Federal Communications Commission.

William F. Caton,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. NHTSA–98–3429]

[RIN 2127–AF37]

Minimum Driving Range for Dual Fueled Electric Passenger Automobiles

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

ACTION: Denial of petition for reconsideration.

SUMMARY: This notice announces the denial of a petition for reconsideration of the agency's decision to set the minimum driving range for dual fueled electric passenger vehicles at 7.5 miles when operating in the EPA urban cycle and 10.2 miles on the EPA highway cycle.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. P.L. Moore, Motor Vehicle Requirements Division, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–5222.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Establishment of a Minimum Driving Range for Dual Fueled Electric Passenger Vehicles

On December 1, 1998, NHTSA published a final rule in the **Federal Register** (63 FR 66064), which established a minimum driving range for dual fueled electric passenger vehicles.

The agency promulgated this rule in response to amendments in the Energy Policy Act of 1992 (EPACT) (Pub. L. 102–486) which expanded the scope of the alternative fuels promoted by section 513 of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), now codified as 49 U.S.C. 32905. Section 32901(c), the replacement section for section 513(h)(2), requires dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for special treatment in the calculation of their fuel economy for purposes of the corporate average fuel economy (CAFE) standards promulgated under Chapter 329 of Title 49 of the United States Code (49 U.S.C. 32901 *et seq*.).

The EPACT amendments, which expanded the scope of alternative fuel vehicles eligible for special CAFE treatment, established and modified minimum driving range requirements for these vehicles. These new or modified minimum driving range requirements necessitated amendments to the driving range requirements found in 49 CFR part 538, *Manufacturing Incentives for Alternative Fuel Vehicles.* NHTSA established a minimum driving range for all dual fueled vehicles except electric vehicles in a final rule issued on March 21, 1996 (61 FR 14507). As noted above, a final rule establishing a minimum driving range for dual fueled electric passenger vehicles was published on December 1, 1998. This final rule set the minimum driving range for dual fueled electric passenger vehicles at 7.5 miles on the EPA urban cycle and 10.2 miles on the EPA highway cycle when operating on electricity alone. The rule further specified that a dual fueled electric passenger vehicle must attain these minimum driving ranges while operating on its nominal electric storage capacity.

The final rule represents the agency's best effort to reconcile the characteristics of contemporary vehicles with Chapter 329's alternative fuel incentive program. The statutory framework of this incentive program, which was drafted well before the advent of the technologies now used in some Hybrid Electric Vehicles (HEVs), does not accommodate the most common HEV designs now in use or under development. Contemporary HEV's have both a conventional internal combustion petroleum fueled engine and an electric motor/generator in their drivetrain. The vehicle uses the petroleum fueled engine either to assist the electric motor or to recharge the batteries used to power the electric motor. Depending on the conditions encountered by the vehicle, it may be powered solely by the electric motor or may be propelled by both the petroleum fueled engine and the electric motor at the same time. In certain modes of operation, the vehicle may be propelled by the electric motor but the gasoline engine may be operating to recharge the batteries. In these HEV's, the modes of operation must switch rapidly and seamlessly—the vehicle may be powered exclusively by the electrical energy stored in the batteries at one moment and may be deriving a substantial amount of its propulsion from the internal combustion engine the next.

As the agency noted in both the Notice of Proposed Rulemaking (NPRM) (62 FR 375, January 3, 1997) and the preamble accompanying the final rule establishing the minimum driving range, Congress established specific definitions for what vehicles may be considered to be dual fueled vehicles for CAFE purposes. Section 32901(a)(2) defines an alternative fuel vehicle as either a dedicated vehicle or a dual fueled vehicle. Dedicated vehicles are defined in section 32901(a)(7) as automobiles that operate only on an alternative fuel. Dual fueled vehicles are defined in section 32901(a)(8) as follows:

> (8) ''dual fueled automobile'' means an automobile that—
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> (A) is capable of operating on alternative fuel and on gasoline or diesel fuel;
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> (B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;
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> (C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and
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> (D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

