



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

B-334209

April 17, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jerrold Nadler
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-AM32). We received the rule on April 12, 2022.¹ It was published in the *Federal Register* as a final rule on April 1, 2022. 87 Fed. Reg. 18994. The effective date is May 31, 2022.

The final rule, according to NHTSA, repeals the interim final rule, 86 Fed. Reg. 3016, and reverts to the December 2016 final rule, 81 Fed. Reg. 95489, that would apply the adjustment for the corporate average fuel economy (CAFE) civil penalty rate beginning with Model Year 2019. NHTSA also stated the rule applies the statutorily required annual adjustments through 2022 and that, going forward, NHTSA will continue to make the mandatory adjustments to the CAFE civil penalty rate, as required by law for all civil monetary penalties.

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). This final rule was published in the *Federal Register* on April 1, 2022. 87 Fed. Reg. 18894. The rule has a stated effective date of May 31, 2022. The Senate received the rule on February 29, 2024. 170 Cong. Rec. S2346 (daily ed. Mar. 11, 2024). The House of Representatives received the rule on February 28, 2024. 170 Cong. Rec. H1092 (daily ed. Mar. 11, 2024). Therefore, based on the dates of congressional receipt of the rule, the rule does not have the required 60-day delay in its effective date.

¹ We received an additional submission of the rule from NHTSA on February 27, 2024.

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 that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Michael Kuppersmith
Trial Attorney, Litigation and Enforcement
NHTSA 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

The Department of Transportation, National Highway Traffic Safety Administration (NHTSA) stated that, based on the experience of recent model years, this final rule will lead to at least a \$100 million difference in the amount of penalties in at least one model year. NHTSA explained that it projects that the difference in the nationwide fleet-wide net shortfall would result in at least \$100 million more civil penalties being assessed at the \$14 rate than the \$5.50 rate for Model Year 2019. Specifically, NHTSA further explained that based on mid-model year fuel economy performance data and assuming a similar magnitude of production from Model Year 2018 for Model Year 2019, the projected shortfall of 1.3 miles per gallon across the United States fleet in Model Year 2019 would result in a nationwide fleet-wide net shortfall of approximately \$115.4 million at the \$5.50 rate or an approximately \$293.9 million shortfall at the \$14 rate—an approximately \$178.5 million difference.

(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 stated that this final rule does not include a federal mandate and that no unfunded mandate assessment has been prepared.

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

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

On January 14, 2021, NHTSA published an interim final rule and requested comments. 86 Fed. Reg. 3016. NHTSA received two letters regarding the rulemaking. On August 20, 2021, NHTSA published a supplemental notice of proposed rulemaking (SNPRM). 86 Fed. Reg. 46811. NHTSA received 17 substantive comments in response to the SNPRM. NHTSA received comments from various states; the Natural Resources Defense Council and Sierra Club; Tesla; the Institute for Policy Integrity at New York University School of Law; the Alliance for Automotive Innovation; Stellantis (FCA US LLC); Jaguar Land Rover North America LLC; Ferrari; the National Automobile Dealers Association; and private citizens and anonymous individuals. NHTSA responded to comments in this final rule.

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

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

Statutory authorization for the rule

NHTSA promulgated this final rule pursuant to Public Laws 92-513, 94-163, 98-547, 101-410, 102-388, 102-519, 104-134, 109-59, 110-140, 112-141, 114-74, and 114-94.

Executive Order No. 12866 (Regulatory Planning and Review)

NHTSA stated that the Office of Management and Budget determined that this final rule is a significant regulatory action under the Order, and that the Office of Information and Regulatory Affairs determined that the rule is economically significant.

Executive Order No. 13132 (Federalism)

NHTSA stated 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, and that the requirements of the Order do not apply.