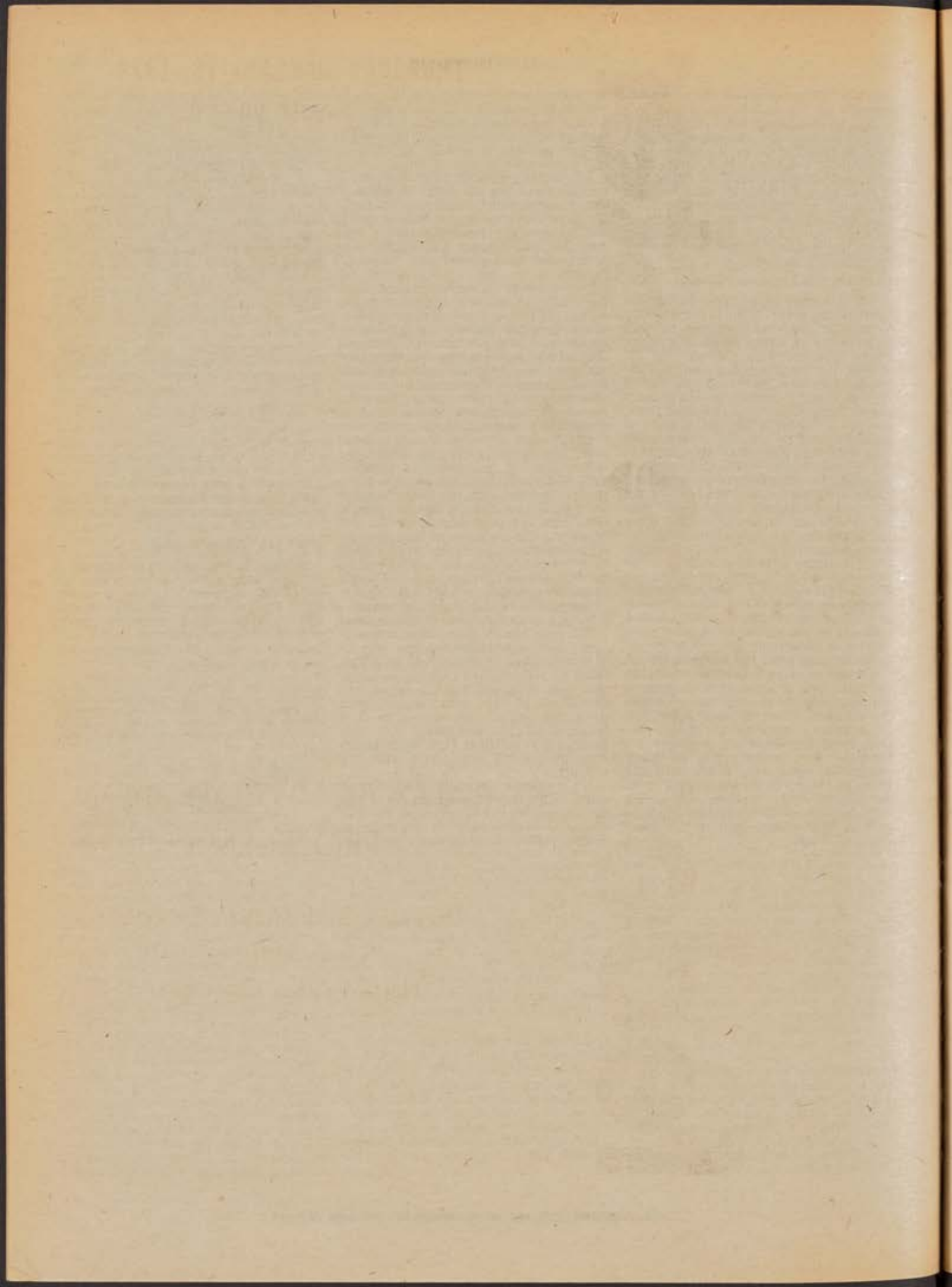
Nothing contained in this subpart is intended to diminish or supersede the obligations imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), or Executive Order 11246 (42 U.S.C. 2000e (note)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on January 10, 1977.

JOSEPH A. FOSTER,
Assistant Administrator,
Office of Airports Programs.

[FR Doc. 77-1245 Filed 1-12-77; 8:45 am]



federal register

THURSDAY, JANUARY 13, 1977

PART VII



ENVIRONMENTAL PROTECTION AGENCY



RADIATION PROTECTION PROGRAMS

**Environmental Radiation Protection
Standards for
Nuclear Power Operations**

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCYSUBCHAPTER F—RADIATION PROTECTION
PROGRAMS

[FRL 659-8]

PART 190—ENVIRONMENTAL RADIATION
PROTECTION STANDARDS FOR NU-
CLEAR POWER OPERATIONS

On May 10, 1974, the Environmental Protection Agency (EPA) published an advance notice of intent to propose environmental radiation protection standards for the uranium fuel cycle (39 FR 16906) and invited public participation. On May 29, 1975, EPA proposed regulations setting forth such standards (40 FR 23420) pursuant to the Atomic Energy Act, as amended, and Reorganization Plan No. 3 of 1970 (35 FR 15623). Numerous written comments were received, and a public hearing was held on March 8-10, 1976 (41 FR 1124 and 41 FR 5349).¹

These regulations setting forth environmental radiation standards are hereby promulgated in final form. The standards specify the levels below which normal operations of the uranium fuel cycle are determined to be environmentally acceptable. A number of changes have been made in the proposed regulations in response to comments received. These changes modify and clarify the areas of applicability of the standards and their effective dates, and expand the conditions under which variances may be granted. The numerical levels of the standards have been retained as proposed.

The Agency has benefited from extensive public participation during the course of the development of these regulations. Sixteen comment letters were received in response to the Agency's May 10, 1974, notice of intent to propose standards, and 82 comment letters following the publication of proposed regu-

lations on May 29, 1975. Letters were received from a broad cross-section of representatives of the general public, the industry, professional groups, the States, and Federal agencies. In addition, 17 parties participated in three days of public hearings and, in many cases, submitted extensive additional written testimony. In all, the contributed record comprises over 3500 pages. Comment letters, a transcript of the public hearing, and all submitted testimony are available for viewing and copying in the Agency's Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The Agency has considered all of this record in reaching its conclusions for these final regulations.

At the time these standards were proposed, EPA released a Draft Environmental Statement and solicited public comments. A Final Environmental Statement is being made available concurrently with the promulgation of these standards. This statement contains the comments received on both the proposed standards and the draft statement, and EPA's response to these comments. Single copies of the Final Environmental Statement and an additional document containing EPA's detailed responses to testimony received in connection with the public hearing are available from the Director, Criteria and Standards Division (AW-460), Office of Radiation Programs, Environmental Protection Agency, Washington, D.C. 20460. Persons interested in a summary discussion of the background, rationale, interpretation, and significance of these standards should consult the notice proposing these regulations and, for greater detail, the Final Environmental Statement.

MAJOR ISSUES RAISED DURING REVIEW

Three major issues were raised by commenters. These were: (1) concern that procedures for implementation of the standards would be unnecessarily conservative or costly, (2) disagreement over the need for and cost-effectiveness of control of environmental releases of krypton-85 and other long-lived radionuclides, and (3) disagreement over the form of the relationship between effects on health and radiation dose assumed in deriving these standards.

A large number of commenters expressed the view that implementation would lead to more restrictive control of effluents than intended due to the use of unnecessarily conservative models for source terms, control capability, and environmental transport, and due to requirements for unreasonably large margins between normal operating levels and the standards, especially at sites containing a number of facilities. The authority to regulate fuel cycle facilities under these standards resides in the Nuclear Regulatory Commission (NRC), or, in some cases, the States, under agreements with NRC. The standards have been expressed in terms of the dose to members of the public, rather than to hypothetical receptors, in order to encourage the use of realistic models by the regulatory agency. In addition, the

Agency has made its intent regarding realistic implementation clear, as, for example, in the discussion of these matters in the Final Environmental Statement and will continue to do so if necessary as implementation proceeds, to assure that unnecessary conservatism does not occur.

In this regard, the NRC has recently issued a revised set of regulatory guides for light-water-cooled reactors which implement their announced intent to use the most realistic models available when adequate experimental data exist to permit a prudent and scientific determination. These models are intended for use in implementing the recently-issued Appendix I to 10 CFR Part 50, which defines design and operating criteria for single reactor units. EPA has examined Appendix I and the accompanying regulatory guides and agrees that they provide the basis for realistic implementation of these standards for single reactor units. The existence of these requirements, coupled with the realization that most existing reactor licenses are for no more than one or two units on a site, makes it unnecessary, in the Agency's judgment, to reexamine the license conditions of these licenses for compatibility with these standards, unless the nearest neighboring site covered by this standard is within ten miles. In these latter cases small adjustments may be necessary. However, in the vast majority of situations, the sum of all reasonably postulated contributions from sources other than the immediate site will be small compared to these standards and should be ignored in assessing compliance. It would not be reasonable to attempt to incorporate into compliance assessment doses which are small fractions of the uncertainties associated with the determination of doses from the primary source of exposure. The Agency has also concluded that, except under highly improbable circumstances, conformance to these criteria should provide reasonable assurance of compliance with these standards for up to five units on a site. This conclusion is based, among other considerations, upon realistic consideration of anticipated site sizes and the relative location of individual units, as well as the stochastic nature of effluent releases.

A number of commenters, including the NRC, also noted that shutdown of nuclear facilities for minor deviations from the standards would not be reasonable. The Agency agrees, and notes that the use of such an extreme measure is not required under present compliance procedures for licenses issued pursuant to the Atomic Energy Act, and that these regulations do not add such a requirement. A graded scale of action is an appropriate regulatory response for achieving conformance. This may include, for example, requirements for corrective actions, appropriate penalties, and, in extreme cases, cessation of operations. The Agency is confident that the NRC will implement these standards in such a reasonable manner.

Some commenters expressed the view that it was not feasible to monitor con-

¹ In this connection the Agency received requests on behalf of Allied-General Nuclear Services (AGNS) on October 4 and December 2, 1976, for a supplemental hearing on certain aspects of this rulemaking, on the grounds that the Agency is, in part, relying upon information acquired subsequent to the public hearing which, in the view of AGNS, would be an essential basis for the rulemaking but is erroneous. The Agency has reviewed the materials submitted in support of this request and concluded that they would not provide a sufficient basis for altering its conclusions. A response to new matters addressed by this material has been appended to the Agency's commentary on testimony received in connection with the public hearing on these standards. In addition it is noted that the Agency has previously (40 FR 23420) made public its intent " . . . to maintain a continuing review of the appropriateness of these environmental standards . . . and to revise them, if necessary, on the basis of information that develops in the interval." In view of the above, the Agency has concluded that it is neither necessary nor appropriate to grant now the additional public hearing requested. We will, of course, welcome the submission of additional factual data on the matters concerned as it becomes available.

formance with these standards through the use of environmental measurements. The Agency agrees that routine monitoring based exclusively upon environmental measurements would not be a reasonable means for assuring conformance and the regulations do not contain such a requirement. Environmental objectives are generally best achieved through controls exercised at the source. For this reason effluent monitoring is generally preferable and such measurements, when combined with regulatory models for environmental transport, would provide quite adequate demonstration of conformance with the standards for the vast majority of situations, based upon existing experience. However, since varying degrees of conservatism and uncertainty exist in all environmental models, the Agency believes it will often be appropriate to supplement effluent monitoring with confirming environmental measurements, as is now the regulatory practice. In the case of light water reactors, models and monitoring requirements for demonstrating conformance with Appendix I of 10 CFR Part 50 are generally adequate for demonstrating conformance with these standards. Similar models and measurements would, in general, be appropriate for most other types of facilities.

In the special case of possible wind-blown effluents from mill tailings, the existence of operational measures (e.g., temporary or permanent stabilization) should normally be the criterion used for verifying compliance, in lieu of effluent and environmental monitoring, because of the difficulty associated with such measurements. It should be noted that doses resulting from exposure to radon and its daughters, which are discharged from a mill site (or result from material which has been discharged), are excluded, but that gamma radiation crossing site boundaries from any on-site source is covered.

In situations where members of the public are actually exposed, these standards, in effect, preempt those regulations which are based upon the Federal Radiation Protection Guides (25 FR 4402) insofar as exposure of the public is due to operations defined to be included in the uranium fuel cycle. For example, the dose limits in 10 CFR Part 20 would not be the limiting consideration regarding exposure of members of the public as a result of uranium fuel cycle operations. These standards do not, however, replace application of the Radiation Protection Guides to the regulation of sources not included within the scope of the uranium fuel cycle. Finally, the graded scale of actions established in 1961 (26 FR 9057) for use in implementing the Radiation Protection Guides do not apply to implementation of these standards, but would remain in effect for implementation of radiation protection guides for other radiation sources.

Several commenters expressed the view that a requirement for control of the unrestricted release of krypton to the environment from fuel cycle operations

was: (a) beyond the jurisdiction of EPA, (b) unreasonably costly, (c) not achievable by 1983, the proposed implementation date (or, in the view of some commenters, was achievable prior to 1983), or (d) not a reasonable requirement of domestic industry until international agreements are achieved to restrict emissions from foreign sources.

The Agency has concluded that its jurisdiction is clear. Reorganization Plan No. 3 of 1970 specifically transferred to EPA from the Atomic Energy Commission the authority to establish standards for "quantities of radioactive materials in the environment" and attaches no conditions to this authority except a requirement that the standards apply outside the boundaries of licensees.

EPA has carefully reexamined the costs of control systems for krypton and has concluded that a substantial portion of the additional costs presented at the public hearings is correct. This analysis is reviewed in the Final Environmental Statement. However, in spite of these increased costs, the installation of controls for krypton-85 is believed to be justified by the public health benefits achievable. In today's dollars, the cost per unit radiation dose reduction at future reprocessing facilities will be \$50-\$75 per man-rem for whole body doses, and considerably less than this for doses to other organs. These values are more than an order of magnitude lower than limiting costs now specified in regulations governing the licensing of individual nuclear power reactors. It is recognized that the cost of retrofitting one facility which is expected to be in operation before 1983 will involve greater costs, and the regulatory agency is encouraged to explore means to minimize costs to this facility in its implementation of the standard for this pilot case.

Regarding the achievability of control over the release of krypton-85 to the environment by 1983, it is noted that this or similar control technology is already being offered commercially for nuclear reactors and fuel reprocessing facilities, and is currently being installed, or is on order, at several U.S. reactors and at a foreign fuel reprocessing facility by U.S. suppliers. The Agency, therefore, believes that 1983 is an achievable implementation date. However, a more accelerated schedule is not considered justified, in view of the small amount of reprocessing that will occur before that date and the present lack of operating experience with krypton controls.