Examination of this section compels the conclusion that Congress intended that for the purposes of Chapter 329's incentive program that dual fueled vehicles are, with one limited exception, vehicles operating either on an alternative fuel or a petroleum fuel but not on a mixture of the two. Subsection (A) describes a vehicle that operates on a petroleum or alternative fuel but not a mixture of both. Subsection (B) limits dual fuel vehicles to those vehicles that offer equal or superior energy efficiency when operating on an alternative fuel, thereby indicating that the two modes of

operation are exclusive. Subsection (C) indicates that vehicles operating on a mixture of alternative fuel and gasoline or diesel fuel may only be considered as dual fueled automobiles for the 1993–1995 model years (unless extended by the Administrator of the Environmental Protection Agency to the 2004 model year) when such vehicles offer equal or superior energy efficiency when operating on a 50/50 mix of alternative fuel and diesel fuel or gasoline. Therefore, the statutory text of section 32901(a)(8) indicates that Congress did not intend to make incentives available for dual fueled vehicles operating on a mix of fuels except under the limited circumstances enunciated in 32901(a)(8)(C). As the period set by Congress in which such vehicles could be considered as dual fueled vehicles has expired and the EPA has not extended this period by regulation, a dual fueled vehicle is one that is capable of operating on either an alternative fuel or gasoline or diesel fuel but not a mixture of both simultaneously.

In order to qualify for the incentives offered for dual fueled alternative fuel vehicles, a vehicle must meet the criteria of section 32901(a)(8) and be capable of attaining a minimum driving range while operating on alternative fuel. In setting the minimum driving range for dual fueled vehicles, NHTSA considered several principal factors: (1) In requiring a minimum driving range when operating on alternative fuel, Congress did not intend that range to be so low so that vehicles would have little or no utility when operating on conventional fuel, (2) Alternative fuel vehicle technology, particularly in the case of dual fueled electric vehicles and hybrids, is far from mature and, (3) In order to evaluate the fuel efficiency of the vehicle when operating on an alternative fuel, the vehicle must have sufficient range while operating on that fuel to allow the fuel economy to be measured using existing or accepted test methods. Considering these factors, and others, NHTSA initially proposed to set the minimum driving range for dual fueled electric vehicles at 17.7 miles—the range required to complete one EPA urban/highway cycle under the current Federal Test Procedure (FTP)—while operating on electricity alone (62 FR 375, January 3, 1997). Following consideration of the comments submitted in response to that proposal, NHTSA modified the proposal to set the minimum driving range at the same level as the EPA urban/highway cycle when that cycle is split into two components—7.5 miles when operating on the urban cycle and 10.2 miles on the highway cycle. As the agency explained in the preamble to the final rule, this driving range was sufficient to establish that dual fueled vehicles had enough range to have some utility to consumers when operating on electricity, allowed the fuel economy of the vehicles to be measured when operating in this mode, and was not so high as to preclude further development of dual fueled electric vehicles.

As the agency recognized that most contemporary HEV designs derive all of their power, whether operating on electricity alone, gasoline alone, or both gasoline and electricity together, from the combustion of petroleum fuel by a conventional engine, care was taken to determine if these HEVs were, for the purposes of Chapter 329, dual fueled electric vehicles. As the agency explained when issuing the final rule, Chapter 329 indicates that a dual fueled alternative fuel vehicle is one that can operate on an alternative fuel and a conventional fuel but not both simultaneously. However, when the fuel economy of the vehicle is measured under section 32905(b) and when the vehicle attains the minimum driving range required under section 32901(c), it must be operated on the alternative fuel .[1] Therefore, the definition of an alternative fuel dual fueled vehicle, the command that there be some minimum driving range for that vehicle, the procedures specified for measuring its fuel economy, and the method calculating the incentive all indicate that the vehicle must be capable of operating some distance while powered only by the alternative fuel.

As outlined above, the definition of a dual fueled alternative vehicle contemplates that the vehicle will derive its motive power either from a petroleum based fuel or from an alternative fuel. In the case of dual fueled electric vehicles, the alternative fuel is electricity. This electricity can be derived from a number of sources—from batteries charged from an external source, from solar cells, or by using the vehicle's own petroleum fueled engine to produce electricity to be stored or used according to the demand. In the agency's view, electricity that is generated solely from burning petroleum in a vehicle's internal combustion engine is not an alternative fuel for the purposes of Chapter 329.

