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March 2, 2011

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

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Transportation, National Highway Traffic Safety Administration: Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference*

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, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference” (RIN: 2127-AK23). We received the rule on February 15, 2011. It was published in the *Federal Register* as a final rule on January 19, 2011. 76 Fed. Reg. 3212.

The final rule establishes a new federal motor vehicle safety standard to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. NHTSA anticipates that manufacturers will meet the standard by modifying existing side impact air bag curtains and possibly supplementing them with advanced glazing. The curtains will be made larger so that they cover more of the window opening, made more robust to remain inflated longer, and made to deploy in both side impacts and rollovers.

The final rule, a major rule under the Congressional Review Act (CRA), has an announced effective date of March 1, 2011. The final rule adopts a phase-in of the new requirements, starting September 1, 2013. 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). The final rule was published the *Federal Register* on January 19, 2011, and we did not receive the rule until February 15, 2011. Therefore, to the extent the final rule becomes effective on March 1, 2011, the final rule does 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, with the exception of the delay in the rule's 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: Anetris Campbell
Staff Assistant, 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,
EJECTION MITIGATION; PHASE-IN REPORTING REQUIREMENTS;
INCORPORATION BY REFERENCE"
(RIN: 2127-AK23)

(i) Cost-benefit analysis

NHTSA performed a cost-benefit analysis in conjunction with the final rule. For benefits, NHTSA states that the final rule will save 373 lives and prevent 476 serious injuries per year. NHTSA estimates that the cost of the final rule will be \$507 million per year. NHTSA estimates that the annual cost per equivalent life saved is \$1.4 million, using a 3-percent discount rate, or \$1.7 million, using a 7-percent discount rate.

(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 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 incorporates its cost-benefit analysis to satisfy the requirements of the Unfunded Mandates Reform Act. The final rule will result in the expenditure of more than \$100 million in any one year by the private sector. The costs and benefits of that requirement are discussed above. NHTSA states that it believes it has selected the least costly, most cost-effective, and least burdensome alternative that achieves the objects 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 December 2, 2000, NHTSA published a notice of proposed rulemaking in the *Federal Register*. 74 Fed. Reg. 63,180. NHTSA received 35 comments from motor vehicle manufacturers through their associations and individually, for air bag and glazing equipment supplies through their associations and individually, and from

consumer and insurance groups, and individuals. NHTSA responded to the comments in the final rule. 76 Fed. Reg. 3212.

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

The final rule contains information collection requirements under the Paperwork Reduction Act. The collection of information would require manufacturers of passenger cars and of trucks, buses, and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the ejection mitigation requirements of this federal motor vehicle safety standard. NHTSA estimates that there are 21 manufacturers of passenger cars and of trucks, buses, and MPVs with a GVWR of 4,536 kg (10,000 lb) or less, that the total annual reporting and recordkeeping burden resulting from this collection of information is 1,260 hours, and that the total annual cost burden will be \$0. NHTSA states that no additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use. NHTSA has submitted a request for clearance to the Office of Management and Budget (OMB).

Statutory authorization for the rule

The final rule is authorized by section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub.L. 109–59, 119 Stat. 1144 (2005), as codified at 49 U.S.C. § 30128.

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

NHTSA determined the final rule to be economically significant under the Order and has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

NHTSA determined that the final rule would not have sufficient federalism implications to warrant consultations with state and local officials or the preparation of a federalism summary impact statement. The final rule would not have a substantial direct effect 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.