

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

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February 12, 2021

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

The Honorable Peter A. DeFazio  
Chairman  
The Honorable Sam Graves  
Ranking Member  
Committee on Transportation and Infrastructure  
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-AM32). We received the rule on January 28, 2021. It was published in the *Federal Register* as an interim final rule; request for comments; and response to petition for rulemaking on January 14, 2021. 86 Fed. Reg. 3016. The stated effective date of the rule is January 14, 2021.

According to NHTSA, this interim final rule responds to a petition for rulemaking regarding when to apply an increase to the civil penalty rate applicable to automobile manufacturers that fail to meet applicable corporate average fuel economy standards and are unable to offset such a deficit with compliance credits. NHTSA states this rule provides that the increase will go into effect beginning in model year 2022 in accordance with NHTSA’s December 2016 rule on the same issue, except if the August 31, 2020, decision of the United States Court of Appeals for the Second Circuit in Case Number 19-2395 is vacated. *New York v. Nat’l Highway Traffic Safety Admin.*, 974 F.3d 87 (2d Cir. 2020). According to NHTSA, this interim final rule amends the relevant regulatory text accordingly and requests comment. NHTSA states that this rule also responds to a petition for reconsideration of NHTSA’s July 2019 rule from the Institute for Policy Integrity at New York University School of Law.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). NHTSA found that good cause

exists for issuing this interim final rule with an immediate effective date because a delay in effective date would be impracticable, unnecessary, and against the public interest. NHTSA also stated that a delayed effective date is not required because the rule "relieves a restriction" by allowing additional time before the higher penalty rate begins to apply. 5 U.S.C. § 553(d)(2).

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Michael Kuppersmith  
Trial Attorney, Litigation and Enforcement  
Office of Chief Counsel  
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-AM32)

(i) Cost-benefit analysis

In its submission to us, the Department of Transportation, National Highway Traffic Safety Administration (NHTSA) indicated that it considers preparation of an analysis of the costs and benefits of this interim final rule to be not applicable.

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

NHTSA stated, even though this is an interim final rule for which no regulatory flexibility analysis is required, it considered the impacts of the rule under the Act and determined that the 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 stated that, because this interim final rule is not expected to include a federal mandate, no unfunded mandate assessment under the Act will be prepared.

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

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

NHTSA found that good cause exists for immediate implementation of this interim final rule without prior notice and comment because a delay in publication of this rule for notice and comment would be impracticable, unnecessary, and contrary to public interest. According to NHTSA, because manufacturers have a compelling need for ample advance notice of an increase to the corporate average fuel economy civil penalty rate in order to modify their design, development, and production plans accordingly, it would be impracticable to follow notice-and-comment procedures and further delay a decision on when the rate should be adjusted. NHTSA stated public comment is also unnecessary because NHTSA is utilizing the interim final rulemaking process provided by the Federal Civil Penalties Inflation Adjustment Act Improvement Act, and the December 2016 rule on which this interim final rule is based was also promulgated without public comment. 28 U.S.C. 2461 note. NHTSA also stated that public interest is served by immediate issuance of this rule to avoid the serious harm of applying the adjustment to civil penalties beginning in model year 2019, when the automotive industry has faced unprecedented economic challenges due to the COVID-19 national emergency. NHTSA further stated that it is nonetheless providing an opportunity for interested parties to comment on this interim final rule.

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

NHTSA determined that this interim final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

NHTSA promulgated this interim final rule pursuant to sections 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, and 33115 of title 49, United States Code; and the Federal Civil Penalties Inflation Adjustment Act of 1990; Debt Collection Improvement Act of 1996; Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; Bipartisan Budget Act of 2015; and Fixing America's Surface Transportation Act. Pub. L. No. 101-410, 104 Stat. 890 (Oct. 5, 1990); Pub. L. No. 104-134, 110 Stat. 1321 (Apr. 26, 1996); Pub. L. No. 109-59, 119 Stat. 1144 (Aug. 10, 2005); Pub. L. No. 114-74, 129 Stat. 584 (Nov. 2, 2015); Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015).

Executive Order No. 12866 (Regulatory Planning and Review)

NHTSA determined that this interim final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

NHTSA determined that this interim 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, as specified in the Order.