II. Petition for Reconsideration of the Minimum Driving Range

On January 13, 1999, the agency received a petition from Toyota Motor Corporation (Toyota) requesting reconsideration of NHTSA's decision to set a minimum driving range of 7.5 miles when operating in EPA urban cycle and 10.2 miles on the EPA highway cycle for all dual fueled electric passenger automobiles.

Toyota's petition argues that the requirement that dual fueled electric vehicles must meet the minimum driving range requirements while operating on electricity alone is inconsistent with the Alternative Motor Fuels Act of 1988 (AMFA) (Pub. L. 100–494). In the company's view, requiring HEV's to meet a minimum driving range while operating on electricity alone is contrary to the EPACT amendments goal of encouraging the development of new alternative fuel technologies. Toyota disagrees with the agency's view that vehicles that are not capable of operating on electricity alone are not dual fuel vehicles and its view that HEVs that charge their batteries using only energy derived from the combustion of petroleum fuel in a conventional engine are not, for CAFE purposes, dual fueled vehicles. The company contends that the agency's conclusion that qualifying dual fuel vehicles must be capable of operating alternately on an alternative fuel and a conventional petroleum fuel is contrary to the express language and the legislative history of AMFA.[2]

Toyota first relies on the definition of dual fueled vehicle found in section 32901(a)(8)(A). The company emphasizes that the section states that a dual fueled automobile is on that ''is capable of operating on alternative fuel *and* on gasoline or diesel fuel.'' (emphasis added). Toyota contends that Congress could have drafted the section to indicate that a dual fueled vehicle is one that is capable of operating on alternative fuel *or* on gasoline and diesel fuel and chose not to. The company submits that the agency's interpretation, which requires a vehicle to operate solely on an alternative fuel, is more consistent with the latter definition

[1] Section 32905(b) sets forth the method for calculating the fuel economy of qualified dual fuel vehicles. The section provides, in pertinent part, that:

The Administrator of the Environmental Protection Agency shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy measured under subsection (a) of this section when operating the model on alternative fuel.

[2] The Alternative Motor Fuels Act of 1988 created the incentive system for alternative fueled vehicles now found in Chapter 329. The EPACT amendments leading to the establishment of the final rule at issue here, modified the provisions created by AMFA.

rather than the one actually adopted by Congress. The petitioner also argued that the legislative history of the EPACT amendments was consistent with its view. This legislative history indicated that EPACT would provide an incentive for dual fueled vehicles even though the vehicles might not be operated on an alternative fuel. Due to concerns that manufacturers might take advantage of the special calculations for dual fueled vehicles even though the vehicles might actually operate on petroleum fuels regardless of their capability to do otherwise, the compromise version of the amendments contained a cap, or limit, on the benefits that manufacturers could gain by producing dual fuel vehicles. The existence of this cap, according to Toyota, indicates that Congress did not intend to exclude manufacturers of vehicles operating on a combination of fuels from qualifying for an incentive—it simply sought to limit the amount of that incentive. Toyota contended that the agency's interpretation, which it construed as a ''flat exclusion'' of an entire class of HEV technology, is contrary to overall intent of the EPACT amendments, the definition of dual fueled vehicles as set forth in section 32901(a)(8)(A), and the choice to limit the extent of the incentive available rather than exclude a promising technology.

Toyota also contends that in setting the minimum driving range at the level selected and requiring that vehicles attain this range while operating on electricity alone, NHTSA has interfered with the HEV market and provided a disincentive to the development of HEV's. The company urges the agency to reconsider its decision to set the minimum driving range for electric vehicles at 7.5 miles when operating in the EPA urban cycle and 10.2 miles on the EPA highway cycle and suggested that this range be set at zero. Finally, Toyota requests that in the event the agency does not reconsider its position that mixed fuel vehicles are not, for CAFE purposes, dual fueled vehicles, that NHTSA should consider a vehicle that operates on electricity and gasoline simultaneously as a dual fueled vehicle under section 32901(a)(8)(c)—which allows, under certain circumstances, qualifying dual fueled vehicles to operate on an alternative fuel and petroleum fuel simultaneously.

