



Office of the General Counsel

B-276490

April 2, 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 Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Department of Transportation, National Highway Traffic Safety
Administration: Federal Motor Vehicle Safety Standards; Occupant
Crash Protection

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 "Federal Motor Vehicle Safety Standards; Occupant Crash Protection" (RIN: 2127-AG59). We received the rule on March 17, 1997. It was published in the Federal Register as a final rule on March 19, 1997. 62 Fed. Reg. 12960.

The final rule amends the NHTSA's occupant crash protection standard to ensure that vehicle manufacturers can quickly depower all air bags so that they inflate less aggressively. NHTSA states that the rule presents an interim solution to the problem of the fatalities and injuries that current air bag designs are causing in relatively low speed crashes to children, and occasionally to adult occupants.

The final rule was made effective on the date of publication in the Federal Register which was March 19, 1997. This action did not allow the 60-day delay in a major rule's effective date as required by the Small Business Regulatory Enforcement

Fairness Act of 1996 (SBREFA). In establishing the effective date, NHTSA, in the Notice of Proposed Rulemaking, requested comments on whether the rule should become effective on the date of publication because of the urgent safety problem. Commenters were in favor of an immediate effective date and no opposing comments were received. Therefore, NHTSA states that it has determined that it has good cause for making the rule effective without waiting the 60 days required by SBREFA.

Enclosed is our assessment of the 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, with the exception of the effective date, complied with the applicable requirements.

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
"FEDERAL MOTOR VEHICLE SAFETY STANDARDS;
OCCUPANT CRASH PROTECTION"
(RIN: 2127-AG59)

(i) Cost-benefit analysis

NHTSA, in its Final Regulatory Evaluation which was furnished to our Office, discusses the costs and benefits of the final rule.

The evaluation states that costs are not a significant issue for the rulemaking because depowering could be accomplished by substituting a lower powered inflator, which may reduce variable costs by a small amount. Also, costs could be reduced by economies of scale if the generic sled test allows for greater commonality among air bag module components. However, there would be engineering, development, and testing costs to design, develop, and certify depowered air bags. The cost evaluation does not include any dollar amounts.

NHTSA estimates, based on data available from one less aggressive depowered air bag in Australia, that 643 lives of belted occupants could be saved by having depowered air bags. Based on research testing and math modelling, additional estimates concerning reductions in fatalities, chest injuries, and arm injuries for both driver side and passenger side air bags are included in the evaluation.

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

The Administrator of NHTSA has certified that the final rule will not have significant impact on a substantial number of small entities.

In response to notice of this certification in the Notice of Proposed Rulemaking, the Coalition of Small Volume Automobile Manufacturers, representing the five small entities which manufacture automobiles, stated that the small entities are significantly affected by NHTSA's rules and that it would be improper for NHTSA to fail to consider the effects of its rules on these firms. Considering these comments, NHTSA concluded that the final rule would not have a significant impact on a substantial number of small entities because the rule does not impose any new requirements or costs on vehicle manufacturers but permits 20 to 35 percent

depowering of the airbags. Also, no manufacturer is required to take any action as a result of the rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain a federal mandate under title 2 of the act for state, local or tribal governments or the private sector, and therefore, section 202 and 205 are inapplicable.

In addition, the final rule does not affect small governments or contain a significant intergovernmental mandate. Accordingly, sections 203 and 204 of the act, which require agencies to consult with small governments and solicit input from state, local and tribal governments, are also inapplicable.

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

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

The final rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. NHTSA published a Notice of Proposed Rulemaking on January 6, 1997, in the Federal Register. 62 Fed. Reg. 807. NHTSA received over 160 comments in response to the notice and in the preamble to the final rule summarizes the comments received and the reason why the alternative contained in the final rule was adopted.

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

The final rule contains no information collections which are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was issued under authority of 49 U.S.C. § 30111, which provides for the Secretary of Transportation to prescribe motor vehicle safety standards.

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget under the executive order as a "significant regulatory action." The Office of Information and Regulatory Affairs of OMB approved the final rule as complying with the requirements of the order based on the information supplied by NHTSA, which included a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

Executive Order No. 12612

The final rule was reviewed by NHTSA under Executive Order No. 12612 (Federalism) and found not to have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order No. 12988

The final rule has been reviewed under Executive Order No. 12988 (Civil Justice Reform) and does not have any retroactive effect. NHTSA discusses the preemptive effect of the rule with respect to any state or local law. It also discusses the authority for judicial review of federal motor vehicle safety standards, including the fact that there is no requirement for the submission of a petition for reconsideration or other administrative proceedings before suit may be filed in court.

National Environmental Policy Act (NEPA)

NHTSA reviewed the final rule under the standards of the NEPA and determined that it will not have a significant impact on the quality of the human environment. Therefore, an Environmental Assessment need not be prepared.