



United States General Accounting Office
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Office of the General Counsel

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April 7, 2000

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Department of Transportation, National Highway Traffic Safety
Administration: Light Truck Average Fuel Economy Standard, Model Year
2002

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), entitled "Light Truck Average Fuel Economy Standard, Model Year 2002" (RIN: 2127-AH95). We received the rule on March 30, 2000. It was published in the Federal Register as a final rule on April 5, 2000. 65 Fed. Reg. 17776.

Section 32902(a) of title 49, United States Code, requires the Secretary of Transportation to prescribe by regulation, at least 18 months in advance of each model year, average fuel economy standards (known as "Corporation Average Fuel Economy" or "CAFE" standards) for non-passenger automobiles manufactured in that model year. Under subsections 32902(a) and (f), the standard is to be the maximum feasible average fuel economy level that the Secretary decides manufacturers can achieve in that model year taking into consideration technological feasibility, economic practicability, the effect of other government motor vehicle standards on fuel economy, and the need of the United States to conserve energy.

The light truck CAFE standard for model year 2001 was established at 20.7 miles per gallon (mpg). During the development of the CAFE standard for model year 2002, the Department of Transportation and Related Agencies Appropriations Act for

Fiscal Year 2000, Pub. L. 106-69 (Oct. 9, 1999) was enacted. Section 321 of that Act provides:

"None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act prescribing corporate average fuel economy standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to enactment of this section."

NHTSA interprets section 321 of the Appropriations Act as requiring it to prescribe the same light truck CAFE standard for model year 2002 that applies to model year 2001. Accordingly, the rule continues the 20.7 mpg standard for 2002. This is the same interpretation NHTSA has applied for the four preceding model years and Congress has continued to insert the same language in the yearly appropriations acts and has not objected to NHTSA's interpretation. Our prior major rule reports on the CAFE standards (GAO/OGC-96-11, May 7, 1996; GAO/OGC-97-36, April 18, 1997; GAO/OGC-98-42, April 17, 1998; and GAO/OGC-99-41, April 22, 1999) have pointed out this interpretation and the fact that based on it, NHTSA has not considered it necessary to comply with many of the procedural rulemaking requirements of various statutes we normally report on to Congress.

Enclosed is our assessment of the NHTSA'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 NHTSA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is John Anderson, Director, Transportation Issues. Mr. Anderson can be reached at (202) 512-2834.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. John Womack
Deputy Chief Counsel
National Highway Traffic Safety
Administration
Department of Transportation

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
ENTITLED
"LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARD,
MODEL YEAR 2002"
(RIN: 2127-AH95)

(i) Cost-benefit analysis

NHTSA did not conduct a cost-benefit analysis of the final rule because it contends it has no discretion regarding the issuance of the standards. NHTSA notes that all past fuel economy rules have had economic impacts in excess of \$100 million per year.

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

NHTSA did not perform an Initial or Final Regulatory Impact Analysis because the lack of discretion precludes any action other than the one taken in the final rule. NHTSA points out that based on past analysis, few, if any, light truck manufacturers would be classified as a "small entity" under the Regulatory Flexibility Act.

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

While the final rule appears to constitute a federal mandate resulting in aggregate annual private sector expenditures of \$100 million or more and therefore be subject to sections 202 and 205 of the Act, NHTSA took no action under the Unfunded Mandates Reform Act of 1995 based on its lack of discretion in the issuance of the standard.

(iv) Other relevant information or requirements under acts and executive orders

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

NHTSA did not issue a Notice of Proposed Rulemaking or solicit comments on the final rule since it contends it cannot expend any funds to set the 2002 standard at any level other than the 2001 standard.

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

The final rule does not contain any new information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

Section 32902(a) of title 49, United States Code, states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy standards for light trucks for each model year.

Executive Order No. 12866

The final rule was determined to be "economically significant" within the meaning of Executive Order No. 12866. It was reviewed by the Office of Information and Regulatory Affairs, OMB, and approved as complying with the requirements of the Order.

Other statutes and executive orders

NHTSA did not conduct an evaluation of the environmental impact of the final rule under the National Environmental Policy Act or an analysis of the federalism implications under Executive Order No. 12612. NHTSA determined these were not required since Congress has precluded any action other than the one contained in the final rule.