III. Response To Petition for Reconsideration

In response to the petition, the agency has reviewed its decision to set the minimum driving range for dual fueled electric vehicles at 7.5 miles when operating in the EPA urban cycle and 10.2 miles on the EPA highway cycle. As explained below, the agency is reaffirming that decision.

A. Statutory Interpretation

In regard to the meaning and intent of Chapter 329's treatment of dual fueled vehicles, Toyota argues, first, that NHTSA erred in adopting the position that Congress did not intend to make alternative fuel incentives available to vehicles capable of operating on gasoline alone. Second, Toyota argues that by denying CAFE incentives for technologies that use a combination of alternative and conventional fuels, NHTSA ''disincentivizes'' the development of an entire class of potential HEV designs. Toyota contends that the agency's interpretation of AMFA places a regulatory limitation on the future development of HEV's. The company stresses that Congress expressly rejected such an approach and strongly favored letting the marketplace, rather than the government, determine the future course of alternative fuel vehicle development.

Despite Toyota's characterization of NHTSA's views, the agency agrees with Toyota that the alternative fuel incentives contained in Chapter 329 are available for vehicles that operate on gasoline alone—provided they can also operate on an alternative fuel alone. The agency also agrees that Congress did not intend to strictly direct and control the development of alternative fuel vehicles. We disagree, however, with the notion, implicit in the petitioner's argument that these principles lead to the conclusion that vehicles that are incapable of operation unless they burn petroleum fuel, and only petroleum fuel, are alternative fueled vehicles eligible for special treatment under CAFE.

Chapter 329 allows vehicles that operate on gasoline alone to qualify as alternative fuel vehicles. As Toyota asserts, section 32901(a)(8)(A) defines ''dual fueled automobile'' as an automobile that ''is capable of operating on alternative fuel and on gasoline or diesel fuel * * *'' In Toyota's view, NHTSA's position that a qualifying dual fueled vehicle must be capable of operating while powered solely by an alternative fuel and not just by a conventional fuel alone, would require that section 32901(a)(8)(A) be read as requiring a dual fueled vehicle to be ''capable of operating on alternative fuel *or* on gasoline or diesel fuel * * *''.

Examination of the remainder of Section 32901(a)(8) as a whole leads us to conclude that for a dual fueled vehicle to be accorded special CAFE treatment, it must have the capability to be propelled solely by an alternative fuel. Section 32901(8) defines a ''dual fueled automobile'' as follows:

> (8) ''dual fueled automobile'' means an automobile that—
>
> (A) is capable of operating on alternative fuel and on gasoline or diesel fuel;
>
> (B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;
>
> (C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and
>
> (D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

To qualify as a dual fueled automobile, a vehicle must meet each criteria of the definition—it must operate on an alternative fuel and gasoline or diesel fuel, provide equal or superior energy efficiency when using the alternative fuel, meet a minimum driving range while using the alternative fuel, and, if the vehicle operates on a mixture of alternative fuel and gasoline or diesel fuel, be a 1993 through 1995 model year vehicle.[3] In addition, section 32905(b), which sets forth the method for calculating the fuel economy of qualified dual fuel vehicles, explicitly requires that the fuel economy of a dual fueled vehicle be measured while it is operating only on an alternative fuel. These provisions indicate that qualifying dual fueled passenger automobiles must, with the exception of model year 1993–1995 vehicles using a mixture of alternative fuel and conventional fuel, be able to operate for some minimum distance while being powered by an alternative fuel providing equal or superior energy efficiency to gasoline or diesel fuel. It is also evident that, but for the provision in section 32901(a)(8)(C) allowing certain dual fueled automobiles to operate on a mixture of alternative fuel

[3] Section 32901(a)(8)(C) provides that after the 1995 model year, vehicles using a mix of alternative fuel and petroleum fuel may be qualified dual fuel vehicles if the EPA issues a regulation extending their eligibility. EPA has not done so.

and gasoline or diesel fuel, Congress may very well have chosen to define a dual fueled automobile as one that operates on alternative fuel *or* gasoline and diesel fuel rather than one that operates on alternative fuel *and* gasoline or diesel fuel.