Finally, we have examined arguments concerning the need for international agreement prior to the establishment of standards and do not find them persuasive. EPA fully supports the development of international agreements, and is presently participating in the development of international guidance for control of radioactive effluents from the fuel cycle under the auspices of the International Atomic Energy Agency. A number of countries are already committed to or are in the process of committing themselves to control of krypton releases. The Agency supports this trend and has con-

cluded that the control of U.S. releases of krypton-85 is warranted on the basis of reducing its potential worldwide public health impact. In initiating a requirement for this control, the United States fulfills its responsibility, as the world's largest user of nuclear power, to provide leadership in this matter.

A number of commenters suggested that the proposed regulations should be amended to include standards for carbon-14 and, in some cases, other long-lived radionuclides. The Agency has studies of sources and controls for these materials underway and anticipates that proposals for appropriate environmental standards for carbon-14 can be made shortly, with consideration of proposals for other materials following at a later date. However, the knowledge base is not yet sufficient to permit incorporation into these standards now.

Comments were received reflecting many points of view on health effects issues. One group agreed with the Agency's primary reliance on risk estimates provided by the recent report to EPA of the National Academy of Sciences ("The Effects on Populations of Exposure to Low Levels of Ionization," Report of the Advisory Committee on the Biological Effects of Ionizing Radiation, NAS-NRC, 1972). These estimates are primarily based upon a linear interpolation between existing data on human populations and the assumption of no effects at zero dose. Another group believed this model is not sufficiently conservative to adequately protect public health, based upon several investigators' hypotheses concerning the shape of the dose-effect relationship at low doses. A third group believed these estimates to be too conservative at low doses and low dose-rates. Frequent reference was made by the third group to a report of the National Council on Radiation Protection and Measurements (Report No. 43) which implies that radiation standards should not be based upon numerical estimates of health effects, and a recent report of the Nuclear Regulatory Commission (NUREG-75/014) which presents, in addition to risk estimates based upon the National Academy of Sciences report, some lower risk estimates based upon a belief that dose-rate dependent phenomena exist for low linear energy transfer radiation (gamma rays and beta particles) which reduce the carcinogenic effect of radiation to levels lower than those predicted by the linear model. The Agency has examined the evidence for each of the above views and concluded that, while each may have validity under various assumptions or for various specific situations, the weight of currently available scientific evidence supports the continued use of a linear, nonthreshold model for deriving standards to protect public health.

Changes Made in the Proposed Regulations

A number of changes have been made in response to comments received on the proposed regulations. The following describes and provides the reasons for each of these changes:

1. Paragraph 190.02(b) has been changed to delete transportation as an operation covered by these standards and to specifically exclude waste disposal sites, which were previously not mentioned. The Agency is addressing the development of criteria and standards for management of radioactive wastes as a separate matter, as mentioned in the notice proposing these standards.

A number of commenters, including the NRC and the Department of Transportation, pointed out the difficulty of implementing these standards for transportation activities, particularly noting the problems near nuclear facilities. In such cases an apportionment of the dose limits would appear to be necessary in order to avoid unreasonably extensive monitoring requirements for members of the public. Since studies by both EPA and NRC show that most transportation-related doses are expected to remain at small fractions of these standards in any case, the implementation difficulty does not appear to warrant their inclusion in these standards limiting doses to individuals from uranium fuel cycle operations. The Agency will instead address this matter under its broad authority inherited from the former Federal Radiation Council, through the development of more general guidance to all Federal agencies concerning radiation exposure arising from the transportation of all types of radioactive materials, not just those from the uranium fuel cycle.

2. Paragraph 190.02(d) is changed to reflect the definition of "site" implied by Reorganization Plan No. 3 of 1970.

3. Paragraph 190.02(f) is changed by adding the word "spontaneously" to reflect the Agency's original intent.

4. Paragraph 190.02(g) is deleted and subsequent paragraphs in Section 190.02 are renumbered. This paragraph defined uranium ore as ore containing 0.05% or more uranium by weight. As pointed out by one commenter, it is not desirable to exclude ores containing less than this quantity of uranium, since future demand for ore may make the use of such ores economically feasible.

5. Section 190.11 has been broadened to permit a greater degree of discretion to the regulatory agency to develop and apply conditions for the granting of variances. As pointed out by a number of commenters, it is not reasonable to predicate the justification for variances solely on public need for orderly delivery of power. For example, a facility may have installed a control system which, in spite of good faith performance on the part of the supplier and the user, may fail to achieve operational capability on a timely basis, or, once installed may experience operational failure at some time, yet operation of the facility may not be essential to the "orderly delivery of electrical power." In addition, some portions of this standard are predicated upon the use of waste treatment systems not yet in general commercial use. Although in no case should operation continue if safety is compromised, it may easily be that excursions above these

standards would occur in such cases to a degree that the added risk to the general public is small and the environmental effect is acceptable in comparison to the economic penalty that would be associated with cessation of operation or the anticipated public health and environmental impact of available alternative sources of power. For this reason, the variance provision has been broadened so that the regulatory agency may, if it deems it to be in the public interest, grant a variance in such situations. It should be noted, however, that the variance provision applies only to temporary and unusual situations. It is expected that continued operation under the variance provision will be predicated upon an approved plan to achieve compliance in an expeditious fashion, that is, in as short a time as is reasonably achievable.

The requirement for public documentation of variances has been clarified and extended to apply to this broadened provision. EPA will not review individual variances or compliance plans, which will be made public in accordance with the provisions of paragraph 190.11(b), but will maintain a general overview through periodic review of the use of this Section.

6. Section 190.12(a) has been changed to provide that the effective date for the standards limiting doses to individuals shall be December 1, 1979, for all operations except the milling of uranium ore, for which the effective date shall be December 1, 1980.

The NRC has carefully examined its existing programs for implementation of Appendix I at light-water-cooled reactors, and the feasibility of integrating implementation of these standards into that on-going process, as well as, in parallel, implementing these standards at other types of fuel cycle facilities through development and promulgation of new regulatory guides and individual license conditions. Finally, there are matters regarding reactors which will require generic treatment, such as the conditions required for compliance when there are multiple units on single sites. It is the conclusion of the NRC, and the Agency concurs, that the originally proposed two-year implementation period is insufficient and that three years will be required to complete this process. The NRC review of these matters regarding implementation has revealed that the case of mills is unique, since better information is required concerning a number of alternatives for stabilization of tailings—both as to their relative merit and the degree of periodic maintenance required. On June 3, 1976, the NRC published (41 FR 22430) a notice of intent to prepare a generic environmental statement on uranium milling operations. This effort will be completed in approximately two years, and includes field measurements with participation of both EPA and NRC personnel. In addition, the NRC issued proposed new effluent reporting requirements at mills on November 17, 1975 (40 FR 53230). In view of the above considerations, it is the jointly agreed upon conclusion of

the Agency and NRC that a four-year implementation period is required at mills, rather than the three years provided for all other fuel cycle operations.

7. Section 190.12(b) has been changed to clarify the Agency's original intent that the standards specified in paragraph 190.10(b) apply to radioactive materials produced after the effective date.

The Agency anticipates that promulgation of these standards will serve, in addition to providing for necessary protection of public health, to alleviate some of the uncertainties associated with the design of environmental controls for fuel cycle facilities, and the consequent economic penalties, through stabilizing and providing direction to the process of development of standards and regulations. The economic and inflationary impacts of these regulations have been evaluated in accordance with Executive Order 11821 and it has been determined that an Inflation Impact Statement is not required. (The estimated annual cost of additional effluent controls required by these regulations is in no case greater than ten to twenty million dollars, which is significantly less than the one-hundred million dollar annual cost cut-off established as the minimum for which an Inflation Impact Statement is required.)

Notice is hereby given that pursuant to the Atomic Energy Act of 1954, as amended, and Reorganization Plan No. 3 of 1970 Title 40, Chapter I, of the Code of Federal Regulations is amended by adding a new Subchapter F and Part 190 as set forth below.

Dated: December 28, 1976.

RUSSELL E. TRAIN,
Administrator.

A new Subchapter F, consisting of Part 190, is added to 40 CFR Chapter I as follows:

SUBCHAPTER F—RADIATION PROTECTION PROGRAMS

PART 190—ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR NUCLEAR POWER OPERATIONS

Subpart A—General Provisions

Sec.

190.01 Applicability.

190.02 Definitions.

Subpart B—Environmental Standards for the Uranium Fuel Cycle

190.10 Standards for normal operations.

190.11 Variances for unusual operations.

190.12 Effective date.

AUTHORITY: Atomic Energy Act of 1954, as amended; Reorganization Plan No. 3, of 1970.

Subpart A—General Provisions

§ 190.01 Applicability.

The provisions of this Part apply to radiation doses received by members of the public in the general environment and to radioactive materials introduced into the general environment as the result of operations which are part of a nuclear fuel cycle.

§ 190.02 Definitions.

(a) "Nuclear fuel cycle" means the operations defined to be associated with the

production of electrical power for public use by any fuel cycle through utilization of nuclear energy.

(b) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy, but excludes mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, and the reuse of recovered non-uranium special nuclear and by-product materials from the cycle.

(c) "General environment" means the total terrestrial, atmospheric and aquatic environments outside sites upon which any operation which is part of a nuclear fuel cycle is conducted.

(d) "Site" means the area contained within the boundary of a location under the control of persons possessing or using radioactive material on which is conducted one or more operations covered by this Part.

(e) "Radiation" means any or all of the following: alpha, beta, gamma, or X-rays; neutrons; and high-energy electrons, protons, or other atomic particles; but not sound or radio waves, nor visible, infrared, or ultraviolet light.

(f) "Radioactive material" means any material which spontaneously emits radiation.

(g) "Curie" (Ci) means that quantity of radioactive material producing 37 billion nuclear transformations per second. (One millicurie (mCi) = 0.001 Ci.)

(h) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in bio-

logical effectiveness due to the quality of radiation and its spatial distribution in the body. The unit of dose equivalent is the "rem." (One millirem (mrem) = 0.001 rem.)

(i) "Organ" means any human organ exclusive of the dermis, the epidermis, or the cornea.

(j) "Gigawatt-year" refers to the quantity of electrical energy produced at the busbar of a generating station. A gigawatt is equal to one billion watts. A gigawatt-year is equivalent to the amount of energy output represented by an average electric power level of one gigawatt sustained for one year.

(k) "Member of the public" means any individual that can receive a radiation dose in the general environment, whether he may or may not also be exposed to radiation in an occupation associated with a nuclear fuel cycle. However, an individual is not considered a member of the public during any period in which he is engaged in carrying out any operation which is part of a nuclear fuel cycle.

(l) "Regulatory agency" means the government agency responsible for issuing regulations governing the use of sources of radiation or radioactive materials or emissions therefrom and carrying out inspection and enforcement activities to assure compliance with such regulations.

Subpart B—Environmental Standards for the Uranium Fuel Cycle

§ 190.10 Standards for normal operations.

Operations covered by this Subpart shall be conducted in such a manner as to provide reasonable assurance that:

(a) The annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any

member of the public as the result of exposures to planned discharges of radioactive materials, radon and its daughters excepted, to the general environment from uranium fuel cycle operations and to radiation from these operations.

(b) The total quantity of radioactive materials entering the general environment from the entire uranium fuel cycle, per gigawatt-year of electrical energy produced by the fuel cycle, contains less than 50,000 curies of krypton-85, 5 millicuries of iodine-129, and 0.5 millicuries combined of plutonium-239 and other alpha-emitting transuranic radionuclides with half-lives greater than one year.

§ 190.11 Variances for unusual operations.

The standards specified in § 190.10 may be exceeded if:

(a) The regulatory agency has granted a variance based upon its determination that a temporary and unusual operating condition exists and continued operation is in the public interest, and

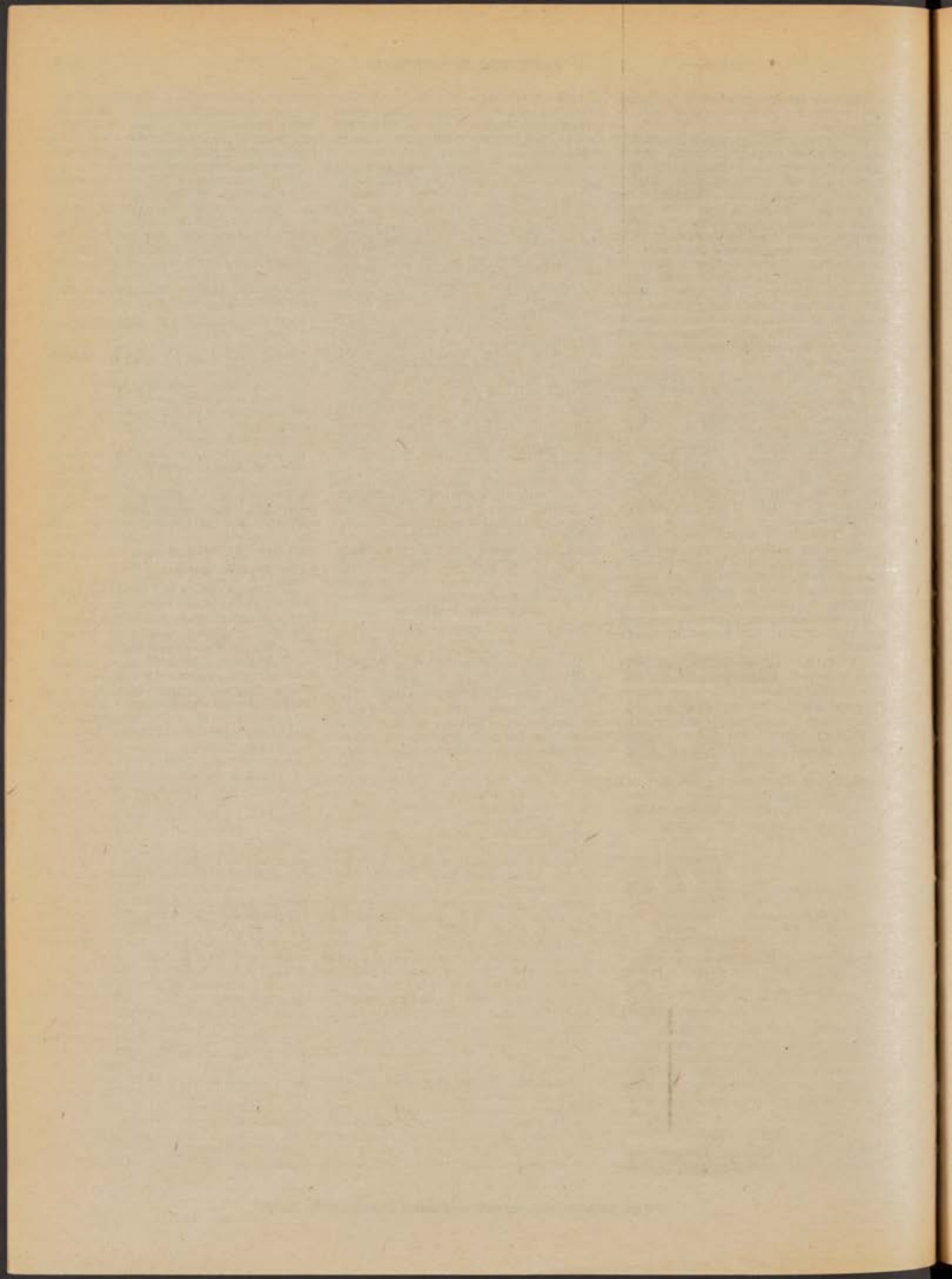
(b) Information is promptly made a matter of public record delineating the nature of unusual operating conditions, the degree to which this operation is expected to result in levels in excess of the standards, the basis of the variance, and the schedule for achieving conformance with the standards.

