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Washington, DC 20548

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B-318552

August 24, 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 L. Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Department of Transportation, National Highway Traffic Safety  
Administration: Requirements and Procedures for Consumer Assistance To  
Recycle and Save Program*

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 “Requirements and Procedures for Consumer Assistance To Recycle and Save Program” (RIN: 2127-AK53). We received the rule on August 7, 2009. It was published in the *Federal Register* as a final rule on July 29, 2009, with a stated effective date of July 29, 2009. 74 Fed. Reg. 37,878.

The final rule sets forth the requirements and procedures for the voluntary vehicle trade-in and purchase/lease program under the Consumer Assistance to Recycle and Save Act of 2009 (commonly known as the Cash-for-Clunkers program). Pub. L. No. 111-32, title XIII, 123 Stat, 1859, 1909–1916 (June 24, 2009). This program helps consumers pay for new, more fuel efficient cars and trucks from a participating dealer when they trade in a less fuel efficient car or truck. The rule establishes a process by which dealers can register in order to participate in the program and establishes the criteria this agency will use to determine which disposal facilities are eligible to receive and either crush or shred the trade-in vehicles. It also sets forth the criteria that trade-in vehicles and new vehicles must meet in order for purchases and leases to qualify for assistance under this program and establishes the requirements that must be met by consumers, dealers, disposal facilities, and others.

Finally, the rule sets forth enforcement procedures and provisions for punishing fraud and other violations of the program requirements.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The Consumer Assistance to Recycle and Save Act of 2009 requires that final regulations governing this program be promulgated no later than 30 days of enactment. Pub. L. No. 111-32, § 1302(d). NHTSA determined that it has good cause to make this rule effective upon publication because delay would be inconsistent with congressional intent, impractical, and contrary to the public interest. Therefore, the requirement to have a 60-day delay does not apply to this rule.

Enclosed is our assessment of 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 of the procedural steps taken indicates that NHTSA 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.

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Milton E. Cooper  
Program Analyst, National Highway  
Traffic Safety Administration  
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  
"REQUIREMENTS AND PROCEDURES FOR  
CONSUMER ASSISTANCE TO RECYCLE AND SAVE PROGRAM"  
(RIN: 2127-AK53)

(i) Cost-benefit analysis

National Highway Traffic Safety Administration (NHTSA) analyzed the costs and benefits of this final rule. NHTSA stated that it plans to hire 30 employees and over 200 contractor employees to administer the program over 6 months. NHTSA determined that the impact of the program governed by this rule will most likely not be large enough to increase production by manufacturers and that dealers will only be selling on average 12 additional vehicles. NHTSA identified the improved fuel efficiency of the on-road vehicle fleet as another benefit. NHTSA noted that this will decrease greenhouse gases and certain pollutants by decreasing fuel consumption, resulting in air pollution benefits. However, these benefits will be dependent upon which types of vehicles consumers purchase. According to NHTSA, dealers may incur certain costs, but that they may retain up to \$50 from the scrap value of trade-in vehicles to offset administrative costs. Also, some related industries, such as automotive repair shops, may lose some profit due to foregone repairs.

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

NHTSA determined that an analysis under the Act is not required because, as explained below, no notice of proposed rulemaking was required. However, NHTSA did state that it examined the impacts on small entities, including on small businesses, in its regulatory analysis of this final rule.

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

NHTSA determined that an analysis under the Act is not required because no notice of proposed rulemaking was required.

(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 prior to this final rule. The Consumer Assistance to Recycle and Save Act of 2009 requires that, notwithstanding

section 553, title 5, of the United States Code, final regulations governing this program be promulgated no later than 30 days of enactment. Pub. L. No. 111-32, § 1302(d).

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

NHTSA determined that this final rule contains information collection requirements under the Act. NHTSA stated that it has obtained approval from the Office of Management and Budget (OMB) for NHTSA Form 1070 (OMB Control Number 2127-0657); Form 1073, "Disposal Facility Certification Form," and Form 1074, "Salvage Auction Certification Form" (OMB Control Number 2127-0658); Form 1075, "Survey of Consumer Response to CARS Initiative" (OMB Control Number 2127-0659); and Form 1071, "Transaction Form," and Form 1072, "Certifications and Summary of Sale Language" (OMB Control Number 2127-0660). Respectively, OMB has given NHTSA approval to collect 57,000 responses, 3,750,000 responses, 168,750 responses, and 500,000 responses for each of these control numbers for a total of 11,395 burden hours, 31,248 burden hours, 9,375 burden hours, and 108,334 burden hours.

Statutory authorization for the rule

NHTSA stated that it promulgated this rule under the authority of section 552 of title 5; sections 322, 30166, 30167, 32307, 32505, 32708, 32901, 32910, and 33116 of title 49, United States Code.

National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321-4370f

NHTSA determined that a NEPA analysis is not required for this final rule because there is a statutorily mandated time frame for the promulgation of the rule. The Consumer Assistance to Recycle and Save Act of 2009 requires that final regulations governing this program be promulgated no later than 30 days of enactment. Pub. L. No. 111-32, § 1302(d).

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

NHTSA determined that this final rule is economically significant under the Order. This rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

NHTSA determined that this final rule does not have federalism implications because the rule does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and the responsibilities among the various levels of government.