



December 1, 2017

Secretary Elaine Chao
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590
Submitted electronically via www.regulations.gov

RE: Notification of Regulatory Review, Docket No. DOT-OST-2017-0069, Federal Motor Vehicle Safety Standards

Dear Secretary Chao:

The Center for Auto Safety (“the Center”) appreciates the opportunity to comment on the Department of Transportation’s (“DOT” or “the Department”) Regulatory Review, as contemplated by the Department’s 1979 Regulatory Policies and Procedures, Executive Order 12866, E.O. 13563, and section 610 of the Regulatory Flexibility Act. The Center, founded in 1970, is a non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy. On behalf of our members nationwide, the Center agrees DOT should make the improvement of regulations a continuous focus of your work. Accordingly, the Center is pleased to offer the following response regarding a few of the specific regulations cited in the notification of regulatory review.

Under the Federal Motor Vehicle Safety Act, (49 U.S.C. § 30111(a)) and as held by the U.S. Supreme Court, (*Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. 29, 54-55 (1983)) while the National Highway Traffic Safety Administration (NHTSA) may consider economic factors in seeking safety standards that are practicable, it is clear that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act. Thus, NHTSA’s website states the agency’s mission statement is to: “Save lives, prevent injuries and reduce economic costs due to road traffic crashes, through education, research, safety standards and enforcement activity.”¹

¹ NHTSA, <https://www.nhtsa.gov/about-nhtsa/nhtsas-core-values>

Of the many tools available to the agency, promulgating and enforcing mandatory federal regulations is amongst the most effective in saving lives, preventing injuries, and reducing economic costs due to road traffic crashes for all Americans, be they drivers, passengers, or pedestrians. Unfortunately, the number of traffic deaths has increased over the last two years, not only in raw numbers (up 5.6% to 37,461 from 2015 to 2016) but also with respect to the fatality rate per 100 million vehicle miles traveled (1.15 VMT to 1.18 VMT).² Sadly, these tragedies do not encompass the millions of injuries and almost \$1 trillion in societal costs that are associated with auto crashes.

Overseeing highway and traffic safety, as well as emissions controls, are enormous responsibilities, and the Center for Auto Safety stands ready to assist the Department in fulfilling its statutory mission. Our members, and all Americans are counting on you as they are likely to be the most significantly, and negatively, affected parties by modifications that would inhibit the implementation and enforcement of existing regulations, whether those modifications be to vehicle safety rules or environmental protections.

When looking at rules to review, the first requirement for the Department should be: Do the costs outweigh the benefits? Where the benefits are greater than the costs, as they are for all of the following rules, the Center for Auto Safety recommends they remain as written and we urge stricter enforcement to allow for the maximum benefit from these regulations.³

- **NHTSA’s Final Rule on Federal Motor Vehicle Motor Safety Standards; Roof Crush Resistance; Phase-in reporting Requirements (49 CFR 571.216a)**

In sum, this regulation doubled the roof strength requirement for light vehicles under 6,000 lbs., and added a roof strength requirement for heavier vehicles (6,000-10,000 lbs.) which were previously not regulated. This regulation prevents intrusion on the passenger compartment by the vehicle roof structure, and as part of the agency’s plan to reduce rollover deaths, including electronic stability control and ejection mitigation, has significantly reduced rollover deaths in America since these actions were finally taken. Notably, this standard completed its phase-in period in the 2017 model year, so the benefits of this rule are only just beginning to be realized.

As the subject of this regulatory review is whether a rule should be modified because of the negative impact and burden that is placed on affected parties, this rule should not be modified or repealed as the benefit – saving human

² NHTSA, <https://www.nhtsa.gov/press-releases/usdot-releases-2016-fatal-traffic-crash-data>

³ To the extent the Department begins a review of existing regulations in the interest of strengthening those regulations, the Center will be pleased to submit comments.

life and limb – is greater not only in a moral sense but in terms of the cost and benefits analysis which is required by law.