§ 190.12 Effective date.

(a) The standards in § 190.10(a) shall be effective December 1, 1979, except that for doses arising from operations associated with the milling of uranium ore the effective date shall be December 1, 1980.

(b) The standards in § 190.10(b) shall be effective December 1, 1979, except that the standards for krypton-85 and iodine-129 shall be effective January 1, 1983, for any such radioactive materials generated by the fission process after these dates.

[FR Doc.77-399 Filed 1-12-77;8:45 am]



federal register

THURSDAY, JANUARY 13, 1977

PART VIII



DEPARTMENT OF TRANSPORTATION

**National Highway Traffic
Safety Administration**



FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

**Final Rule and Advance Notice of
Proposed Rulemaking**

Title 49—Transportation

CHAPTER V—DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[OST Docket No. 48]

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Agency: Department of Transportation.

Action: Final rule and advance notice of proposed rulemaking.

Summary: The first part of the preamble of this notice announces and discusses the issuance by the Department of Transportation (DOT) of a regulation establishing procedures to govern a one-year demonstration program of financial assistance to participants in certain administrative proceedings of the National Highway Traffic Safety Administration (NHTSA). This demonstration program has been established to determine whether the process governing the making of administrative decisions will be enhanced by financially assisting participants whose representation contributes or can reasonably be expected to contribute to a full and fair determination of the issues, but who would otherwise be financially unable to participate effectively.

The second part of the preamble is an advance notice of proposed rulemaking, inviting public comment on whether financial assistance to participants in administrative proceedings, under appropriate circumstances, on a department wide and permanent basis ought to be established. The public is invited to comment also on the applicable scope, criteria, and procedures that should govern such a program of assistance.

Dates: The regulation is effective on January 13, 1977. Comments on the Advance Notice of Proposed Rulemaking must be received on or before April 20, 1977.

Address: Comments on the Advance Notice of Proposed Rulemaking should be addressed to:

Docket Clerk, OST Docket Number 48, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590.

For further information contact:

Robert B. Donin, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590 (202) 426-4704.

Supplementary information: During the preceding year, the DOT has intensively considered promulgating regulations that would enhance the presentation of relevant information and points of view in its administrative proceedings. In reaching the position announced today, the DOT has taken cognizance of several legislative initiatives, S. 2715 and H.R. 12762, of the 94th Congress, 2d Session, to affirm the authority of Federal agencies to fund participants in administrative proceedings and to provide guidelines for the exercise of that authority. The DOT has also been considering an opinion of the Comptroller General, cited below, determining that the NHTSA already possesses sufficient authority to

fund participants in its proceedings, and letters from Congressman John E. Moss and Senator Warren G. Magnuson, urging the NHTSA to use its existing authority to assist participants financially under the appropriate circumstances. This notice also responds to a petition for rulemaking submitted by the Center for Auto Safety, Environmental Defense Fund and Consumers Union. That petition requested that the DOT promulgate regulations to provide for compensation of costs incurred in the presentation of views in certain proceedings of the NHTSA and the other operating administrations of the DOT.

PART I: DEMONSTRATION PROGRAM

Purpose of the demonstration program. The goal of this demonstration is to provide added assurance that a full range of views and all relevant information are presented to the NHTSA in its consideration of regulatory actions. The DOT has already sought to encourage wider consumer participation in decisionmaking through the formulation of a Consumer Representation Plan which outlines the opportunities for communication of views regarding regulation, policymaking and program development and sets out Departmental procedures intended to increase participation. (41 FR 42822, September 28, 1976)

In the past, however, it has sometimes been difficult for some consumer, environmental and other groups of citizens that are either widely dispersed or poorly financed to bear the cost of participating in federal regulatory proceedings. By contrast, better financed and organized groups, frequently representative of the regulated industry, are often able to participate vigorously and effectively. Of course, there are other adequately financed public interest groups to which this program may not pertain and there may be groups representing regulated parties which are not able to finance effective participation. There is a risk that because of this financial and organizational imbalance, the views of those who are now financially able to participate in regulatory proceedings may have a disproportionate influence on government decisionmaking. It is hoped that by removing some of the financial barriers to effective participation, under appropriate circumstances, this imbalance may be reduced or eliminated.

Where public interest groups have possessed sufficient resources to participate in administrative proceedings, they generally have made a valuable contribution. As Judge Harold Leventhal recently observed:

Administrative law and regulation have been profoundly influenced by the participation, in both agencies and courts of public interest representatives who have identified issues and caused agencies and courts to look squarely at the problems that otherwise would have been swept aside and passed unnoticed. They have made complaints, adduced and marshaled evidence, offered different insights and viewpoints, and presented scientific, historical, and legal research. They have been of significant service to the entire decisional process.¹

Although the reimbursement of costs that would otherwise pose a bar to future participation by such groups benefits the assisted participants, this demonstration program is primarily aimed at benefiting the general public by promoting fair, balanced, and effective regulation.

At the same time, designing a system to fund citizen participation in regulatory proceedings poses difficult questions of cost, feasibility and fairness. Among these issues are the criteria for eligibility, expense to the public (including both the cost of administration and the cost of disbursements), the appropriate procedure for selection of recipients of financial support, and the determination of what costs should be reimbursable by the DOT. In order to gain experience which will indicate whether, and in what form, such a program of financial support shall be permanently adopted, the DOT has decided to undertake a one-year demonstration limited in scope to certain proceedings of the NHTSA.

Statutory authority for program. The DOT has adequate statutory authority to conduct this program of assistance. Under the Department of Transportation Act, 49 U.S.C. § 1651, et seq. and related statutes,² the DOT and its component agencies have broad responsibility for safety regulation, energy conservation and the sound development of the various transportation modes. The Comptroller General has held that while 31 U.S.C. § 628 prohibits agencies from using appropriated funds except for the purpose for which the appropriation was made, an appropriation made for a particular object, purpose of program "is available to finance expenses which are reasonably necessary and proper or incidental to the execution of the object, purpose or program for which the appropriation was made . . ." 53 Comp. Gen. 351, 364 (1973). See also 50 Comp. Gen. 534, 536 (1971); 44 Comp. Gen. 312, 314 (1964); *Northern States Power Co. v. FPC*, 118 F. 2d 141, 143 (7th Cir. 1941). In an opinion issued February 19, 1976, (Decision B-92288) the Comptroller General advised the Nuclear Regulatory Commission (NRC) that, under this principle, it could lawfully reimburse intervenors in licensing proceedings where (1) it believes that such participation is required by statute or necessary to represent adequately opposing points of view on a matter, and (2) the intervenor is indigent or otherwise unable to bear the financial costs of participation in the proceeding.

A subsequent opinion has clarified both of these standards. (Decision B-139703, December 3, 1976). This opinion is addressed to the Food and Drug

¹ "Attorneys' Fees for Public Interest Representation," 62 ABA Journal 1134 (September, 1976).

² With respect to NHTSA, for example, see the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq., the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1901, et seq., and the Highway Safety Act of 1966, 23 U.S.C. § 401, et seq.

Administration but appears equally applicable to other agencies. The December 3 opinion expressly provided that an agency need not determine that a person's participation is essential to a full and fair determination in a proceeding in order for the agency to be able to fund that person's participation. With respect to the second standard, the recent opinion stated

*** (I)t is our view that FDA may not extend financial assistance to a party requesting to participate which has the financial resources to participate but does not, for whatever reason, wish to use its resources for this purpose.

At the same time, the December 3 opinion rejected giving financial assistance based upon an applicant's having an economic interest in a proceeding that is small in comparison with the costs of effective participation. The GAO found that eligibility criterion to be unacceptable under its prior decisions and in the absence of specific statutory authority.

Since the appropriation for DOT and its component agencies provides for "necessary expenses," Pub. L. No. 94-387, 90 Stat. 1171 (1976), it is clear that DOT may, under appropriate circumstances, reimburse the cost of participation in the administrative proceedings of any of its operating components. Moreover, the Comptroller General has specifically advised that "the rationale of our February 19 decision to NRC is equally applicable" to the NHTSA, and that therefore payments may be made to cover participation in the NHTSA's proceedings. See letter of May 10, 1976, from R. F. Keller, Deputy Comptroller General, to Hon. John E. Moss, Chairman, Oversight and Investigations Subcommittee, House Commerce Committee (B-180224) (reprinted as Appendix B to Food and Drug Administration Advance Notice of Proposed Rulemaking, 41 FR 35855, 35860 (August 25, 1976)).

Standards and procedures of the program. The regulation set forth in this notice adopts a standard for compensation based on the Comptroller General's decisions discussed above. Funding determinations are to be made by a 3-member evaluation board composed of the following three officials or their delegates: the Assistant Secretary for Environment, Safety, and Consumer Affairs, the NHTSA Associate Administrator for Planning and Evaluation, and the NHTSA Chief Counsel. Applications may be submitted for funding for participation in any NHTSA rulemaking proceeding, selected by the Administrator, under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, or any proceeding under section 152(a) of that Act for the presentation of data, views, and arguments following an initial determination of a noncompliance or safety-related defect. The possibility of funding participation in investigations preceding such initial determinations was also considered. Since investigations are not public proceedings and because it is desirable to keep the demonstration program limited in scope, the DOT decided not to fund participation in those areas.

Applications may also be submitted for funding for participation in any proceeding, selected by the Administrator, under the Motor Vehicle Information and Cost Savings Act, as amended, and the Highway Safety Act of 1966, as amended.

Applications for a proceeding are to be submitted to the NHTSA official immediately responsible for the program under which the proceeding will be held. The appropriate official will be the Associate Administrator for Motor Vehicle Programs in the case of the Vehicle Safety Act and Titles I-IV of the Cost Savings Act; the Director of the Office of Automotive Fuel Economy in the case of Title V of the Cost Savings Act; and the Associate Administrator for Traffic Safety Programs in the case of the Highway Safety Act. The official receiving the applications may submit his comments regarding them to the evaluation board. The evaluation board may approve an application only if it makes positive findings on four criteria relating to representation of the applicant's interest and economic need. In brief, the evaluation board must find that (1) representation of the applicant's interest contributes or can be reasonably expected to contribute substantially to a full and fair determination of the issue involved; (2) participation by the applicant is reasonably necessary to represent that interest adequately; (3) the applicant can competently represent the interest it espouses; and (4) absent funding pursuant to this regulation, the applicant does not have available to it sufficient resources to participate effectively.

Where more than one applicant representing the same interest satisfies these criteria, the evaluation board may approve partial or complete funding of two or more applications or approve a single application after a comparison of the applicants' interest, proposals, and past performance in regulatory proceedings. However, the evaluation board may determine with respect to a proceeding under any of the above statutes, that in view of the public interest and the availability of funding for the demonstration program as a whole, no applications for compensation should be considered. Resources for this program are limited, and therefore some proceedings may go entirely unfunded since other more important proceedings may require intensive work by one or more funded participants.

To facilitate determinations by the evaluation board, applicants are to submit a sworn statement describing the work to be funded, the applicant's participation in other administrative proceedings, and the applicant's interest, organization and financial status.

Reimbursement will be limited to reasonable out-of-pocket costs of participation such as attorneys' fees, expert witness fees, and clerical and travel expenses, and will be paid at market rates for the kind and quality of service provided. Reimbursement will not be provided for time expended by any individual on his own behalf or by the staff of any group or organization on its be-

half. Similarly, reimbursement will not be provided for the hiring of outside personnel when staff personnel are available and qualified to do the work. Advance payment of funds by an agency to an applicant in order to ensure the participation of that applicant in a proceeding is impermissible. See, *Opinions of the Comptroller General*, B-139703, September 22, 1976, and B-139703, December 3, 1976, and 31 U.S.C. § 529.

PART II: ADVANCE NOTICE OF PROPOSED RULEMAKING

The Department of Transportation (DOT) is considering promulgating final regulations providing for financial assistance under appropriate circumstances, to participants in all administrative proceedings of the Department and its operating administrations. The purpose of this notice is to invite the public to comment on whether such financial assistance should be provided and suggest the applicable scope, criteria, and procedures which should govern such a program of assistance.

As discussed in Part I of this notice, announcing the NHTSA demonstration program, the DOT believes that the quality of administrative decisionmaking will be enhanced by broad citizen participation which provides a counterweight to the appeals of narrow, special interest groups. Given the ample financial resources of well-organized industry groups, however, there is a serious question whether effective citizen participation can be achieved in the absence of federal action to lessen the often substantial cost of developing a regulatory presentation.

It is clear that DOT and its operating administrations¹ have authority to provide such financial assistance under appropriate circumstances. Under the Department of Transportation Act, 49 U.S.C. § 1651 et seq. and related statutes,² the Department and its component agencies have broad responsibility for safety regulation, environmental quality and the sound development of the vari-

¹ United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and St. Lawrence Seaway Development Corporation.

