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Office of the General Counsel

B-276677

April 18, 1997

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

The Honorable Bud Shuster  
Chairman  
The Honorable James L. Oberstar  
Ranking Minority Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: Department of Transportation, National Highway Traffic Safety  
Administration: Light Truck Average Fuel Economy Standard,  
Model Year 1999

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 1999" (RIN: 2127-AG64). We received the rule on April 3, 1997. It was published in the Federal Register as a final rule on April 3, 1997. 62 Fed. Reg. 15859.

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 "Corporate 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 1998 was established at 20.7 miles per gallon (mpg). During the development of the CAFE standard for model year 1999, the Department of Transportation and Related Agencies Appropriations Act, 1997, Pub. L. 104-205 (Sept. 30, 1996), 110 Stat. 2951, was enacted. Section 323 of the Appropriations Act, 110 Stat. 2972, 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 (49 U.S.C. 32901, et seq.) 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 the enactment of this section."

NHTSA interprets section 323 of the Appropriations Act as requiring it to prescribe the same light truck CAFE standard for model year 1999 that applies to model year 1998. Accordingly, the rule continues the 20.7 mpg standard for 1999.

This action is consistent with NHTSA's action in 1996 when it established the 1998 model year standard as the same as the 1997 model year standard, 20.7 mpg, based on similar language in its 1996 Appropriation Act. As we pointed out in our report on the rule promulgating the 1998 standard (B-271810.2, May 7, 1996), NHTSA did not follow many of the steps that ordinarily would apply to the rulemaking, based on its interpretation of the above language that the agency had no discretion over the standard.

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 indicates that NHTSA did not comply with many of the applicable requirements because of the above-noted language. We note that Congress took no action regarding the procedural shortcomings involved in the promulgation of the 1998 standard and continued the same statutory language in the Department's Appropriation Act for 1997.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation

work relating to the Department of Transportation, National Highway Traffic Safety Administration is John Anderson, Director of Transportation Issues. Mr. Anderson can be reached at (202) 512-2834.

Robert P. Murphy  
General Counsel

Enclosure

cc: Nancy E. McFadden  
General Counsel  
U.S. 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 1999"  
(RIN: 2127-AG64)

(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 standard. 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 business" 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 section 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 1999 standard at any level other than the 1998 model year standard. Therefore, the soliciting of comments would be superfluous.

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

The final rule does not contain any new information collections which are subject to review by the Office of Management and Budget 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 on March 28, 1997, 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 nor 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.