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United States Government Accountability Office
Washington, DC 20548

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September 27, 2007

The Honorable Daniel K. Inouye
Chairman
The Honorable Ted Stevens
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

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

Subject: *Department of Transportation, National Highway Traffic Safety Administration: Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Side Impact Protection; Fuel System Integrity; Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection; Side Impact Phase-In Reporting Requirements*

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, entitled “Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Side Impact Protection; Fuel System Integrity; Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection; Side Impact Phase-In Reporting Requirements” (RIN: 2127-AJ10). We received the rule on September 14, 2007. It was published in the Federal Register as a final rule on September 11, 2007. 72 Fed. Reg. 51,908.

The final rule upgrades the Federal Motor Vehicle Safety Standard (FMVSS) No. 214, “Side impact protection.” The final rule does so by incorporating a dynamic pole test into FMVSS No. 214 requiring manufacturers to improve head and thorax protection to occupants of vehicles that crash into poles and trees, or that are laterally struck by a higher-riding vehicle, and to reduce fatalities and injuries caused by partial ejections through side windows. Additionally, the final rule enhances the moving deformable barrier test by adding a second dummy to better represent the at-risk population in vehicle-to-vehicle side crashes.

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 complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Patricia Dalton, Managing Director, Physical Infrastructure. Ms. Dalton can be reached at (202) 512-2834.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Milton E. Cooper
Program Analyst, National Highway
Traffic Safety Administration
Department of Transportation

ENCLOSURE

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
"FEDERAL MOTOR VEHICLE SAFETY STANDARDS; OCCUPANT PROTECTION IN
INTERIOR IMPACT; SIDE IMPACT PROTECTION; FUEL SYSTEM INTEGRITY;
ELECTRIC-POWERED VEHICLES: ELECTROLYTE SPILLAGE AND ELECTRICAL
SHOCK PROTECTION; SIDE IMPACT PHASE-IN REPORTING REQUIREMENTS"
(RIN: 2127-AJ10)

(i) Cost-benefit analysis

NHTSA prepared a Final Regulatory Impact Analysis (FRIA) to accompany the final rule, which included a cost-benefit analysis. NHTSA estimates the total annual incremental costs to meet the final rule will be between \$429 million and \$1.1 billion, depending on the type of airbag system installed. NHTSA estimates that the final rule will have incremental benefits of annually preventing between 266 and 311 fatalities and between 352 and 371 serious injuries.

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

NHTSA certifies that the rule will 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

The final rule does not contain an intergovernmental mandate. The final rule does contain a federal private sector mandate that would result in the expenditure of more than \$100 million by the private sector in one year. NHTSA incorporated its analysis in the FRIA to satisfy the requirements of the Unfunded Mandates Reform Act of 1995. NHTSA also believes that it has chosen the most cost-effective alternative that achieves the objectives of the rulemaking.

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

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

On May 17, 2004, NHTSA published a notice of proposed rulemaking in the *Federal Register* proposing upgrades to the Federal Motor Vehicle Safety Standard (FMVSS) No. 214, "Side impact protection" by incorporating a dynamic pole test into FMVSS

No. 214 and enhancing the moving deformable barrier test. 69 Fed. Reg. 27,990. On January 12, 2005, NHTSA reopened the comment period until April 12, 2005. 70 Fed. Reg. 2105. NHTSA received 35 comments to the proposed rule. On September 11, 2007, NHTSA published the final rule in the *Federal Register* and responded to the comments. 72 Fed. Reg. 51,908. The effective date of this final rule is November 13, 2007, with a 4-year phase-in of the new test requirements beginning September 1, 2009.

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

The final rule contains a collection of information that is subject to review by the Office of Management and Budget (OMB) under the Act. NHTSA has submitted a request for OMB clearance of the collection of information and estimates that the total annual reporting and recordkeeping burden will be 1,260 hours.

Statutory authorization for the rule

This final rule is promulgated under the direction of section 10302 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59, August 10, 2005, 119 Stat. 1144.

Executive Order No. 12,866

The final rule was considered to be economically significant under the executive order and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

NHTSA has concluded that the final rule does not have federalism implications under the order.