² See, for example, Federal Boat Safety Act, 46 U.S.C. § 1451 et seq., Deepwater Port Act, 33 U.S.C. § 1501 et seq., Federal Aviation Act of 1958, 49 U.S.C. § 1301 et seq., Airport and Airway Development Act of 1970, 49 U.S.C. § 1701 et seq., International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1159a et seq., Federal-Aid Highway Act, 23 U.S.C. § 101 et seq., Federal Railroad Safety Act of 1970, 45 U.S.C. § 421 et seq., National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq., Highway Safety Act of 1966, 23 U.S.C. § 401 et seq., Urban Mass Transportation Act of 1964, 49 U.S.C. § 1601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., National Environmental Policy Act 1969, 42 U.S.C. § 4231 et seq., Noise Control Act of 1972, 42 U.S.C. § 4901, et seq., Clean Air Act, 42 U.S.C. § 1857f-10, Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

ous transportation modes. The appropriation for the Department and its component agencies provides for "necessary expenses." Pub. L. No. 94-387, 90 Stat. 1171 (1976). Hence financial assistance for participants in Department and agency proceedings is legally permissible under the reasoning of recent Opinions of the Comptroller General, as discussed in Part I.

DOT expects to derive substantial guidance regarding the utility and feasibility of a system of reimbursement from the one-year NHTSA demonstration program. In addition, however, DOT welcomes public comment on the overall question of whether, and in what form, regulations governing DOT and all its operating administrations should be permanently established. Specifically, DOT seeks public comment on questions including, but not limited to, the following:

(1) Should DOT or any of its component agencies adopt permanent procedures to provide reimbursement for participation in administrative proceedings?

(a) If funds should be provided for participation in the proceedings of all components of DOT, should reimbursement be administered under a single Department-wide procedure or under separate procedures applicable to each operating administration?

(2) What changes should be made in the regulations governing the NHTSA demonstration program before they are permanently adopted and applied to proceedings by other operating administrations of DOT?

(a) In what types of proceedings (hearings, rulemakings, adjudications, public meetings) should reimbursement be made available?

(b) In addition to the findings specified by the Comptroller General as prerequisite to findings, what additional criteria and standards should the agency adopt for evaluating the strength of an applicant's interest and its potential contribution to the proceeding?

(c) Where two or more applicants representing the same interest seek funds to participate in the same proceedings, should the agency use to select the applicant? If so, what criteria should the agency use to select the applicant that will receive an award?

(d) With regard to any single proceeding, should the number of applicants that receive funds be limited?

(e) What types of expenses should be recoverable? Should reimbursement be available only for out-of-pocket costs (e.g., legal fees, travel expenses) or also for the value of work performed by an individual-applicant or the staff of organization-applicant in developing its presentation? With regard to the participant's presentation, should DOT fund scientific, technical, demographic or similar research, or should reimbursement be limited to the preparation of oral or written testimony based on existing data?

(f) What agency official(s) should make the funding determination? Should

administrative appeal of this determination be provided? If so, to what agency official(s)?

(g) Should funding decisions be reached before the proceeding (based on the participant's planned presentation and projected costs) or after the proceeding (based on the quality of the participant's presentation and costs actually incurred)?

(h) Should funds be issued before, during or after the proceeding?

All comments received before the close of business on the comment closing date will be considered, and will be available for public inspection or copying from 9 A.M. to 5:30 P.M., Monday through Friday, except Federal Holidays, in Room 10100, DOT Headquarters, 400 Seventh Street, S.W., Washington, D.C. 20590. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The DOT will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Issued in Washington, D.C. on January 11, 1977.

WILLIAM T. COLEMAN, Jr.,
Secretary of Transportation.

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

SECTION 1. Purpose. This regulation establishes procedures for a demonstration program for compensating individuals, groups, associations, partnerships, or corporations that are financially unable to participate in certain administrative proceedings of the National Highway Traffic Safety Administration.

SEC. 2. Applicability. This regulation applies to any individual, group, association, partnership, or corporation, seeking financial assistance for participation in proceedings of the National Highway Traffic Safety Administration.

SEC. 3. Definitions. As used herein—

"Administration" means the National Highway Traffic Safety Administration.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration or his delegate.

"Applicant" means any individual, or any profit or nonprofit group, association, partnership, or corporation seeking financial assistance under this regulation to participate in proceedings.

"Appropriate Administration official" means—

(a) The Associate Administrator for Motor Vehicle programs in the case of applications submitted for proceedings under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.) or Titles I-IV of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(b) The Associate Administrator for Traffic Safety Programs in the case of applications submitted for proceedings under the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.).

(c) The Director of the Office of Automotive Fuel Economy in the case of applications submitted for proceedings under Title V of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2001 et seq.).

"Evaluation board" means a board composed of the Assistant Secretary for Environment, Safety, and Consumer Affairs, NHTSA Associate Administrator for Planning and Evaluation, and the NHTSA Chief Counsel, or their respective delegates.

"Proceeding" means any proceeding (a) which is a rulemaking proceeding under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Motor Vehicle Information and Cost Savings Act, as amended, the Highway Safety Act of 1966, as amended, or a proceeding under section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, for the presentation of views, data, and arguments following an initial determination of a noncompliance with a Federal motor vehicle safety standard or of a defect related to motor vehicle safety,

(b) which commences prior to the end of the one-year period immediately following the effective date of this regulation,

(c) regarding which the Administrator has determined, in light of the public interest and the availability of funding under this program, that applications for assistance under this regulation should be considered.

SEC. 4. Application period. Applications may be submitted under this regulation during the one-year period immediately following January 13, 1977, the effective date of this regulation.

SEC. 5. Application procedure. Applications for financial assistance for participation in proceedings shall be marked for the attention of the appropriate Administration official and addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Each application shall contain, in a sworn statement, the following information in the order specified:

(a) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of the members of its governing body and a description of the organization's general purposes, structure, and tax status.

(b) An identification of the proceeding for which funds are requested.

(c) A description of the applicant's economic, social and other interests in the outcome of the proceeding for which funds are requested.

(d) A discussion of the reasons why the applicant is an appropriate representative of those interests, including the expertise and experience of the applicant in the matters involved in the proceeding for which funds are requested and in related matters.

(e) An explanation of how the applicant's participation would enhance the quality of the decision making process and serve the public interest by contributing views and data which would not be presented by another participant.

(f) A statement of the total amount of funds requested.

(g) With respect to the proceeding for which funds are requested, an itemized statement of the expenses to be covered by the requested funds and of the expenses to be covered by the applicant's funds.

(h) A description of the evidence, activities, studies or other submissions that will be generated by each of those expenditures.

(i) An explanation of how the applicant's obtaining the requested funds would result in enhancing the quality of the applicant's participation in the proceeding for which funds are requested.

(j) An explanation of why the applicant cannot use funds that it already possesses or expects to receive for the purpose for which funds are requested, including:

(1) A listing of the applicant's anticipated income and expenditures (rounded to the nearest \$100) during the current fiscal year.

(2) A listing of the total assets and liabilities of the applicant as of the date of the application.

(k) An explanation of why the applicant cannot in other ways obtain the funds that are requested, including a description of the applicant's past efforts to obtain those funds in other ways and the feasibility of future attempts to raise funds in other ways.

(l) A list of all proceedings of the Federal government in which the applicant has participated during the past year (including the interest represented and the contribution made) and any amount of financial assistance received from the Federal government in connection with these proceedings.

Sec. 6. Processing of applications. (a) When the Administrator determines that the Administration will receive applications for funding under this regulation for a particular proceeding, an invitation for applications is published in the *FEDERAL REGISTER*. When practicable, the invitation is included in the notice commencing the proceeding. Each invitation specifies a deadline for submission of applications. Although applications will be received after the deadline, there is not any assurance that they will be considered.

(b) Within five working days after the deadline for receipt of applications, the appropriate Administration official forwards all applications received before the deadline, together with his comments, if any, on those applications to the evaluation board.

(c) Within five working days after the evaluation board receives the applications from the appropriate Administration official, it approves or denies in whole or in part, each of those applications. The evaluation board may approve an application, in whole, or in part, if it finds that:

(1) The applicant represents an interest whose representation contributes or can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the number, complexity, and potential significance of the issues affected by the proceeding, and the novelty, significance and complexity of the ideas advanced by the applicant;

(2) Participation by the applicant is reasonably necessary to represent that interest adequately;

(3) It is reasonably probable that the applicant can competently represent the interests it espouses, when assessed under the criteria of this regulation; and

(4) The applicant does not have available, and cannot reasonably obtain in other ways, sufficient resources to participate effectively in the proceeding in the absence of funding under this program.

In determining whether an applicant would be unable to participate effectively, the evaluation board examines the applicant's proposed expenditures for preparing its presentation in the proceeding, decides whether these projected costs are reasonable and compares them to the applicant's income and expenditures, including anticipated future income and expenditures, for the current fiscal year.

(d) In the event that two or more applications, which satisfy the criteria of paragraph (c) of this section and seek to represent the same or similar interest, contain significant differences in viewpoint, approach, or proposals, the evaluation board may partially or completely grant one or more of those applications.

(e) In selecting among the applications specified in paragraph (d) of this section, the evaluation board considers and compares the skills and experience the applicants possess, and the contents of their proposals. In particular, the evaluation board considers and compares:

(1) The applicants' experience and expertise in the substantive area with the Administration's or Department of Transportation's activities and procedures;

(2) The applicants' prior general performance and competence;

(3) Evidence of the applicants' relation to the interest they seek to protect or represent; and

(4) The specificity, novelty, relevance, and significance of the ideas the applicants propose to develop and present.

(f) The decision of the evaluation board whether to select any of the applicants that satisfy the criteria of paragraph (c) of this section is discretionary. In making its decision, the evaluation board may consider:

(1) Whether an applicant's proposal can be reasonably developed and presented with the time allotted; and

(2) The availability of funding for assistance under the program.

(g) A written decision of the evaluation board, stating why assistance has either been granted or denied in light of the criteria in paragraphs (c) through (f) of this section, is mailed to all applicants.

(h) Upon good cause shown by an applicant, the decision of the evaluation board regarding its application may be reconsidered.

Sec. 7. Recoverable costs. (a) Expenses compensable under this regulation are limited to reasonable attorneys' fees, expert witness fees, the expenses of clerical services, travel, studies, surveys and demonstrations, and other reasonable costs of participation actually incurred. In all cases, compensation is not greater than the prevailing market rates for the kind and quality of service provided.

(b) (1) Compensation is limited to reasonable out-of-pocket costs.

(2) Compensation is not provided for:

(i) Time expended by any individual on his own behalf or by the staff of any group or organization on its own behalf; or

(ii) The hiring of outside personnel when staff personnel are available and qualified to do the work.

Sec. 8. Payments to applicants. Payment of compensable expenses for approved applications is made by the Administration within 90 days after the applicant has submitted a completed claim, including bills, receipts or other proof of costs incurred. For good cause shown, payment to an applicant may be expedited.

[FR Doc. 77-1296 Filed 1-12-77; 8:45 am]

PROPOSED RULES

**DEPARTMENT OF
TRANSPORTATION**

Office of the Secretary

[49 CFR Subtitle A]

[OST Docket No. 48]

**FINANCIAL ASSISTANCE TO PARTICI-
PANTS IN ADMINISTRATIVE PROCEED-
INGS**

Advanced Notice of Proposed Rulemaking

CROSS REFERENCE: For a document containing an advanced notice of proposed rulemaking concerning financial assistance to participants in administrative proceedings, see FR Doc. 77-1296 appearing in the FEDERAL REGISTER immediately preceding this cross reference.

federal register

THURSDAY, JANUARY 13, 1977

PART IX



DEPARTMENT OF TRANSPORTATION

**National Highway Traffic
Safety Administration**



AUTOMOTIVE FUEL ECONOMY PROGRAM

**First Annual Report to Congress,
January 1977**

**DEPARTMENT OF
TRANSPORTATION**
National Highway Traffic Safety
Administration
AUTOMOTIVE FUEL ECONOMY PROGRAM
Report to Congress

JANUARY 11, 1977.

The attached document, "Automotive Fuel Economy Program First Annual Report to the Congress," has been prepared pursuant to Section 402(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163), which requires in pertinent part that

Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the FEDERAL REGISTER a review of average fuel economy standards under this part.

JOHN SNOW,
Administrator.

JANUARY 5, 1977.

HON. JAMES O. EASTLAND,
President pro tempore of the Senate,
Washington, D.C. 20510

DEAR SENATOR EASTLAND: Transmitted herewith is the first annual report to the Congress reviewing the progress made in formulating average automotive fuel economy standards, as required by Section 502 (a)(2) of the Energy Policy and Conservation Act (P.L. 94-163).

Respectfully,

WILLIAM T. COLEMAN, JR.

JANUARY 5, 1977.

HON. THOMAS P. O'NEILL,
Speaker of the House of Representatives,
Washington, D.C. 20515

DEAR MR. SPEAKER: Transmitted herewith is the first annual report to the Congress reviewing the progress made in formulating average automotive fuel economy standards, as required by Section 502 (a)(2) of the Energy Policy and Conservation Act (P.L. 94-163).

Respectfully,

WILLIAM T. COLEMAN, JR.

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Section 1

SUMMARY

This report reviews the progress made by the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), in the area of automotive fuel economy, following the passage of the Energy Policy and Conservation Act (EPCA; P.L. 94-163), which adds a new Title V to the Motor Vehicle Information and Cost Savings Act. Section 502(a)(2) of EPCA requires that an Annual Report be submitted to the Congress and published in the Federal Register by January 15, beginning in 1977. The Annual Report of 1979 is to include a comprehensive analysis of the automotive fuel economy program. Since passage of the Act, NHTSA has taken the following actions in implementing the requirements of Sections 501-509:

1. Established the Office of Automotive Fuel Economy reporting directly to the Administrator of NHTSA.
2. Organized personnel, tasks, and resources to begin the preparation of Notices of Proposed Rulemaking (NPRM) and implementation of administrative regulatory processes.
3. Established the mechanism for interagency coordination.
4. Published in the Federal Register:
 - (a) Advance Notice of Proposed Rulemaking (ANPRM) for establishing fuel economy standards for passenger automobiles for model years 1981-1984.
 - (b) NPRM for applications from industry for reducing passenger automobile standards for model years 1978-1980.
 - (c) NPRM for fuel economy standards on nonpassenger automobiles for model year 1979.
 - (d) NPRM for exemption applications for low-volume manufacturers.

- (e) NPRM for classifying passenger, nonpassenger, and off-highway vehicles.
- 5. Produced drafts for:
 - (a) NPRM for establishing which manufacturer of a multistage vehicle is responsible for compliance.
 - (b) NPRM for automobile manufacturers' reports.
- 6. Established a research and development program in support of specific rulemaking actions, utilizing resources and facilities of both the Department of Transportation and outside contractors.

Section 2

BACKGROUND

The Energy Policy and Conservation Act (EPCA), P. L. 94-163, enacted December 22, 1975, amends the Motor Vehicle Information and Cost Savings Act (15 U. S. C. 2001 et seq.) to include a new Title V - "Improving Automotive Efficiency." This Title requires the Secretary of Transportation to define and implement a program for improving the fuel economy of new automobiles in the United States market.

