

underlying reasoning in the Code of Federal Regulations.

On January 26, 2009, President Obama issued a memorandum concerning the completion of the rulemaking.² In light of the requirement in EPCA to prescribe CAFE standards for 18 months in advance,³ i.e., by March 30, 2009 for MY 2011, and in order to provide additional time to obtain new information and consider anew the appropriate approach to establishing future CAFE standards, the President requested NHTSA to complete its rulemaking in two phases: (1) standards for MY 2011, and (2) standards for MY 2012 and beyond. The President further requested that NHTSA consider, as part of both phases, whether any provisions regarding preemption are consistent with the EISA, the Supreme Court's decision in *Massachusetts v. EPA* and other relevant provisions of law and the policies underlying them.

Massachusetts v. EPA,⁴ was a case involving a 2003 order of the Environmental Protection Agency (EPA) denying a petition for rulemaking to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act.⁵ The Court ruled that greenhouse gases are "pollutants" under the Clean Air Act and that the Act therefore authorizes EPA to regulate greenhouse gas emissions from motor vehicles if that agency makes the necessary findings and determinations under section 202 of the Act.

The Court considered EPCA briefly, stating

[T]hat DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's "health" and "welfare," 42 U.S.C. § 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, § 2(5), 89 Stat. 874, 42 U.S.C. § 6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

549 U.S. at 537.

In keeping with the President's remarks on January 26 regarding the need for new national policies to address the closely intertwined issues of energy independence, energy security and climate change, and for the initiation of serious and sustained

domestic and international action to address them, NHTSA will develop CAFE standards for MY 2012 and beyond after collecting new information, conducting a careful review of technical and economic inputs and assumptions and standard setting methodology. It is reasonable to anticipate that this process will lead to changes, given the further review and analysis that will be conducted pursuant to the President's request, and given the steady evolution in technical and policy factors potentially relevant to the next CAFE rulemaking. NHTSA may consider numerous factors, including, but not limited to, energy and climate change needs and policy choices regarding goals and approaches to achieving them, developments in domestic legislation and international negotiations regarding those goals and approaches, technologies for reducing fuel consumption, the capacity and condition of the automotive industry, fuel prices, and climate change science and damage valuation.

The goal of the review and re-evaluation will be to ensure that the approach used for MY 2012 and thereafter produces CAFE standards that contribute, to the maximum feasible extent, consistent with the legal requirements of EPCA/EISA, to meeting the energy and environmental challenges and goals outlined by the President. We intend to craft our program with the goal of creating the maximum incentives for innovation, providing reasonable flexibility to the regulated parties, and meeting the goal of making substantial and continuing reductions in the consumption of fuel sufficient to achieve at least 35 mpg not later than model year 2020. To that end, we are committed to ensuring that the CAFE program for beyond MY 2011 is based on the best scientific, technical, and economic information available, and that such information is developed in close coordination with the Environmental Protection Agency, Department of Energy and other federal agencies and our stakeholders, including the public and the vehicle manufacturers.

In response to the President's request that NHTSA consider whether any provisions regarding preemption are consistent with EISA, the Supreme Court's decision in *Massachusetts v. EPA* and other relevant provisions of law and the policies underlying them, NHTSA is reconsidering its views regarding preemption under EPCA of state standards regulating motor vehicle tailpipe emissions of carbon dioxide. Accordingly, the agency will neither include any discussion of preemption in

the preamble to forthcoming final rule establishing CAFE standards for MY 2011 nor include any provisions addressing preemption in the amendments made by that rule to the Code of Federal Regulations. This course of action will permit the agency to address the issue of preemption in a deliberate, comprehensive manner in the context of its forthcoming rulemaking to establish CAFE standards for 2012 and later model years.

Issued on: March 16, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2009-0048]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 19, 2009.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA-2009-0048] by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between

² The memorandum is available at: http://www.whitehouse.gov/the_press_office/The_Energy_Independence_and_Security_Act_of_2007/ (last accessed March 12, 2009).

³ 49 U.S.C. 32902(a).

⁴ 549 U.S. 497 (2007).

⁵ 68 FR 52922 (September 8, 2003).

9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
Telephone: 1-800-647-5527.

- Fax: 202-493-2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

Complete copies of this request for collection of information may be obtained at no charge from Dennis Flemons, NHTSA 1200 New Jersey Avenue, SE., Room W53-448 NVS-412, Washington, DC 20590. Mr. Flemons telephone number is (202) 366-5389. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

i. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

ii. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii. How to enhance the quality, utility, and clarity of the information to be collected;

iv. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Fatality Analysis Reporting System (FARS).

OMB Control Number: 2127-0006.

Form Number: HS214, HS 214A, HS214B, HS 214C.

Affected Public: State, Local, or Tribal Government.

Abstract: Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966, the National Highway Traffic Safety Administration (NHTSA) has the responsibility to collect accident data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce the severity of injury and the property damage associated with motor vehicle accidents. The Fatal Accident Reporting System (FARS) is a major system that acquires national fatality information directly from existing State files and documents. Since FARS is an on-going data acquisition system, reviews are conducted yearly to determine whether the data acquired are responsive to the total user population needs. The total user population includes Federal and State agencies and the private sector.

Changes in the forms usually involve clarification adjustments to aid the user population in conducting more precise analyses, to remove ambiguity for the respondents and to differentiate data by data collection year. These changes are annual and do not affect the reporting burden of the respondent (State employees utilize existing State highway safety related files).

Other changes may involve removing outdated data elements introducing new data elements or redesigning data elements to capture higher quality data and to respond more to the needs of the user population. These changes are less frequent and affect burden very gradually. Advances in technology and systems design are incorporated to minimize the burden on the respondents.

Estimated Annual Burden: 82,407 hours.

Number of Respondents: 53.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Marilena Amoni,

Associate Administrator, National Center for Statistics and Analysis.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35227]

Middletown and New Jersey Railroad, LLC—Acquisition and Operation Exemption—Middletown & New Jersey Railway Co., Inc.

Middletown and New Jersey Railroad, LLC (Middletown), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate 6.5 miles of rail line owned by Middletown & New Jersey Railway Co., Inc., between milepost 0.0 at Middletown, NY, and milepost 6.5 at Slate Hill, NY.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35228, *Regional Rail, LLC.—*

Continuance in Control Exemption—Middletown and New Jersey Railroad, LLC., wherein Regional Rail, LLC seeks to continue in control of Middletown, upon Middletown becoming a Class III rail carrier.

The transaction is expected to be consummated on or shortly after April 5, 2009 (the effective date of the exemption).

Middletown certifies that its projected annual revenues as a result of the transaction will not result in its becoming a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed \$5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any