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April 15, 2009

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Transportation, National Highway Traffic Safety Administration: Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Transportation (DOT), National Highway Traffic Safety Administration, entitled “Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011” (RIN: 2127-AK29). We received the rule on April 3, 2009. It was published in the *Federal Register* as a final rule on March 30, 2009. 74 Fed. Reg. 14,196.

The final rule sets the final fuel economy standards for Model Year 2011 passenger cars and light trucks. Under the final rule, if each manufacturer produced its expected mix of automobiles and just met its obligations under the “optimized” standards, the combined industry-wide average fuel economy for MY 2011 passenger cars would be 30.2 mpg and for MY 2011 light trucks it would be 24.1 mpg. The final rule creates an alternative minimum standard for domestic passenger cars of 27.8 mpg. The final rule also adopts a new regulation on credits earned for exceeding applicable CAFE standards. Credit holders will have accounts with NHTSA, and will be able to hold credits, apply them to compliance with CAFE standards, transfer them to another compliance category for application to compliance there, or trade them.

Enclosed is our assessment of the DOT's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the DOT complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

Sincerely yours,

Signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ronald L. Medford
Acting Deputy Administrator
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION
ENTITLED
"AVERAGE FUEL ECONOMY STANDARDS PASSENGER CARS AND LIGHT
TRUCKS MODEL YEAR 2011"
(RIN: 2127-AK29)

(i) Cost-benefit analysis

NHTSA performed a cost-benefit analysis in conjunction with the final rule. Overall, NHTSA estimates that the model year (MY) 2011 standards will save approximately 887 million gallons of fuel and reduce tailpipe emissions of CO₂ by 8.3 metric tons.

The value of the total benefits are estimated to be slightly over \$1 billion over the lifetime of the MY 2011 passenger cars and approximately \$921 million over the lifetime of the MY 2011 light trucks. The estimate of societal benefits includes direct impacts from lower fuel consumption as well as externalities which impact the petroleum markets and the environmental benefits. In addition, the benefits determination includes an offset to account for the “rebound effect”, which accounts for an increase in miles driven as a reaction to decreased fuel costs per gallon.

NHTSA estimates that the total costs for manufacturers just complying with the standard would be approximately \$1.460 billion for additional fuel saving technologies, \$595 million for MY 2011 passenger cars and approximately \$865 million for MY 2011 light trucks, compared to the costs they would incur if the standard remained at the adjusted baseline. The resulting vehicle price increases would be recovered or paid back in additional fuel savings in an average of 4.4 years for buyers of MY 2011 passenger cars and in an average of 7.7 years for buyers of MY 2011 light trucks.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

NHTSA certified that this final rule will not have a significant economic impact on a substantial number of small entities, and therefore did not prepare a regulatory flexibility analysis.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

NHTSA certified that the final rule will not result in the expenditure by state, local or tribal governments, in the aggregate, of more than \$126 million annually.

NHTSA determined that the final rule will result in expenditure of more than \$126 million annually by vehicle manufacturers and/or their suppliers. NHTSA is statutorily required to set standards at the maximum feasible level achievable by manufacturers, and has concluded that the final fuel economy standards for the MY 2011 passenger car and light truck fleets in light of the statutory standard.

(iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On May 2, 2008, NHTSA published a Notice of Proposed Rulemaking entitled Average Fuel Economy Standards, Passenger Cars and Light Trucks; Model Years 2011–2015, 73 Fed. Reg. 24352. Based on consideration of the public comments and other available information, including information on the financial condition of the automotive industry, NHTSA adjusted its analysis and the standards and prepared a final rule for MYs 2011–2015. On November 14, the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget cleared the rule as consistent with the Order. On January 7, 2009, the Department of Transportation announced that the final rule would not be issued by the Bush Administration due to the recent financial difficulties of the automobile industry that would require a thorough review by the next administration. On January 26, 2009, the Obama Administration issued a memorandum requesting that NHTSA divide the rulemaking into two parts, the MY 2011 standards and the standards for MY 2012 and beyond. This final rule is based on the criteria and standards developed in the proposed rule of May 2008 and the comments received on that proposed rulemaking.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule makes changes to existing information collection requirements, and as such NHTSA has submitted a request for an amendment of an existing collection to OMB for review and comment. The final rule would require manufacturers to provide data on vehicle (including passenger car and light truck) footprint and manufacturers and other persons wishing to trade fuel economy credits to provide an instruction to NHTSA on the credits to be traded.

For footprint, NHTSA estimates that each passenger car manufacturer would incur an additional 10 burden hours per year, which would result in a total industry additional burden of 200 hours a year, with an associated cost of collecting and preparing the information of \$4,246 a year for the industry. For credit trading, NHTSA estimates that each instruction would incur an additional burden hour per year. NHTSA estimates that the maximum instructions it would receive each year is 20, and therefore estimates a total annual burden of 20 hours a year with an associated cost of \$425 per year.

Statutory authorization for the rule

This final rule is enacted under the authority of the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act of 2007, Public Law 110-140, 121 Stat. 1492 (Dec. 18, 2007). 49 U.S.C. § 32902.

Executive Order No. 12,866, Regulatory Planning and Review

NHTSA determined that the final rule is economically significant under the Order, and NHTSA prepared a Final Regulatory Flexibility Analysis in conjunction with the final rule. The rule has been reviewed by OMB under the Order. Additionally, NHTSA prepared a formal probabilistic uncertainty analysis pursuant to OMB Circular A-4, which requires such an analysis for complex rules where there are large, multiple uncertainties whose analysis raises technical challenges or where effects cascade and where the impacts of the rule exceed \$1 billion. According to NHTSA, this rule meets these criteria on all counts.

Executive Order No. 13,132 (Federalism)

To provide time for further careful consideration of the issues related to federalism in this context, NHTSA decided not to include any preemption provisions in the regulatory text at this time and will examine those issues in the context of the rulemaking for MY 2012 and later years.