To satisfy this EPCA requirement, the Department of Transportation (DOT) started work on the procedural and regulatory elements of a fuel economy program. Initial planning began with the formation of a working group with automotive fuel economy experience from the Office of the Secretary (Systems Development and Technology and Transportation Systems Center) and from the National Highway Traffic Safety Administration (NHTSA) to provide the technical, legal, and administrative support to carry out the functions required by the Act. The focus of this work was on preliminary development of Notices of Proposed Rulemaking (NPRM's), procedures, and administrative processes so that an overall implementation plan was produced. The process of interagency coordination, on regulations that have significant policy impact, was established. Finally, the DOT staffing, resources, organization, and R&D activities to support the specific rulemaking tasks were identified.

In May 1976, letters were sent to the House and Senate Appropriations Subcommittees, advising them that up to \$1.7 million would be used for automotive fuel economy activities during fiscal year (FY) 1976 and the FY 1976 Transition Quarter (FY 1976 TQ). These funds were appropriated to the Office of the Secretary and made available by transferring priorities.

On June 22, 1976, authority to administer the program was delegated by the Secretary of Transportation to the Administrator of NHTSA, (Federal Register; 41 FR 25015). NHTSA's responsibilities under the Act can be divided into four major areas: (1) to establish and enforce automotive fuel economy standards, (2) to grant exemptions from applicable fuel economy standards, (3) to receive reports from automobile manufacturers, and (4) to report to the Congress on the fuel economy program.

This first report to the Congress reviews the progress of the NHTSA Office of Automotive Fuel Economy in developing automotive fuel economy standards for new passenger automobiles beginning with model year (MY) 1978, and for nonpassenger vehicles beginning with MY 1979.

Section 3

INTRODUCTION

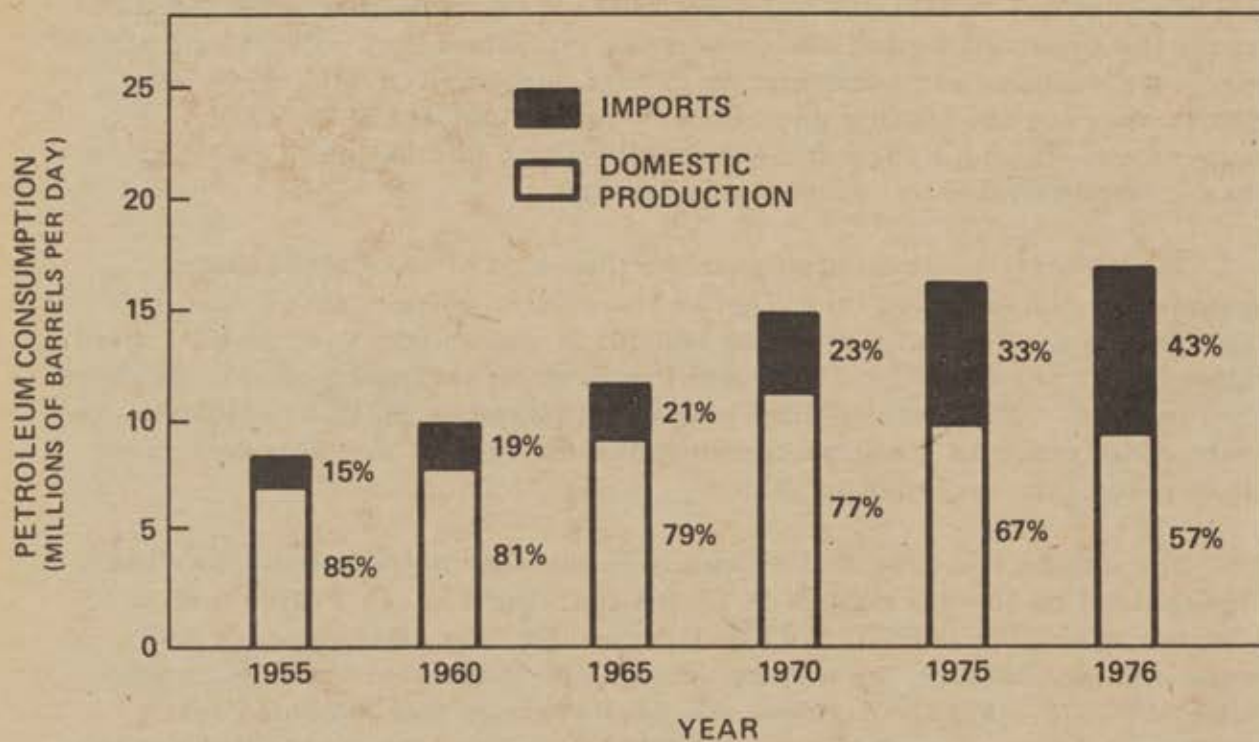
Over the twenty years between 1955 and 1975, United States dependence on imported crude oil more than doubled (see Figure 1). Preliminary 1976 data show another 10 percent increase - with imports now amounting to about 43 percent of the Nation's total petroleum supply requirements. Long-range projections show that, if present consumption trends continue, domestic and world sources combined will be unable to meet the expected United States demand for petroleum. Figure 2, which projects sources and consumption of this commodity to the year 2025, illustrates the increasing gap between supply and demand. (The curves shown would vary somewhat with price fluctuations, since price has a demonstrated relationship to demand.)

Transportation accounts for more than half of the United States petroleum consumption (see Figure 3); of this, 60 percent is used by automobiles. The daily average amount of motor fuel used in all United States vehicles for 1974, 1975, and the first nine months of 1976 is shown in Figure 4. The Federal Highway Administration (FHWA) estimates the rate of increase in gasoline consumption for 1976 at 5.7 percent, more than twice that recorded in 1975.

The urgent need for fuel economy in the automotive sector has been recognized by the passage of P. L. 94-163, the Energy Policy and Conservation Act (EPCA). This Act specifies the fleet average fuel economy standards to be met by automobile manufacturers, beginning with MY 1978. Figure 5 shows the fleet average fuel economy for passenger cars of model years 1974-1977, and the standards to be met under the EPCA from MY 1978 to MY 1985.

The fuel economy standard for MY 1978 passenger automobiles is set at 18 MPG, for MY 1979 at 19 MPG, and for MY 1980 at 20 MPG. The standards for MY 1981-1984 are to be determined by the Secretary and prescribed not later than July 1, 1977. The goal for MY 1985 and thereafter is 27.5 MPG, but this may be amended by the Secretary to a level which he determines to be the maximum feasible average fuel economy level. However, any change which increases the level above 27.5 MPG or below 26 MPG must be submitted to the Congress for approval. The standards for nonpassenger automobiles beginning in MY 1979 are to be determined by the Secretary. Fuel economy for

Figure 1

**U.S. PETROLEUM CONSUMPTION, BY SOURCE
(1955-1976)**

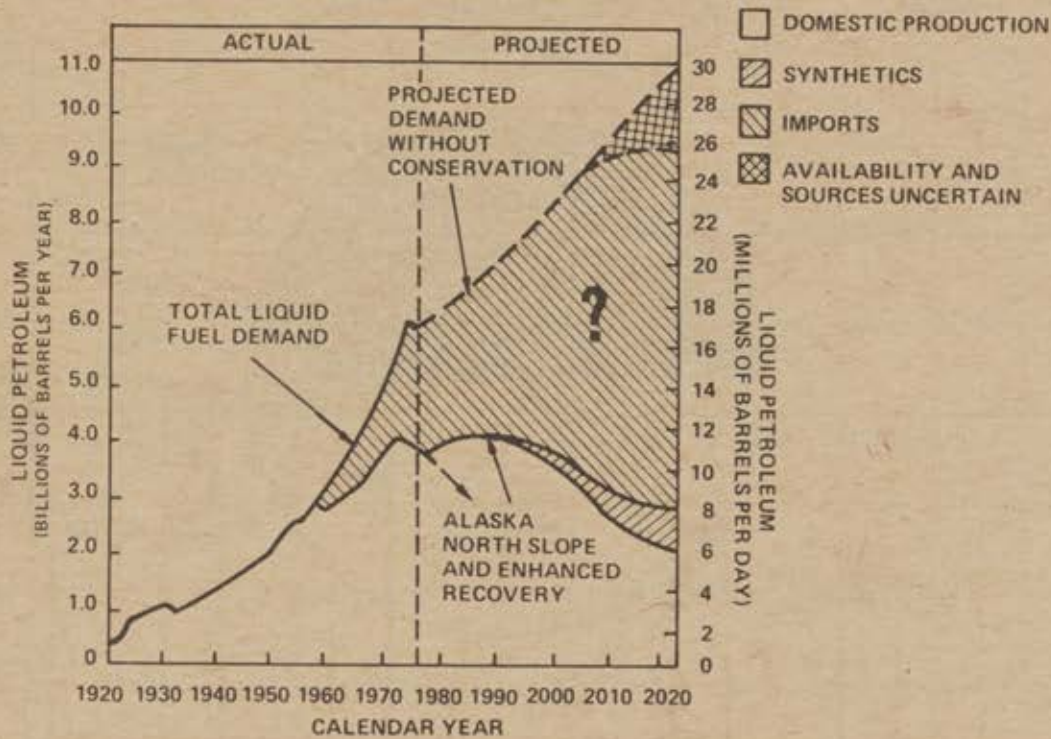
SOURCE: For '55-'70: National Energy Outlook, FEA
(Pg. 57. Fig. II-6)

For '75: Energy Statistics, FEA

For '76: NHTSA Estimate

Figure 2

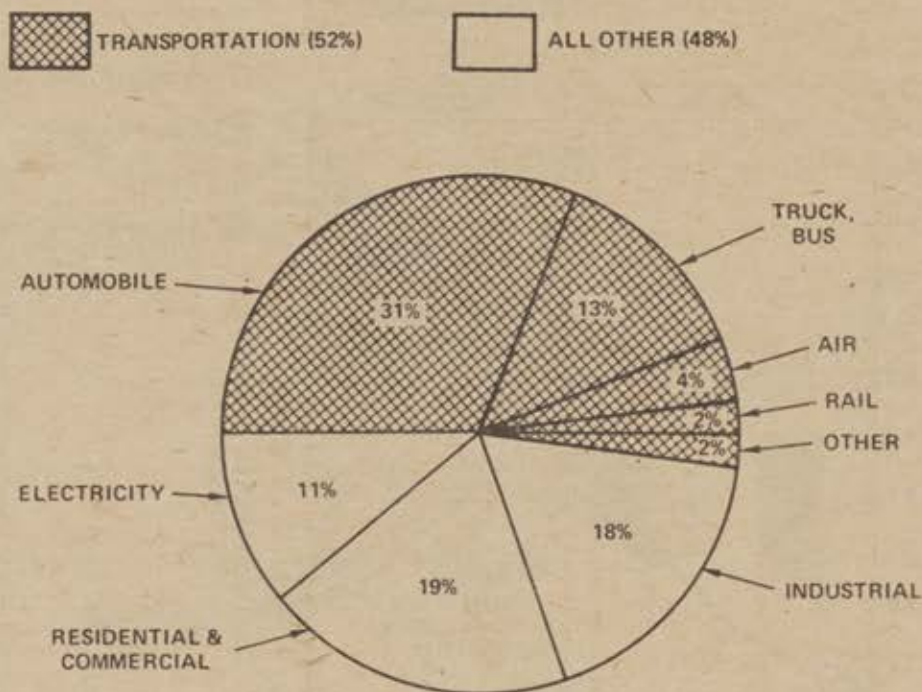
U.S. PETROLEUM CONSUMPTION AND SOURCES, 1920-2025



SOURCES: Historic Data:
 1920 to 1963 Energy Facts
 1964 to 1973 Annual Statistical Review, Petroleum Industry Statistics
 1973 to 1975 FEA, Monthly Energy Review
 Projected Data:
 Synfuel Interagency Task Force, Vol. II (Nov. 1975), p 67,
 Figure 4-111-10, "High SynFuels Cost" case adjusted to include
 2 million barrels per day

Figure 3

U.S. PETROLEUM CONSUMPTION BY SECTOR



Source: Draft report by the Federal Task Force on
Motor Vehicle Goals Beyond 1980. May 1976.

Figure 4

GASOLINE CONSUMPTION REPORTED BY STATES (1974-1976)

