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March 12, 2014

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

The Honorable Fred Upton  
Chairman  
The Honorable Henry 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; 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-AK56). We received the rule on February 25, 2014. It was published in the *Federal Register* as a final rule on November 25, 2013. 78 Fed. Reg. 70,416. The rule has an effective date of November 28, 2016, although optional early compliance is permitted by the final rule.

The final rule completes the first initiative of NHTSA's 2007 “NHTSA's Approach to Motorcoach Safety” plan and is one of the principal undertakings of the Department of Transportation's 2009 Motorcoach Safety Action Plan and fulfills a statutory mandate of the Motorcoach Enhanced Safety Act of 2012, incorporated into the Moving Ahead for Progress in the 21st Century Act. This final rule amends the federal motor vehicle safety standard on occupant crash protection to require lap/shoulder seat belts for each passenger seating position in all new over-the-road buses, and in new buses other than over-the-road buses with a gross vehicle weight rating greater than 11,793 kilograms (26,000 pounds), with certain exclusions. By requiring the passenger lap/shoulder seat belts, this final rule significantly reduces the risk of fatality and serious injury in frontal crashes and the risk of occupant ejection in rollovers, thus considerably enhancing the safety of these vehicles.

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 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;  
OCCUPANT CRASH PROTECTION"  
(RIN: 2127-AK56)

(i) Cost-benefit analysis

The National Highway Traffic Safety Administration (NHTSA) analyzed the costs and benefits of this final rule. Based on Fatal Analysis Reporting System (FARS) data 2000–2009, annually there were 20.9 fatalities and 7,934 injuries to occupants of covered buses. NHTSA estimates that installing lap/shoulder seat belts on new covered buses will save 1.7–9.2 lives and prevent 146–858 injuries (3.46–25.17 equivalent lives), depending upon the usage of lap/shoulder belts in the vehicles. The cost of adding lap/shoulder belts will be approximately \$2,101 per vehicle, NHTSA estimates. Lifetime fuel costs due to an increased weight of the bus will be an estimated additional cost of \$794 to \$1,077. Total costs are estimated to range from \$6.4 to \$8.6 million for the 2,200 buses sold per year (all costs are in 2008 dollars). According to NHTSA, the cost per equivalent life saved is estimated to range from \$0.3 million to \$1.8 million.

The cost of installing lap/shoulder belts on new buses is estimated by NHTSA as follows. For the driver, the difference in costs between a lap belt only and a lap/shoulder belt at the driver seating position is approximately \$18.86. This cost includes the difference in cost between a lap and lap/shoulder belt. About 60 percent of the driver positions currently have lap/shoulder belts, thus adding a shoulder belt to the driver seat for 40 percent of the large buses will add an average of \$7.54 per bus. For the passenger seats, the incremental cost of adding lap/shoulder belts and to change the seat anchorages for a two passenger seat is \$78.14 (\$39.07 per seating position). On a 54-passenger bus, the cost for the passenger seats is \$2,109.78 (\$39.07 × 54). On a 45-passenger bus, the incremental cost of adding lap/shoulder belts and to change the seat anchorages is \$1,758.15 (\$39.07 × 45). A sales weighted average of those buses results in the estimate of \$2,094 per average covered bus. NHTSA has also estimated increased costs in fuel usage. The increased fuel costs depend on added weight (estimated to be 73 kilograms; 161 pounds) and the discount rate used. NHTSA estimates the increased costs in fuel usage for added weight and discounts the additional fuel used over the lifetime of the bus using a 3 percent and 7 percent discount rate.

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

NHTSA certified that this 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 determined that this final rule will not result in expenditures by state, local, or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

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

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

On August 18, 2010, NHTSA published a notice of proposed rulemaking (NPRM) in the *Federal Register*. 75 Fed. Reg. 50,958. NHTSA states that it received approximately 130 comments on the NPRM from consumer and other groups, individuals, bus seat suppliers, bus manufacturers and industry groups, and motorcoach owners and operators. According to NHTSA, the comments ranged from general support or opposition to the proposed requirements, comments regarding to which vehicles should the lap/shoulder seat belt requirements apply, concern about one or more aspects of the proposal, and others had questions about or suggested changes to various components of the proposed definition of transit buses and bus types.

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

NHTSA determined that this notice contains no new information collection requirements.

Statutory authorization for the rule

NHTSA states that the final rule is authorized by the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act"), 49 U.S.C. §§ 30101 et seq.

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

NHTSA determined that the final rule is economically significant under Executive Order 12,866 and states that the action was reviewed by the Office of Management and Budget under Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

NHTSA determined that the final rule will not have a substantial effect on state and local governments. NHTSA also examined potential preemption issues and the nature (e.g., the language and structure of the regulatory text) and objectives of the final rule and concluded that this final rule, like many NHTSA rules, will prescribe only a minimum safety standard. As such, NHTSA states that it does not intend that the final rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by the final rule. Establishment of a higher standard by means of state tort law will not conflict with the minimum standard final in this final rule. According to NHTSA, without any conflict, there could not be any implied preemption of a state common law tort cause of action.

Executive Order No. 13,563 (Improving Regulation and Regulatory Review)

NHTSA states that it has analyzed the merits of requiring lap belts for passenger seating positions as an alternative to lap/shoulder belts for those seating positions, knowing, however, that the Motorcoach Enhanced Safety Act requires lap/shoulder belts on over-the-road buses.

NHTSA also considered alternative strength standards and addressed the potential alternatives in the final rule.

#### National Environmental Policy Act

NHTSA analyzed the final rule for the purposes of the National Environmental Policy Act and determined that implementation of this action will not have any significant impact on the quality of the human environment.

#### National Technology Transfer and Advancement Act

NHTSA states that under the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” NHTSA states that after carefully reviewing the available information, including standards from the European Union, Australia, and Japan, it determined that there are no voluntary consensus standards that it would incorporate into this rulemaking. NHTSA also discusses the reasons for deciding against adopting the international regulations regarding the performance of seat belt anchorages in the final rule.

#### Executive Order No. 12,988

NHTSA states that with respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12,988, “Civil Justice Reform” (61 Fed. Reg. 4729, February 7, 1996) requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. According to NHTSA, the final rule is consistent with that requirement. Pursuant to this Executive Order, NHTSA noted that the issue of preemption was discussed in the final rule in connection with E.O. 13,132 (Federalism). NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

#### Executive Order No. 13,211

Executive Order 13,211 applies to any rulemaking that (1) is determined to be economically significant as defined under E.O. 12,866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. According to NHTSA, this rulemaking is not subject to E.O. 13,211.