The petitioner stresses that the legislative history and references within that history to sections 32905 and 32906 indicate that Congress was aware that dual fueled vehicles might operate on gasoline alone and intended that such operation be permitted. While examination of the legislative history is not warranted here due to the clarity of the statute itself, we recognize that Chapter 329 envisions that dual fueled vehicles would and could operate on gasoline or diesel fuel alone. Sections 32905(b) and (d) set forth fuel economy measurement procedures for dual fueled vehicles when operating on gasoline or diesel fuel and when operating on alternative fuel. Sections 32906(a)(1)(A) and (a)(1)(B) place restrictions on the maximum fuel economy increases available to manufacturers producing dual fueled automobiles to prevent those manufacturers from obtaining a large fuel economy gain from the production of vehicles that may very well be operated on gasoline alone.

The fact remains, however, that the recognition that dual fueled vehicles would be capable of operating on gasoline alone, or might well be operated on gasoline alone, does not in any way conflict with the requirement that a dual fueled vehicle also be capable of operation while being powered by an alternative fuel alone.

Toyota's second argument is that in indicating that dual fueled electric vehicles must be capable of operating on electricity alone and that this electricity may not be generated by the vehicle's own gasoline or diesel powered motor, NHTSA has, in defiance of Congress, erected an unreasonable bar to marketplace-driven development of alternative fuel technologies. The petitioner contends that this requirement interferes with the free development of alternative fuel technologies by forcing dual fueled electric vehicles to have large storage batteries and high-powered electric motors. In support of its position, Toyota has submitted segments of the legislative history of AMFA indicating that Congress did not intend to favor one technology over another and the market should determine which technologies will prevail.

The agency does not take issue with the petitioner's claim that AMFA's legislative history demonstrates an intent to treat all qualifying technologies equally. However, the matter at issue is not, as Toyota argues, favoring one technology over another. Instead the question is whether a technology that depends entirely on the consumption of petroleum is eligible for treatment as an alternative fuel technology. Section 3 of the EPACT amendments to AMFA contained this declaration of purpose:

> (1) To encourage the development and widespread use of methanol, ethanol, natural gas, other gaseous fuels, and electricity as transportation fuels by consumers; and
>
> (2) To promote the production of alternatively fueled motor vehicles.

While Congress certainly intended to encourage innovation, increased efficiency, and the use of new technologies for all vehicles, the AMFA and EPACT amendments were specifically dedicated to encourage the production of vehicles that did not use gasoline and the development of technologies and infrastructure supporting the increased use of alternative fuels. As we observed when establishing the minimum driving range for dual fueled electric vehicles, a dual fueled electric passenger automobile that is incapable of obtaining electrical energy from any source other than the onboard combustion of gasoline or diesel fuel, is not a dual fueled or an alternative fueled vehicle. Such a vehicle, regardless of the technology employed or the form of energy used in converting fuel to work, is powered only by the fuel it consumes. It is our position that this interpretation is consistent with the Chapter 329 and the alternative fuel incentive program.

B. Minimum Driving Range

The petitioner also urges NHTSA to reconsider its decision to set the minimum driving ranges for dual fueled electric vehicles at 7.5 miles when operating on the EPA urban cycle and at 10.2 miles on the EPA highway cycle. In the petitioner's view, these minimum driving ranges are so high that they eliminate CAFE incentives for certain promising hybrid electric vehicle technologies and interfere with the natural market forces that Congress intended should shape the development of dual fueled vehicles. Instead of the ranges selected by the agency, Toyota argues that NHTSA should set the minimum driving range for dual fueled electric vehicles at zero miles. Doing so, in Toyota's view, would encourage the development of vehicles that run on a combination of fuels.

The petitioner's arguments are similar to those in comments to the agency's original minimum driving range proposal. One commenter in particular, Mercedes Benz of North America, contended that the minimum driving range for dual fueled electric vehicles should be set at zero. As we explained in the notice issuing the final rule, the agency gave extensive consideration to this matter. It was, and is, the agency's view that a minimum driving range of zero miles would be inconsistent with the Congressional command that a minimum driving range be established. Setting a minimum driving range of zero miles would result in a range requirement of no range at all. Furthermore, section 32901(c)(3) directs that in setting a minimum driving range the agency must specifically consider consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other factors the Secretary considers relevant. An alternative fuel vehicle that has no range while operating on that alternative fuel would not appear to be acceptable to consumers or particularly practicable. Most significantly, a dual fueled electric vehicle must be capable of some meaningful operation in the electric-only mode to allow measurement of its fuel economy when operating on that alternative fuel. In setting the minimum driving range as it did, NHTSA established minimum ranges that were the shortest ranges that could be used to measure the fuel economy of dual fueled electric vehicles under the EPA test procedure. While a test procedure comparable to the existing EPA urban/highway test might be used, the lack of an alternative test procedure mandated the use of the existing EPA test.