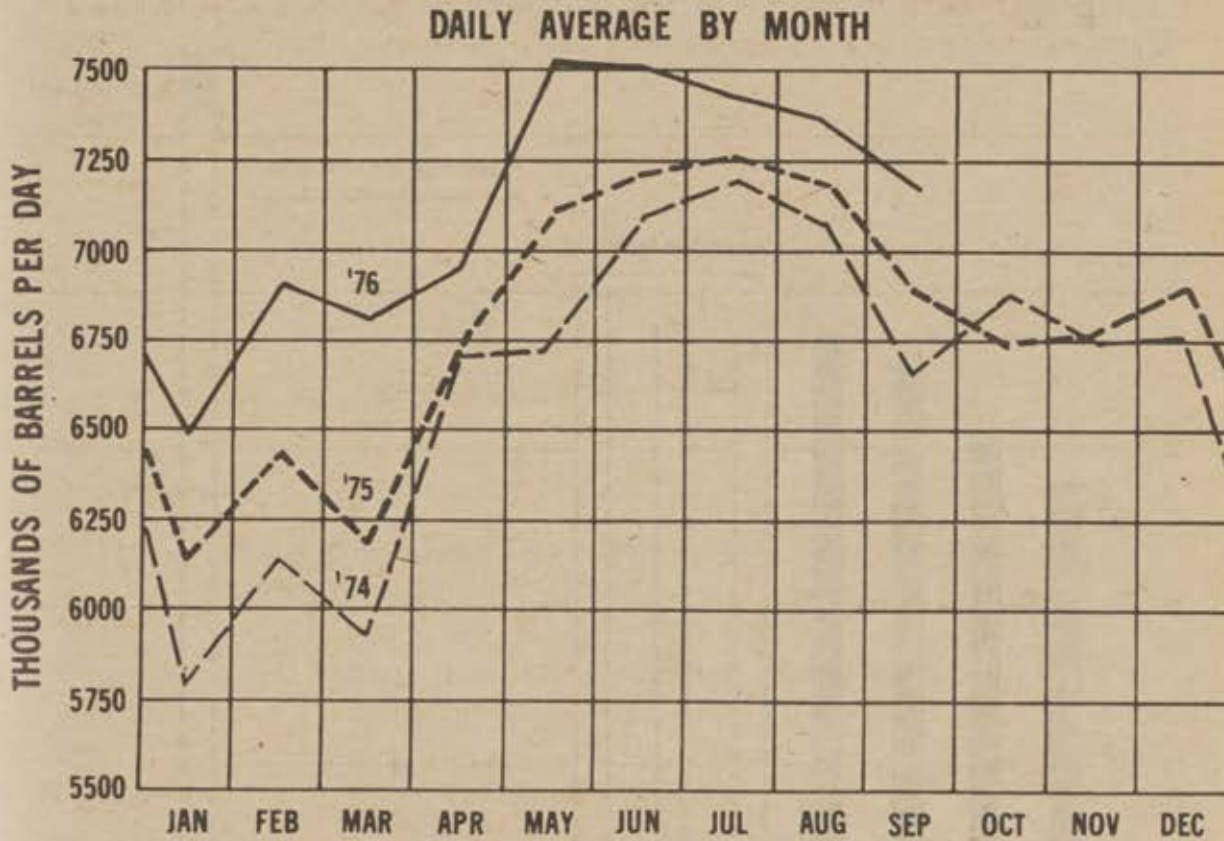
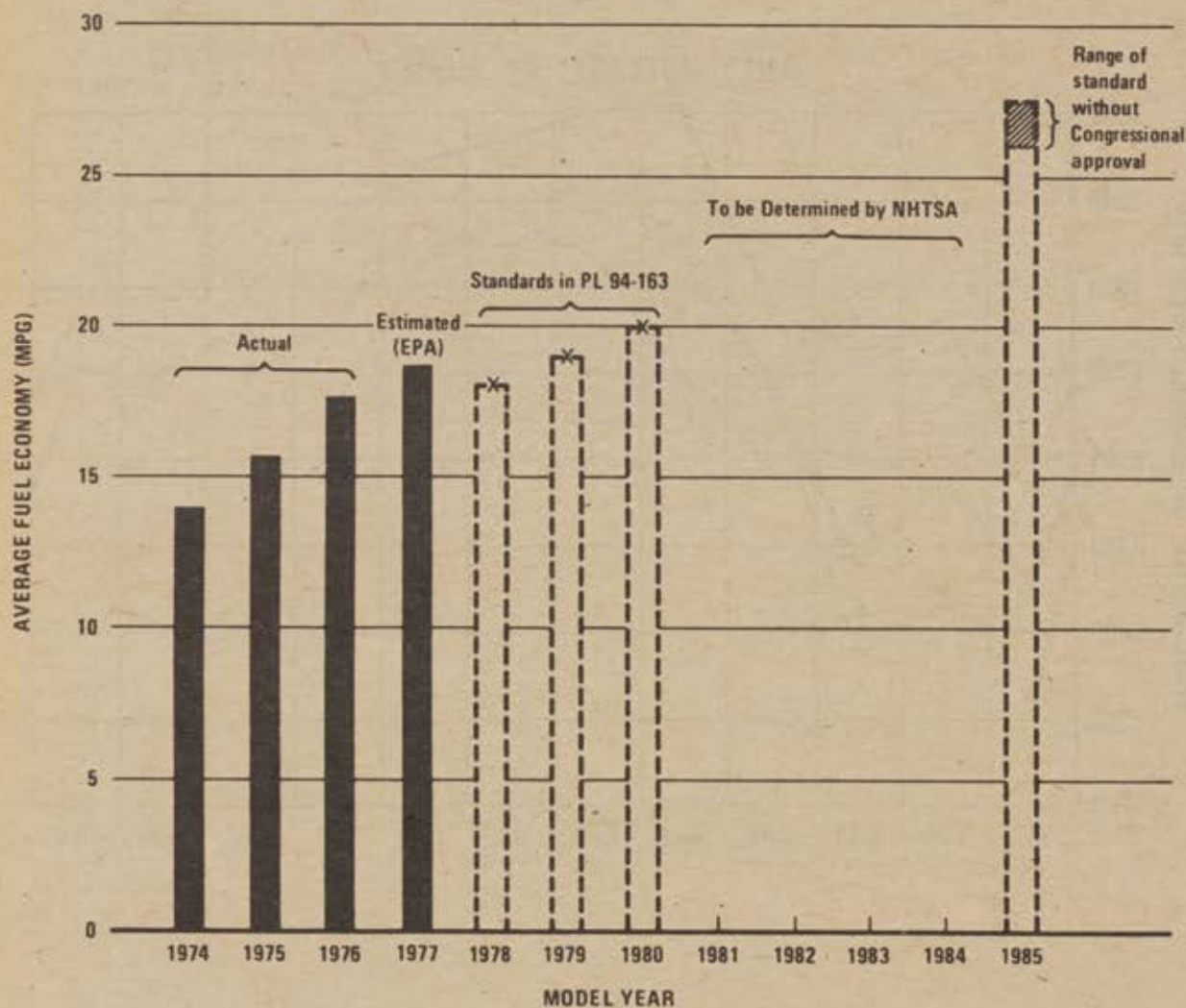


Figure 5

AVERAGE FUEL ECONOMY OF NEW AUTOMOBILES, MODEL YEARS 1974 - 1985 (U.S. Market)



Source: EPA, Office of Mobile Source Air Pollution Control. Summary Chart, September 19, 1975

each model type is to be measured, and fleet average fuel economy of a manufacturer is to be calculated, by procedures established on September 10, 1976, (41 FR 38674) by the Environmental Protection Agency (EPA) Administrator, who is required to report measurements and calculations to the Secretary of Transportation.

The equation used by EPA for computing city/highway combined fuel economy for each new model automobile in a given inertia weight class is:

$$\text{MPG}_{c/h} = \frac{1}{\frac{.55}{\text{MPG}_c} + \frac{.45}{\text{MPG}_h}}$$

Where:

$\text{MPG}_{c/h}$ = Combined city/highway fuel economy in miles per gallon.

MPG_c = Miles per gallon obtained on the EPA city driving cycle.

MPG_h = Miles per gallon obtained on the EPA highway driving cycle.

} EPA
Composite
Driving
Cycle

For each manufacturer, the following formula is used to obtain the average fleet fuel economy:

$$\text{MPG} = \frac{1}{\sum f_i \left[\frac{1}{\text{MPG}_{c/h, i}} \right]}$$

Where:

MPG = Fuel economy for the model year (MPG)

f_i = Fraction of sales of model type i .

$\text{MPG}_{c/h, i}$ = City/highway combined fuel economy for model type i .

For example, if a manufacturer produced only three models with combined fuel economy of 18, 20, and 22 MPG and sales of 30, 20 and 50 percent respectively, the average fuel economy for this manufacturer's fleet in MPG is:

$$\text{MPG} = \frac{1}{\frac{0.30}{18 \text{ (MPG)}} + \frac{0.20}{20 \text{ (MPG)}} + \frac{0.50}{22 \text{ (MPG)}}} = 20.2$$

Table 1 shows the trends in the fleet average fuel economy for fourteen manufacturers in MY 1975-1977. Currently, only four automobiles, Fuji, Honda, Toyota, and Volkswagen, meet the 1985 fuel economy goal of 27.5 MPG - and all four are foreign made.

Table 1

FUEL ECONOMY FOR SELECTED MANUFACTURERS, 1975-1977

	<u>1975</u>	<u>1976</u>	<u>1977</u>
American Motors	19.0	18.3	19.2
Chrysler	15.5	16.5	16.6
Ford	13.6	17.3	17.1
General Motors	15.4	16.7	18.4
Audi	24.2	25.2	25.9
BMW	17.7	18.9	20.4
Fuji (Subaru)	26.5	29.7	30.2
Honda	31.3	32.6	35.6
Nissan (Datsun)	24.9	26.9	27.1
Porsche	19.8	20.5	19.8
Toyo Kogyo (Mazda)	16.7	21.9	26.1
Toyota	22.2	25.0	28.1
VW	27.4	28.3	30.4
Volvo	19.2	19.4	19.9
Fleet Average	15.6	17.6	18.6

Source: EPA "Light Duty Automotive Fuel Economy Trends Through 1977,"
SAE Paper #760795, September 1976.

Section 4

STATUTORY REQUIREMENTS

Sections 501-505 and 508 of the new Title V of the Motor Vehicle Information and Cost Savings Act direct the Secretary of Transportation to issue standards on fuel economy as follows:

- (1) Section 501(1), (2) and (3) authorize the Secretary to prescribe rules defining and classifying "automobiles," "passenger automobiles," and "automobiles capable of off-highway operation."
- (2) Section 501(8) directs the Secretary to prescribe rules for determining which manufacturer is responsible for compliance with the Act, in cases where there is more than one manufacturer of an automobile.
- (3) Section 502(a) (3) requires the promulgation, by rule, of average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. The Title provides for the issuance of these standards by July 1, 1977.
- (4) Section 502(b) of the Act provides that average fuel economy standards for nonpassenger automobiles be prescribed at least 18 months prior to the beginning of the model year to which they are applicable.
- (5) Section 502(c) of the Act authorizes the Secretary to establish the format and content for an application, by a manufacturer who manufactures fewer than 10,000 passenger automobiles in a given model year, for an exemption from the generally applicable average fuel economy standards.
- (6) Section 502(d) (1) of the Act requires the Secretary to issue a regulation covering applications by automobile manufacturers for reductions of passenger automobile fuel economy standards for MY 1978, 1979, and 1980.

There is no statutory deadline for issuance of this regulation, but Section 502(d) (1) permits manufacturers to apply for reductions of fuel economy standards at any time within 24 months prior to the beginning of the model year for which the reduction is sought.

- (7) Section 503(d) (1) of the Act requires the EPA Administrator to establish fuel economy testing and calculation procedures for both passenger and nonpassenger automobiles, and report measurements and calculations to the Secretary of Transportation. Section 503(d) (3) provides that these procedures will be promulgated at least 12 months prior to the model year to which they are applicable. Section 503(f) requires the EPA Administrator to consult and coordinate with the Secretary in carrying out his duties.
- (8) Section 505(a) (1) authorizes the Secretary to establish the format and content of the semiannual compliance reports to be filed by automobile manufacturers. The first report is to be filed during the 30-day period preceding the beginning of the manufacturer's 1978 model year.
- (9) Section 508 covers civil penalties to be assessed by the Secretary for compliance violations, and the deduction from these penalties of credits given a manufacturer for achieving average fuel economy in excess of that required under the applicable standard.

Section 5

IMPLEMENTATION

The Secretary of Transportation has assigned the responsibility of implementing the applicable sections of Title V to the Administrator of NHTSA. The organizational structure of NHTSA has been expanded to add the Office of Automotive Fuel Economy, which reports directly to the Administrator (See Appendix A). The elements of the Office are shown in Appendix B. Positions and total dollar resources for the NHTSA fuel economy program for FY 1976TQ and FY 1977 are given in Appendix C.

RULEMAKING

Dockets have been established at NHTSA for all automotive fuel economy rulemaking actions. These files are available for public review. Rulemaking for seven fuel economy standards has been initiated:

1. Development of fuel economy standards for passenger automobiles for model years 1981-1985 and beyond, Docket # FE 76-01.

Description

This NPRM proposes a new regulation for specifying average fuel economy standards for passenger automobiles in model years 1981 through 1985 and beyond. An ANPRM was issued to obtain information and comments. Additional notice and opportunity to comment will be provided before the standards are issued.

2. Development of a regulation for applications from industry for reducing passenger automobile fuel economy standards for model years 1978-1980, Docket # FE 76-02.

Description

This NPRM proposes a new regulation specifying requirements for submission of petitions from manufacturers for

reducing the passenger automobile average fuel economy standards for model years 1978-1980. Such a reduction would partially offset any loss of fuel economy due to the application in those years of Federal emission, safety, noise, or damageability standards more stringent than those applicable to MY 1975. The NPRM also describes the procedures that NHTSA would follow in acting on the petitions.

The NPRM was published on October 26, 1976: 41 FR 46878.

3. Development of standards for nonpassenger automobiles, Docket # FE 76-03.

Description

This NPRM proposes a new average fuel economy standard for nonpassenger automobiles of 6,000 pounds and less, beginning in MY 1979.

The final rule is scheduled for publication in March 1977.

4. Development of a regulation for exemption applications for low-volume automobile manufacturers.

Description

This NPRM proposes a new regulation specifying requirements for submission of petitions from manufacturers of less than 10,000 passenger automobiles per year for an exemption to the average fuel economy standards. Such exemptions may be granted only if NHTSA determines that the standard otherwise applicable is more stringent than the maximum feasible average fuel economy level which the manufacturer can attain. An exemption can be granted for a low-volume manufacturer only if NHTSA establishes

an alternative (maximum feasible level) standard for the manufacturer, or for such classes of automobiles as the manufacturer produces.

Estimated publication date of the final rule is April 15, 1977.

5. Vehicle classification.

Description

This NPRM proposes a new regulation to define automobiles, passenger automobiles, nonpassenger automobiles and automobiles having a significant feature (other than 4-wheel drive) designed to equip them for off-highway operation.

The rule is scheduled for publication by March 1, 1977.

6. Multistage manufacturer responsibility.

Description

This NPRM proposes a new regulation to prescribe rules for determining, in cases where there is more than one manufacturer of an automobile, which manufacturer is responsible for complying with the provisions of Title V.

The rule is scheduled for publication by March 1, 1977.

7. Development of a regulation for automobile manufacturers' reports on fuel economy.

Description

This NPRM proposes the content and format for the semi-annual reports that automotive manufacturers are required to submit, beginning with MY 1978. The semiannual reports will contain pertinent information to support the program offices.

The rule is scheduled for publication by August 1977.

It is anticipated that additional regulations in the following areas will be required in the future:

Procedural

Rule on which vehicles with GVWR greater than 6,000 pounds and less than 10,000 pounds are automobiles.

Passenger Automobiles (MY 1978-1980)

Rule granting or denying reductions of average fuel economy standards applied for by manufacturers.

Rule prescribing procedures for formal compliance determination hearings for 1978 and later model years.

Rule governing carryback and carryover of credits for exceeding the average fuel economy standards in any model year.

Passenger Automobiles (MY 1981-1985)

Rule modifying the average fuel economy standard for MY 1985 passenger automobiles, if necessary.

Rule modifying standards for average fuel economy of MY 1981 to 1984 passenger automobiles, pursuant to modification of the standard for 1985 models, if necessary.

Nonpassenger Automobiles

Rule establishing average fuel economy standards for nonpassenger automobiles between 6,000 and 10,000 pounds GVWR, if required.

Low-Volume Manufacturer Applications

Rule granting or notice denying applications for exemption from average fuel economy standards and establishment of alternative standards.