More specifically, NHTSA’s analysis estimated compliance with the upgraded roof strength standard would increase lifetime consumer costs by \$69-\$114 per affected vehicle. Redesign costs were expected to increase affected vehicle prices by an average of about \$54. Added weight was estimated to increase the lifetime cost of fuel usage by \$15 to \$62 for an average affected vehicle. Total consumer costs were expected to range from \$875 million to \$1.46 billion annually.⁴

NHTSA estimated that the changes in FMVSS No. 216 would prevent 135 fatalities and 1,065 nonfatal injuries annually.⁵

The most recent update to the value of statistical life (VSL) by DOT was published in August 2016, and raised the dollar figure associated with a human death to \$9.6 million.⁶ This memo also includes a formula for determining the value of preventing injuries. For the purposes of estimating the monetary benefits of this rule, using this updated VSL and the cost/benefit analysis from NHTSA would equal a societal benefit of \$1,296,000,000 annually in prevented deaths. Even if *all* 1,065 of the injuries were “moderate” injuries, (which is statistically improbable as there are 5 categories of injuries ranging from “minor” to “critical”) the estimated costs of preventing these injuries would produce a benefit savings of over \$479 million, bringing the benefits to over \$1.7 billion annually. This figure, would exceed the estimated costs of the rule by a range of \$250 million to \$825 million annually.

Under the statutes that brought NHTSA into existence and relevant Supreme Court holdings, regulations that save lives, prevent injuries, and save money cannot not be repealed, replaced, suspended, or modified, because they are both practicable and fulfill NHTSA’s mandate to make safety preeminent in its judgments.

- **NHTSA’s Final Rule on Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference (49 CFR 571.226)**

⁴ 74 FR 22347

⁵ *Id.*

⁶ NHTSA,

<https://cms.dot.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20a%20Statistical%20Life%20Guidance.pdf>

In sum, this regulation was written for the purpose of preventing, or reducing the risk of human beings from violently hurled from their vehicles (fully or partially) in the event of a crash. The rule was written in response to a Congressional mandate in Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 10301 compelled NHTSA to reduce complete and partial ejections of vehicle occupants from outboard seating positions, by considering various ejection mitigation systems and promulgating a rule.

As the subject of this regulatory review is whether a rule should be modified because of the negative impact and burden that is placed on affected parties, this rule should not be modified or repealed as the benefit – saving human life and limb – is greater not only in a moral sense but in terms of the cost and benefits analysis which is required by law.

More specifically, NHTSA’s analysis estimated compliance with the ejection mitigation standard would average \$31 per affected vehicle, which presuming a fleet of 16.5 million new vehicles per year would present a total estimated cost of \$507 million annually.⁷

NHTSA estimated that the changes in FMVSS No. 226 would prevent 373 fatalities and 476 serious injuries annually.⁸

The most recent update to the value of statistical life (VSL) by DOT was published in August 2016, and raised the dollar figure associated with a human death to \$9.6 million.⁹ This memo also includes a formula for determining the value of preventing injuries. For the purposes of estimating the monetary benefits of this rule, using this updated VSL and the cost/benefit analysis from NHTSA would equal a societal benefit of \$3,580,800,000 annually in prevented deaths.

Using the figure of 476 “serious” injuries, the estimated costs of preventing these injuries would produce a benefit savings of over \$480 million, bringing the benefits to over \$4.06 billion annually. This figure, would exceed the estimated costs of the rule by approximately \$3.55 billion annually. Under the statutes that brought NHTSA into existence and relevant Supreme Court holdings, regulations that save lives, prevent injuries, and save money cannot not be repealed, replaced, suspended, or modified, because they are both practicable and fulfill NHTSA’s mandate to make safety preeminent in its judgments.

⁷ 76 FR 32111

⁸ *Id.*

⁹ NHTSA,

<https://cms.dot.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20a%20Statistical%20Life%20Guidance.pdf>

- **NHTSA’s Final Rule on Federal Motor Vehicle Safety Standards; Occupant Crash Protection (49 CFR 571.208 and 222)**

In sum, this regulation was written for the purpose of preventing, or reducing the risk of, human beings from violently ejected from, or hurled around the cabin of, buses in the event of a crash. The rule was written in response to a Congressional mandate in Motorcoach Enhanced Safety Act of 2012, incorporated into the Moving Ahead for Progress in the 21st Century Act (MAP-21). The mandate resulted in the requiring new over-the-road buses to have passenger lap/shoulder seat belts.¹⁰ This purpose of the rule was to significantly reduce 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.

As the subject of this regulatory review is whether a rule should be modified because of the negative impact and burden that is placed on affected parties, this rule should not be modified or repealed as the benefit – saving human life and limb – is greater not only in a moral sense but in terms of the cost and benefits analysis which is required by law.