Other than urging the agency to adopt a zero mile driving range, the petitioner did not submit a suggested test procedure or offer any other information indicating that a zero mile driving range would be useful either to consumers or that it would facilitate testing of vehicles in the electric only mode. NHTSA does not believe that Congress, in specifying a minimum driving range, intended that this range be set at zero. Furthermore, in order to actually test the fuel efficiency of a dual fuel electric vehicle when operating on an alternative fuel, the vehicle must be capable of some operation in that mode. A minimum driving range of zero miles would not serve either the intent of Congress or the need to actually measure energy efficiency.

C. Mixed Fuel Vehicles

The petitioner's alternative request is that NHTSA clarify that vehicles using a combination of electricity and conventional fuels are dual fueled vehicles under the conditions set forth in section 32901(a)(8)(C). Section

32901(a)(8)(C) provides that for the 1993–1995 model years (and subsequent model years if extended by the Administrator of the Environmental Protection Agency), vehicles operating on a 50/50 mixture of alternative fuel and gasoline or diesel fuel may be considered to be dual fueled vehicles if they provide superior energy efficiency in comparison to operating on pure gasoline or diesel and meet the remaining conditions of the section. Therefore, for the 1993, 1994, and 1995 model years, vehicles operating on such a mix of alternative fuel and conventional fuel could be considered dual fuel alternative fuel vehicles. For model years after 1995, vehicles operating on a 50/50 mixture of alternative and conventional fuel vehicles may not be dual fueled alternative fuel vehicles, as the Administrator of the EPA has declined to extend that provision of section 32901(a)(8)(c).

Toyota observes that when issuing the final rule, NHTSA cited section 32901(a)(8)(c) as the one instance where a vehicle operating on a mixture of an alternative fuel and gasoline or diesel fuel might have been considered to be a dual fueled vehicle. The petitioner submits that it is not clear from the final rule whether the agency would consider vehicles operating on electricity and gasoline to fall within section 32901(a)(8)(c) and further argues that it would be contrary to the meaning and intent of Chapter 329 if NHTSA were to determine that such vehicles did not.

In support of the latter contention, Toyota contends that as Section 32901(a)(1)(J) includes electricity as an alternative fuel and Section 32901(a)(8)(C) expressly states that if certain other conditions are met, a vehicle operating on a mixture of electricity and gasoline or diesel fuel is a dual fueled vehicle, a vehicle operating on a mixture of electricity and petroleum fuel must be a dual fueled vehicle.

NHTSA agrees that a vehicle operating on a mixture of electricity and gasoline or diesel fuel would meet the definition of a dual fueled vehicle provided that all the conditions of Sections 32901(a)(8) and (a)(8)(C) are met, including the minimum driving range requirement. The agency notes, however, that as the EPA has declined to extend the availability of dual fuel status to vehicles operating on a 50/50 mix of petroleum and alternative fuel, this classification is no longer available. Accordingly, NHTSA is not in a position to grant the relief Toyota seeks even if it were inclined to do so.

Toyota's request also implies that a vehicle that derives all of its energy from the combustion of petroleum fuel, would qualify as such an alternative fuel vehicle. We note that under Section 32901(a)(8)(C), a qualifying vehicle must operate on a mixture of alternative and conventional fuel. We decline, however, to embrace the notion that a mixture of conventional and alternative fuel is created when a petroleum fuel is burned by the vehicle to produce both kinetic and electrical energy that may be used or stored depending on the work to be done. NHTSA believes that any interpretation under which electricity that is generated due to the operation of a vehicle on conventional fuel, could be classified as an alternative fuel would be overly broad and inconsistent with the meaning and intent of Chapter 329.

IV. Conclusion

For the reasons stated above, the agency is denying the petition.

Issued on: April 18, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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