Manufacturers' Reports and Recordkeeping

Rule prescribing records to be kept and information to be provided by the automobile manufacturers to aid NHTSA in implementing the fuel economy program.

RELATED ACTIVITIES

In connection with the formulation of the rules required under Sections 501-509 and preparation of public notices and reports to the Congress, NHTSA also performs many related activities. Since the passage of the Act, NHTSA has initiated actions to:

1. Establish and maintain appropriate relationships with consumer groups, the automotive industry, and other Federal agencies.
2. Develop and update economic and technological data bases.
3. Modify the automotive fuel economy research programs to incorporate the statutory requirements of Title V.
4. Formulate methods for the collection and reporting of information required to assess manufacturers' technological alternatives and corporate economic capabilities.
5. Set up procedures to ensure compliance with standards.
6. Recommend penalties for manufacturers failing to meet the standards.
7. Assess and evaluate program effectiveness.

EFFECTS OF SAFETY AND DAMAGEABILITY STANDARDS

All FMVSS's and damageability standards which have been issued, or which NHTSA plans to issue through 1980, have been analyzed to determine their effect on the fuel economy of post-MY 1975 automobiles. In this

analysis, it was assumed that any measurable effect on fuel economy could only be caused by an increase in electrical power consumption or an increase in vehicle weight of 10 or more pounds. Previous research indicates that it would be necessary to increase the weight of a small car by 100 pounds to reduce fuel economy by 0.29 MPG.

Analysis of issued standards reveals that only three safety standards and one damageability regulation currently in force may impact post-1975 vehicle weight by more than 10 pounds. No significant effect on electrical power consumption is anticipated. Fuel impacts of standards to be issued after 1980 will be evaluated in the future.

Existing Standards

FMVSS No. 215 - Exterior Protection - Passenger Cars

This standard, effective September 1, 1972, requires MY 1973 passenger cars to withstand barrier impacts of 5 mph front, and 2 1/2 mph rear, without damage to lighting, fuel, exhaust, cooling, and latching systems. An amendment, effective September 1, 1973, was issued to upgrade the barrier impact speed to 5 mph front, and 5 mph rear and to correct the mismatch that exists between passenger car bumpers by requiring impacts by a weighted pendulum at 5 mph front and rear.

Post-MY 1975 automobiles with a wheelbase of 120 inches or more, which were previously exempted from some of the impact requirements, must now meet them. Although this may mean an increase in bumper weight on these luxury cars, NHTSA estimates that the fleet average weight increase for all model years will be less than 10 pounds.

Part 581 - Bumper Standard

On March 4, 1976, NHTSA issued a final rule on Part 581, Bumper Standard. The purpose of this standard is to reduce physical damage to the front and rear ends of a passenger motor vehicle from low-speed collisions. NHTSA is proposing that manufacturers be given the option of complying with either FMVSS No. 215 or Part 581 until September 1, 1978, when compliance with Part 581 becomes mandatory. The new

standard permits the use of "soft face" bumpers as long as the damage to the vehicle does not exceed specified limits. Soft-face bumpers are expected to weigh 110 to 120 pounds, substantially less than many MY 1975 bumpers. NHTSA expects, therefore, that Part 581 requirements will likely result in a weight reduction compared to MY 1975 passenger cars.

FMVSS No. 301 - Fuel Systems Integrity - Passenger Cars

This standard specifies requirements for the integrity and security of fuel tanks, fuel tank filler pipes, and fuel tank connections in all passenger cars manufactured after January 1, 1968. An amendment to this standard upgrades passenger car fuel system performance requirements, effective September 1, 1975, and extends the applicability to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less. As of September 1, 1976, it must be demonstrated that fuel loss in these vehicles will not exceed one ounce per minute in a static rollover, a 30-mph moving barrier crash, a 20-mph lateral moving barrier crash, and a 30-mph frontal barrier crash. All of the other vehicles subject to the standard must meet these requirements as of September 1, 1977.

NHTSA expects that the post-MY 1975 passenger car requirements of FMVSS No. 301 can be met with no increase in weight. Even if some manufacturers elect to meet the requirements through shielding rather than redesign, the fleet average weight differential still should be less than 10 pounds.

Planned Standards

Current plans for the period through FY 1978 indicate that NHTSA may issue new rules or amend existing standards in 32 areas which may affect MY 1979 and MY 1980 passenger cars.

While formal impact analyses have not been completed on all of these 32 standards, a preliminary review indicates that only FMVSS No. 108 (Lighting Equipment) and FMVSS No. 208 (Occupant Crash Protection) may possibly affect the fuel economy of pre-MY 1981 passenger automobiles.

FMVSS No. 108 - Lamps, Reflective Devices, and Associated Equipment
(Amendment)

This amendment to FMVSS No. 108 proposes requirements for side-turn signal lamps and high-intensity headlamps. The NPRM is scheduled to be issued in FY 1977, and the rule in FY 1978. Although improvements are being made in reducing the power consumption of vehicle lighting systems, the new side-turn signal lamps and higher-intensity headlamps will draw more power than MY 1976 lamps. However, preliminary analysis indicates that the total increase in fuel consumption will be less than one-half gallon per car per year.

INTRA-AGENCY AND INTERAGENCY COORDINATION

Intra-Agency Review

In delegating responsibility for developing fuel economy standards to the National Highway Traffic Safety Administration (NHTSA), the Office of the Secretary of Transportation (OST) has retained a review and concurrence authority which is exercised through the Assistant Secretary for Systems Development and Technology. As work progresses in developing a fuel economy standard, OST is kept informed and a completed Notice of Proposed Rulemaking (NPRM) or Final Rule (FR) is sent to OST for formal review and concurrence.

The formal review normally takes about one month, during which OST is briefed and specifies any changes required for concurrence.

Interagency Review

Fuel economy regulations proposed by NHTSA are also subject to interagency review, in accordance with an Office of Management and Budget (OMB) memorandum issued on October 5, 1971. This memorandum states that "agency regulations, standards, and guidelines pertaining to environmental quality, consumer protection and the occupational public health and safety" are to be submitted for interagency review 30 days prior to being proposed publicly.

NHTSA determines which agencies are asked to review particular rules and consults with OST and the OMB Transportation Branch if there is any doubt whether an agency should be involved. In addition to the Environmental Protection Agency (EPA), the Federal Energy Administration (FEA), and the Energy Research and Development Administration (ERDA), the agencies to be considered for review include the Department of Commerce, the Council on Environmental Quality (CEQ), the Council on Wage and Price Stability (COWPS), and the Economic Policy Board.

By far the closest involvement is with EPA. This agency is responsible for prescribing, by rule, the testing and calculation procedures and conducting the tests and making the calculations on the basis of which compliance with fuel economy standards is determined by NHTSA. EPA is also consulted on a continuing basis concerning the effects of the emission standards on fuel economy.

The rules issued by NHTSA on fuel economy and several rules promulgated by EPA that relate to fuel economy have been the result of coordination between the two agencies. NHTSA and EPA are continuing to develop more effective methods of cooperation.

Some of the major issues identified during coordination with FEA and EPA are presented in the Research and Development Section.

ERDA provides inputs to NHTSA on the status of advanced engine programs which could impact on the post-1985 fuel economy standards.

Section 6

THE RULEMAKING PROCESS

As a pattern for fuel economy rulemaking, NHTSA has adopted a process similar to that used by the agency in issuing Federal Motor Vehicle Safety Standards (FMVSS's). The most significant modification relates to the period permitted for completing the process. In compliance with the EPCA, the first group of fuel economy rules will be issued in final form by March 1, 1977, fourteen months after the Act was signed into law. To satisfy this schedule, the time allowed for accomplishing rulemaking milestones has had to be drastically reduced, while yet offering interested parties the opportunity to participate in the rulemaking process.

As required by the Administrative Procedures Act and implementing orders, NHTSA allows other Federal agencies, industry, and interested private citizens and groups to comment on fuel economy proposals. From these comments, it is expected that NHTSA will acquire information and opinions that will contribute to the issuance of final rules calculated to best achieve maximum feasible automobile fuel economy.

The fuel economy rulemaking process requires NHTSA to:

- (1) Prepare an engineering draft which describes the technical specifics of the proposed rule and the reasons why particular engineering decisions were made.
- (2) Prepare a rulemaking support paper (RSP), a preliminary impact assessment (PIA), and a review to determine if a draft environmental impact statement (DEIS) is needed. The RSP provides the technical basis for the PIA and the environmental review. The PIA contains such items as:
 - (a) Estimates of the cost impact on consumers, producers, or businesses, and on Federal, State, or local governments.
 - (b) Effects on supplies of important materials, energy supply or demand, and automobile performance.

- (c) Reasonable and practical alternatives and their impacts.

The environmental review evaluates the need for a DEIS by estimating the primary and secondary environmental effects of fuel economy on existing air, noise, and water pollution standards and on energy supply and natural resources development.

- (3) Prepare the legal draft of the rulemaking document. The legal draft describes the nature of the proposal, the purpose of its issuance, the specific information requested or requirements to be satisfied, the expected impact and environmental effects, and the time allowed for comments.
- (4) Obtain departmental concurrence.
- (5) Conduct interagency coordination.
- (6) Transmit the rulemaking document to the Federal Register for publication, for public review and comment.

These activities are in line with the President's goal of comprehensive regulatory reform and ensure that rulemaking proposals are supported by adequate analysis of anticipated costs and consequences before they become final rules.

Table 2 depicts the major steps associated with publication of a typical rule on automotive fuel economy.

Table 2

STEPS IN THE DEVELOPMENT OF AUTOMOTIVE FUEL ECONOMY RULES

1. Engineering Draft of Proposed Rulemaking
2. RSP, PIA, DEIS
3. Legal Draft of NPRM
4. Concurrence of Secretary and Interagency Coordination
5. Publication of NPRM in Federal Register
6. Public Hearings if necessary
7. Incorporation of comments
8. Engineering Draft of Rule
9. Legal Draft of Rule
10. Concurrence of Secretary
11. Interagency Coordination
12. Publication of Rule in Federal Register
13. Post-Rule Activities

Section 7

RESEARCH AND DEVELOPMENT SUPPORT

The NHTSA Automotive Fuel Economy (AFE) program is supported by research and development which contributes to the sound formulation, establishment, and enforcement of fuel economy standards and standards modifications.

The purpose of the AFE R&D support program is to enhance NHTSA's preparedness to (1) address and apply the statutory criteria of Title V of the Motor Vehicle Information and Cost Savings Act, (2) review and assimilate the responses and submissions made by manufacturers, consumers, and other interested parties during the rulemaking process, and (3) report to the Congress the progress made in implementation of Title V.

The objective of the support program is to develop, maintain, and update (1) the data bases (statistical, technological, engineering, manufacturing, cost, financial, economic, marketing, and other national impacts) and (2) the analytical tools (framework, methodologies, and specific approaches) necessary to evaluate the maximum feasible fuel economy level and related rulemaking actions.

In the AFE R&D program, the services of the DOT Transportation Systems Center (TSC) will be used to the maximum possible extent. TSC has the expertise and capability for the identification and acquisition of data and the analytical techniques necessary to support rulemaking actions. The Center also has extensive experience in establishing a qualified contractor base in virtually all subjects of interest to the AFE program, and in dealing with auto manufacturers and the auto industry for informal exchange of information. It is planned to supplement the services of TSC with selected contracts with the private sector.

Those portions of the Motor Vehicle Goals study* which apply to fuel economy rulemaking will be modified and updated as necessary for use in

* "The Report by the Federal Task Force on Motor Vehicle Goals Beyond 1980." Draft report to the Energy Resources Council (ERC), September 2, 1976.

the AFE R&D support program.

These elements include (a) detailed breakdown of technological and economic information and analyses by manufacturer, (b) explicit inclusion of nonpassenger autos, (c) reformulation of baselines and projected baselines for the determination of impacts from AFE standards and (d) reconsideration of the effects of other Federal standards (emissions, safety, damageability, noise). In addition, existing data bases and analytical tools will be updated periodically.

To maintain administrative control and facilitate program review, the AFE R&D support program is divided into four task areas:

(1) Assessment of Technological Options, (2) Industry Assessment, (3) Economics, Marketing, and Other Impacts, and (4) Integrated Evaluations.

Assessment of Technological Options initially refers to the evaluation of production and production-prototype hardware available to manufacturers for achieving fuel economy improvements. This encompasses potential for auto-weight reduction, engine and drivetrain improvements, and also includes the effects of other Federal standards on fuel economy.

Industry Assessment includes evaluation of manufacturability and costs of technological improvements, both individually and in combination, assessment of manufacturers' capabilities and leadtimes in implementing fuel economy improvements, and capital requirements and the feasibility of obtaining capital.

Economics, Marketing and Other Impacts involves such complex factors as the following:

- o Identification and allocation of costs and benefits to the manufacturer and consumer as a result of specific AFE standards.
- o Evaluation of consumer choices and preferences and the resulting impact on the manufacturer's ability to meet AFE standards.
- o Fuel price effects in the absence or presence of AFE standards.
- o Aggregated economic effects of AFE standards on the automotive sector of the economy, on the national economy, on petroleum and other national resources, on air quality, and on highway safety.

Integrated Evaluations consist of tasks devoted to systems integration to generate coherent analysis, evaluation, and documentation in response to specific rulemaking.

Following are the plans in these four areas during FY 1977:

Assessment of Technological Options

- (1) Improve and develop tools, (engineering and statistical) to predict fuel economy as a function of performance, emissions, etc., including analysis and tests.
- (2) Obtain data on lightweight internal combustion engines (spark ignition and diesel). The emphasis will be on the evaluation of engines that offer the "best" fuel economy for low horsepower-to-vehicle-weight ratios for given emission constraints. Potential costs will be evaluated. The effect of control logic for a number of engine/vehicle configurations will be studied.
- (3) Evaluate the impact of advanced transmissions on emissions and fuel economy.
- (4) Evaluate the weight-reduction potential of passenger and nonpassenger cars and utility vehicles considering comfort, safety, damageability, reliability, and initial cost. Manufacturing considerations will be included in the study.
- (5) Define the performance of mass-produced engines, their efficiency as a function of emission control, and ancillary hardware and software requirements.

Industry Assessment

- (1) Expand and improve the automotive manufacturing data base. Under this task, manufacturing cost data and methodology generated by the basic interview method, and consultant estimates for various components and vehicles, will be compared with the costing technique based on teardown of actual components or vehicles in order to verify and calibrate the manufacturing cost data bases.

