



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-331267

August 7, 2019

The Honorable Roger F. Wicker
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Transportation, National Highway Traffic Safety Administration: Civil Penalties*

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 "Civil Penalties" (RIN: 2127-AL94). We received the rule on July 26, 2019. It was published in the *Federal Register* as a final rule on July 26, 2019. 84 Fed. Reg. 36007. The effective date of the rule is September 24, 2019.

The final rule, according to NHTSA, confirms the determination NHTSA announced in the notice of proposed rulemaking that the Federal Civil Penalties Inflation Adjustment Act of 2015 (Inflation Adjustment Act) does not apply to the civil penalty rate applicable to automobile manufacturers that fail to meet applicable corporate average fuel economy (CAFE) standards and are unable to offset such a deficit with compliance credits. In addition, according to NHTSA, this final rule is finalizing NHTSA's determination that even if the Inflation Adjustment Act applies, increasing the CAFE civil penalty rate would have a negative economic impact, and therefore, in accordance with the Energy Policy and Conservation Act of 1965 and the Energy Independence and Security Act of 2007, the current CAFE civil penalty rate of \$5.50 should be retained, instead of an increase to \$14 in model year 2019.

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. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Michael Kuppersmith
Trial Attorney, Litigation and Enforcement
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
“CIVIL PENALTIES”
(RIN: 2127-AL94)

(i) Cost-benefit analysis

The Department of Transportation, National Highway Traffic Safety Administration (NHTSA), stated that this final rule is a deregulatory action and reported the potential economic impacts in the final rule. According to NHTSA, if the corporate average fuel economy (CAFE) civil penalty rate is increased from \$5.50 to \$14, the projected additional penalties through 2026 is \$7,171,193,263.09 under augural standards and \$2,759,359,238.58 under proposed standards.

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

NHTSA certified that this final rule would not have a significant economic impact on a substantial number of small entities.

(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 this final rule does not include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

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

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

On April 2, 2018, NHTSA published a proposed rule. 83 Fed. Reg. 13904. NHSTA stated that it received 16 comments. NHSTA responded to comments in the final rule.

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

NHTSA found that there are no requirements for information collection associated with this final rule.

Statutory authorization for the rule

NHTSA determined this final rule was promulgated pursuant to Pub. L. No. 101-410, 104 Stat. 890; Pub. L. No. 104-134, 110 Stat. 1321; Pub L. No. 109-59, 119 Stat. 1144; Pub. L. No. 114-74, 129 Stat. 584; Pub L. No. 114-94, 129 Stat. 1312; 49 U.S.C. §§ 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, and 33115; and delegation of authority at 49 C.F.R. 1.81 and 1.95.

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

NHTSA stated that this final rule is economically significant under the Order and that this final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

NHTSA determined that this final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.