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June 19, 2009

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Transportation, National Highway Traffic Safety Administration: Federal Motor Vehicle Safety Standards; Roof Crush Resistance; 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 (NHTSA), entitled “Federal Motor Vehicle Safety Standards; Roof Crush Resistance; Phase-In Reporting Requirements” (RIN: 2127-AG51). We received the rule on June 5, 2009. It was published in the *Federal Register* as a final rule on May 12, 2009. 74 Fed. Reg. 22,348.

The final rule amends NHTSA’s safety standard on roof crush resistance for motor vehicles as a part of a comprehensive plan for reducing the risk of rollover crashes and the risk of death and serious injury in those crashes. For vehicles with a Gross Vehicle Weight Rating (GVWR) of 2,722 kilograms (6,000 pounds) or less, the final rule doubles the amount of force the roof must withstand during testing from 1.5 times the vehicle’s unloaded weight to 3.0 times the vehicle’s unloaded weight. The final rule also extends applicability of the standard to vehicles with a GVWR greater than 2,722 kilograms (6,000 pounds) but not greater than 4,536 kilograms (10,000 pounds), and establishes a force requirement for these vehicles of 1.5 times the vehicle’s unloaded weight. Moreover, the final rule requires all vehicles to meet the force requirements in a two-sided test instead of a single-sided test. The final rule establishes a new requirement for maintenance of headroom, in addition to the existing limit on the amount of roof crush. Finally, the rule incorporates special

provisions such as leadtime to allow multi-stage manufacturers, alterers, and small volume manufacturers to phase-in the new requirements.

The final rule has an effective date of July 13, 2009. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Congress and our Office did not receive the rule until June 5, 2009, which means that the rule will not have the required 60-day delay in its effective date.

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 of the procedural steps taken indicates that, except for the delay in the effective date, NHTSA complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Milton E. Cooper
Program Analyst, National Highway
Traffic Safety Administration
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
"FEDERAL MOTOR VEHICLE SAFETY STANDARDS;
ROOF CRUSH RESISTANCE; PHASE-IN REPORTING REQUIREMENTS"
(RIN: 2127-AG51)

(i) Cost-benefit analysis

NHTSA estimated that the final rule will prevent 135 fatalities and 1,065 nonfatal injuries annually. NHTSA also estimated that compliance with the upgraded roof strength standard will increase lifetime consumer costs by \$69 to \$114 per affected vehicle. NHTSA anticipated redesign costs to increase affected vehicle prices by an average of about \$54. Finally, NHTSA estimated that added weight will increase the lifetime cost of fuel usage by \$15 to \$62 for an average affected vehicle. NHTSA projected total consumer costs to range from \$875 million to \$1.4 billion annually.

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

NHTSA certified that the final rule will not have a significant impact on a substantial number of small entities and therefore did not prepare a regulatory flexibility analysis.

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

NHTSA determined that the final rule contains mandates that will likely result in spending by the private sector in excess of the UMRA threshold of approximately \$100 million annually (annually adjusted for inflation, with base year of 1995). NHTSA incorporated the final rule's cost-benefit analysis to meet the Act's requirements, as allowed under 2 U.S.C. § 1532(c). In this regard, NHTSA considered alternatives to the final rule, such as single-sided test requirements, different strength to weight ratio levels, and different phase-in schedules. NHTSA concluded that it selected the most cost-effective alternative to achieve 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.*

NHTSA promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act, 5 U.S.C. § 553. NHTSA published a notice of

proposed rulemaking on August 23, 2005, 70 Fed. Reg. 49,223. NHTSA published a supplemental notice of proposed rulemaking on January 30, 2008, 73 Fed. Reg. 5484, requesting additional public comment primarily on the issue of single-sided versus two-sided testing. NHTSA received comments from a variety of interested parties, including manufacturers, industry groups, consumer protection groups, academics, government officials, and private individuals. NHTSA responded to the comments in the final rule. 74 Fed. Reg. 22,348.

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

The final rule contains a new information collection requirement that has been submitted to the Office of Management and Budget (OMB) for approval.

National Environmental Policy Act, 42 U.S.C. §§ 4321-4347

NHTSA determined that implementation of the final rule will not have any significant impact on the quality of the human environment.

National Technology Transfer and Advancement Act, 15 U.S.C. § 272

NHTSA incorporated the voluntary consensus standard SAE Standard J826, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation," into the final rule.

Statutory authorization for the rule

NHTSA stated that the final rule is authorized by 49 U.S.C. §§ 322, 30111, 30115, 30117, 30166.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule was reviewed by OMB and found to be an economically significant regulatory action under the Order.

Executive Order No. 13,132 (Federalism)

NHTSA determined that the final rule does not have federalism implications because the rule does not have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of powers and responsibilities among the various levels of government." NHTSA also noted that the National Traffic and Motor Vehicle Safety Act contains an express preemption provision.