- (2) Collect data and perform analyses of industry capital, labor and material requirements, production scheduling, and costs. Provide responses to specific industry concerns about production capacities, capital availability, changeover intervals and labor. Alternative strategies for meeting capital requirements will also be evaluated.
- (3) Assess ease of manufacture (materials, labor, capital requirements and costs) for projected components and vehicles, e.g., innovative structures, conversion to smaller engines and gas-to-diesel engines.
- (4) Evaluate engineering risks to the consumer and to the manufacturer associated with design changes that show fuel-economy benefits. Studies will include the investigation of possible degradation in durability and safety due to reduction in body-metal thickness, and increase in engine speed (for smaller engine size) to reduce vehicle weight.
- (5) Expand and improve the maintenance cost data base to provide cost information on automotive maintenance inspection and diagnostic equipment. This task will also determine requirements for maintenance of advanced electronic control systems and other components, and provide information on costs to meet damageability standards.

Economics, Marketing and Other Impacts

- (1) Develop financial analyses on each major manufacturer to assess his ability to underwrite technical changes which would improve fuel economy and the risks in doing so.
- (2) Develop data and methodologies for assessing various strategies (extent and phasing of technological innovation, production fleet mix, vehicle performance, and pricing) used by manufacturers to meet AFE standards. Determine the effects of such strategies on the consumer.

- (3) Develop techniques for assessing consumer response to various alternatives offered by manufacturers in response to AFE standards.
- (4) Determine the sensitivity of items such as corporate fuel economy, sales volume, fleet mix and vehicle miles traveled to various increases in fuel price.

Integrated Evaluations

- (1) Synthesize information from each of the three major areas above, to determine the impact of proposed standards, for both passenger and nonpassenger automobiles, utilizing techniques similar to those applied in the Motor Vehicle Goals study.
- (2) Provide technological, economic, marketing, and societal data bases for proposed AFE standards.

Economic Practicability

Title IIIA of the Energy Policy and Conservation Act, which adds a new Title V to the Motor Vehicle Information and Cost Savings Act, represents a new area of governmental regulatory activity, the regulation of automotive fuel economy. Heretofore fuel economy of automobiles has been left to market forces; now it is to be determined, at least in part, by governmental action. The purpose of the new regulatory program is to help ensure that scarce crude oil resources are used in ways which reflect the high economic costs incurred to make these resources available and the risks resulting from increasing U. S. dependence on imports from countries which have restricted the availability of crude oil to the United States.

The overriding objective of this program is to conserve fuel. In setting fuel economy standards the NHTSA Administrator is required to consider their economic practicability. The Congress has demonstrated an awareness that adverse economic effects could result from setting standards too high. To avoid these economic consequences, the Title

requires the Administrator to consider the economic practicability as well as the technological feasibility of establishing and implementing particular standards.

In addition to mandating fuel economy, the Act empowers the FEA to keep fuel prices below the levels that would exist in a normal market. Provision for government price controls on petroleum in the same legislation which seeks to conserve fuel may seem contradictory. Allowing the price of fuel to rise is one way to encourage conservation. Congressional rationale may rest on the following suppositions:

- (1) As a result of actions by foreign suppliers, fuel prices under free market conditions have become so high that the American people should be protected against them.
- (2) These high prices would result in unjustifiable gains to some American producers who could sell at prices which do not reflect the historical costs incurred in finding and producing oil.

For these reasons the price of crude oil to petroleum refiners is set at less than normal market clearing levels and, consequently, the price of gasoline to motorists is below the levels that would exist under free market conditions. Thus, without the fuel savings provisions of the EPCA, Americans would use fuel at greater rates than is justified by real costs or scarcity and would purchase automobiles that are comparatively fuel inefficient.

Congress did not provide a definition of the term "economic practicability." The Administrator is allowed considerable discretion in interpretation of the term. Two ways of approaching the concept of economic practicability are discussed below.

The first approach relies primarily on the premise that current fuel prices cannot be used as a guide for the scarcity of petroleum products. These prices are depressed by government control actions and to adequately measure the value of petroleum, the current world price must include the cost of supply interruptions. Under this interpretation, the Administrator should mandate fuel economy standards

which reflect a higher fuel price than now exists. The Administrator might also conclude that the risk of supply interruption is such as to cause a still higher "price" of fuel to be used as a guide to fuel scarcity. This conclusion would call for more stringent fuel economy measures.

The legislatively set goal of 27.5 MPG implies an as yet indeterminate fuel price. There is a price of gasoline at which the automobile fleets produced and sold in the United States would have this average fuel economy. The Administrator may reduce the minimum average fuel economy requirement from 27.5 to 26 MPG without Congressional review, if he determines that this reduction is the maximum feasible level of average fuel economy. In the absence of the EPCA fuel economy measures, 26 MPG fuel economy would be achieved by market forces at a somewhat lower fuel price than that necessary to achieve 27.5 MPG.

At this time we do not know whether the gasoline prices at which either 26 or 27.5 MPG would be achieved by market forces are near, above, or below those which would result from oil at world market prices. NHTSA's research program has as one of its goals the determination of the relationship between fuel prices and fuel economy of automobiles produced for the United States market.

It is anticipated that this research will provide answers to the following questions:

- (1) What gasoline price would ultimately result in the production and sale of automobiles that would average 26 or 27.5 MPG?
- (2) What would be the average fuel economy of automobiles if there were no fuel economy regulatory program and if gasoline prices were decontrolled to reflect world crude oil prices? How would the average fuel economy change if a premium were added to these prices to reflect the risks of interruption of the supply of crude oil?

A second approach of economic practicability is that the economic consequences of achieving various fuel efficiency levels must fall within acceptable ranges. The following impacts of fuel economy standards may be considered:

- (1) The effect on prices of automobiles, and hence on their marketability and the consequent impact on fuel savings.

- (2) The effect on the characteristics (e.g., size, capacity and performance) of automobiles and therefore on their marketability.
- (3) The effect on employment in the automobile manufacturing and related industries.
- (4) The effect on competition and on the economic health of firms in the automobile manufacturing and related industries.
- (5) The effect on the amount of energy necessary to manufacture automobiles and their components as compared to the resultant effect on fuel consumption.

NHTSA's research program will investigate the two interpretations of economic practicability described above. The research will not determine economic practicability. That will be a matter in which the Department of Transportation and the Congress will exercise judgment.

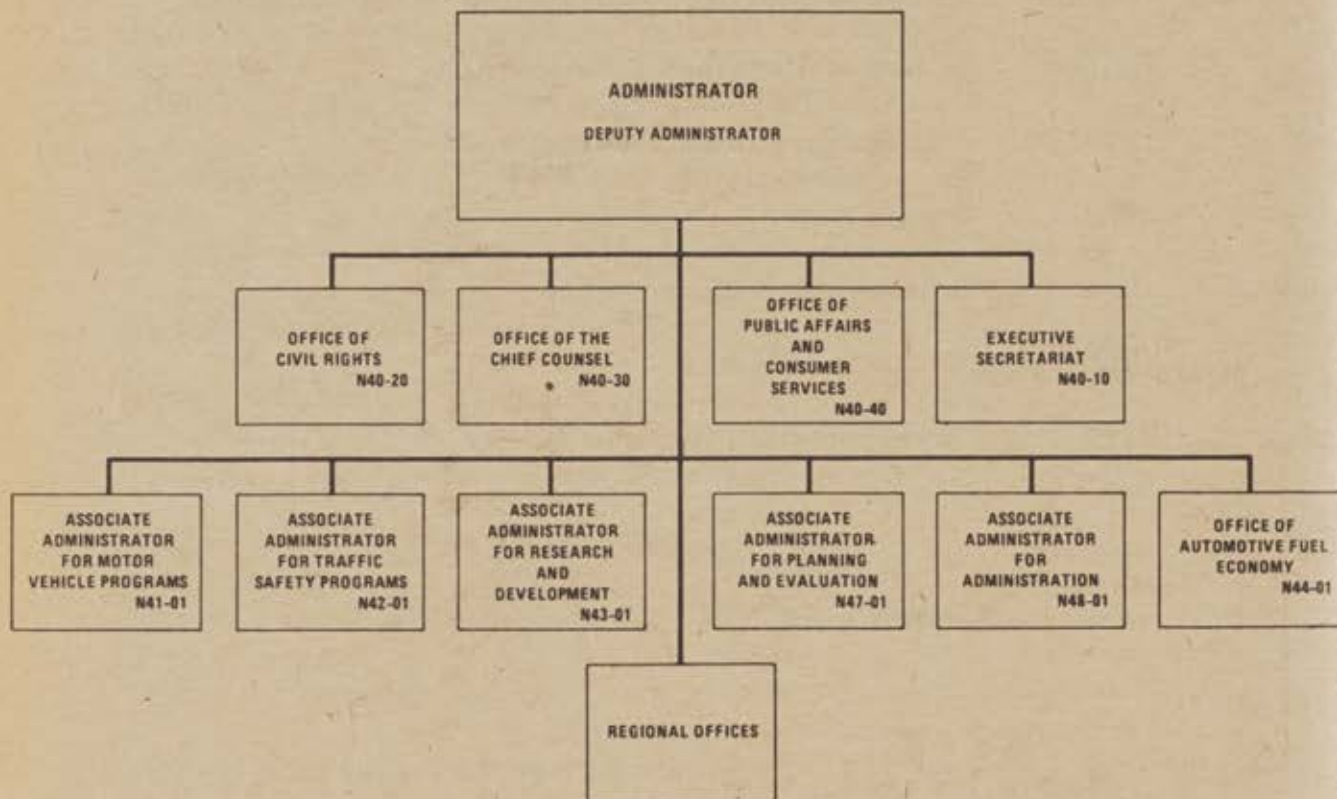
GLOSSARY

AFE	Automotive Fuel Economy
ANPRM	Advance Notice of Proposed Rulemaking
CEQ	Council on Environmental Quality
COWPS	Council on Wage and Price Stability
DEIS	Draft Environmental Impact Statement
DOT	Department of Transportation
EPA	Environmental Protection Agency
EPCA	Energy Policy and Conservation Act
ERC	Energy Resources Council
ERDA	Energy Research and Development Administration
FE	Fuel Economy
FEA	Federal Energy Administration
FHWA	Federal Highway Administration
FMVSS	Federal Motor Vehicle Safety Standard
FR	<u>Federal Register</u>
FTC	Federal Trade Commission
GSA	General Services Administration
GVWR	Gross Vehicle Weight Rating

MPG	Miles Per Gallon
MY	Model Year
NHTSA	National Highway Traffic Safety Administration
NPRM	Notice of Proposed Rulemaking
PIA	Preliminary Impact Assessment
PL	Public Law
RSP	Rulemaking Support Paper
TQ	Transition Quarter
TSC	Transportation Systems Center

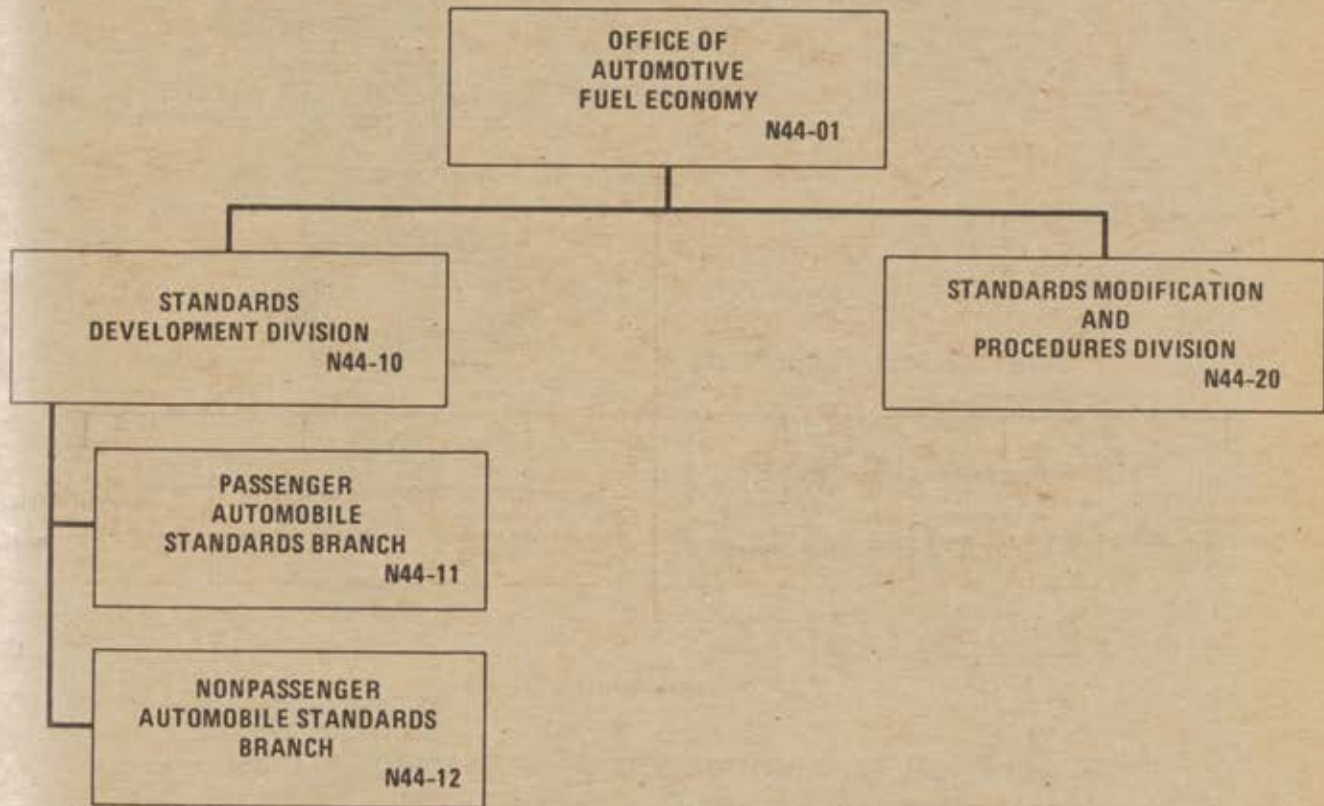
APPENDIX A

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION



APPENDIX B

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Office Of Automotive Fuel Economy



APPENDIX C

AUTOMOTIVE FUEL ECONOMY PROGRAM

(Dollar amounts in thousands)

	<u>FY 1976 TQ</u>	<u>FY 1977*</u>
Positions	-	40
Dollars:		
Salaries and supporting expenses	-	900
Contract program	<u> </u>	<u>\$2,100</u>
TOTAL	\$1,405	\$3,000

*An additional \$3.0 million will be requested in a supplemental appropriation request and \$2.0 million will be added through internal reprogramming.