More specifically, NHTSA’s analysis estimated compliance with the occupant protection standard would cost \$2,101 per affected vehicle, plus lifetime fuel costs due to an increased weight of the bus would be an additional cost of \$794 to \$1,077. Presuming a fleet of 2,200 affected buses sold per year, a total estimated cost of \$6.4 – \$8.6 million annually was presented.¹¹

Of the approximately 21 fatalities per year and 7,934 injuries per year to occupants of covered buses, NHTSA estimated that the changes in FMVSS 208 and 222 would prevent 1.7-9.2 fatalities and 146-858 injuries annually.¹²

The most recent update to the value of statistical life (VSL) by DOT was published in August 2016, and raised the dollar figure associated with a human death to \$9.6 million.¹³ This memo also includes a formula for determining the value of preventing injuries. For the purposes of estimating the monetary benefits of this rule, using this updated VSL and the most pessimistic cost/benefit analysis from NHTSA would equal a societal benefit of \$16.32 million annually in prevented deaths. (Using the most optimistic

¹⁰ The rule exempted certain new buses including those with a gross vehicle weight exceeding 26,000 pounds and transit and school buses.

¹¹ 78 FR 70415

¹² Id.

¹³ NHTSA,

<https://cms.dot.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20a%20Statistical%20Life%20Guidance.pdf>

projection it would create a societal benefit of \$88.32 million in prevented deaths.)

Using the lowest figure of 146 injuries, and presuming each was “minor” the estimated costs of preventing these injuries would produce a benefit savings of over \$4 million. If one uses the larger figure of 858 injuries and presumes each was “moderate” it would bring the benefits to over \$387 million annually. Accordingly, the range of potential benefits from prevented deaths and injuries is between \$20 million and \$475 million.

These figures, would exceed the estimated costs of the rule by an approximate range of \$15.6 million - \$466 million annually. Under the statutes that brought NHTSA into existence and relevant Supreme Court holdings, regulations that save lives, prevent injuries, and save money cannot not be repealed, replaced, suspended, or modified, because they are both practicable and fulfill NHTSA’s mandate to make safety preeminent in its judgments.

- **NHTSA’s Final Rule on Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems for Heavy Vehicles (49 CFR 571.136)**

In sum, this regulation was written for the purpose of preventing untripped rollovers and mitigating severe understeer or oversteer conditions that lead to loss of control of trucks and buses that weigh more than 26,000 pounds. The rule would require all new covered vehicles to install Electronic Stability Control (ESC).

The rule was part of a Congressional directive to NHTSA in MAP-21 that the Secretary consider requiring stability enhancing technology on motorcoaches, as well as being undertaken under NHTSA’s statutory authority under the Motor Vehicle Safety Act (49 U.S.C. 301) to prescribe motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.

As the subject of this regulatory review is whether a rule should be modified because of the negative impact and burden that is placed on affected parties, this rule should not be modified or repealed as the benefit – saving human life and limb – is greater not only in a moral sense but in terms of the cost and benefits analysis which is required by law.

More specifically, NHTSA's analysis estimated the total cost of compliance with installing ESC at \$45 million.¹⁴ At the time this rule was promulgated in 2015, NHTSA estimated that the introduction of FMVSS 571.136 would prevent 1,424 to 1,759 crashes, 505 to 649 injuries, and 40 to 49 fatalities and provide a net societal benefit of \$312 million to \$525 million and a 3 to 7 percent discount rate.¹⁵

Based on these figures, the benefits would exceed the estimated costs of the rule by an approximate range of \$267 million - \$480 million annually. Under the statutes that brought NHTSA into existence and relevant Supreme Court holdings, regulations that save lives, prevent injuries, and save money cannot be repealed, replaced, suspended, or modified, because they are both practicable and fulfill NHTSA's mandate to make safety preeminent in its judgments.

Conclusion

As demonstrated, the above listed rulemakings, most of which were authorized or mandated by Congress, clearly benefit the American public. Importantly, these rules are only now beginning to realize their full potential to save lives, prevent injuries, and reduce the economic burden we all face due to crashes on our nation's roads. The Center for Auto Safety opposes any modification to these standards that would inhibit the implementation and future actualization of this potential. If anything, these rules could have been strengthened during the rulemaking stage to provide additional benefits to consumer safety at a minimal cost to automakers. Now that they are in place, the key to providing the maximum consumer benefit in exchange for the related societal costs is for NHTSA to zealously enforce these regulations, not repeal or weaken them.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levine". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Jason Levine
Executive Director

¹⁴ 80 FR 36049. This figure was in part based on the existing percentage of heavy trucks and buses with ESC.

¹⁵ Id. These figures were using the VSL rate prior to the more recent 2016 update.