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B-336082

March 13, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Transportation, National Highway Traffic Safety Administration: Federal Motor Vehicle Safety Standards; Child Restraint Systems—Side Impact Protection, 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; Child Restraint Systems—Side Impact Protection, Incorporation by Reference” (RIN: 2127-AK95). We received the rule on February 27, 2024. It was published in the *Federal Register* as a final rule on June 30, 2022. 87 Fed. Reg. 39234. The effective date is August 1, 2022.

According to NHTSA, the final rule amends Federal Motor Vehicle Safety Standard (FMVSS) (Standard) No. 213, “Child Restraint Systems,” and adds FMVSS No. 213a, which is referenced by Standard No. 213. According to NHTSA, the final rule fulfills a statutory mandate set forth in the Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, 126 Stat. 405 (July 6, 2012), which directed the Secretary of Transportation (and NHTSA by delegation) to issue a final rule to improve the protection of children seated in child restraint systems during side impacts.

The Congressional Review Act (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 *Congressional Record* reflects receipt by the Senate on February 29, 2024, 170 Cong. Rec. S2345 (Mar. 11, 2024), and receipt by the House on February 28, 2024, 170 Cong. Rec. H1091 (Mar. 11, 2024). The rule was published in the *Federal Register* on June 30, 2022, and it has a stated effective date of August 1, 2022. 87 Fed. Reg. 39234. Therefore, based on the date of publication, 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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large, stylized initial 'S'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Milton E. Cooper
Director, Rulemaking Operations
National Highway Traffic Safety Administration

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,
CHILD RESTRAINT SYSTEMS—
SIDE IMPACT PROTECTION, INCORPORATION BY REFERENCE”
(RIN: 2127-AK95)

(i) Cost-benefit analysis

The Department of Transportation, National Highway Traffic Safety Administration (NHTSA) conducted an analysis of the costs and benefits of the final rule. NHTSA provided the following tables summarizing its analysis:

Table 1: Annual Estimated Benefits

Fatalities	3.7
Non-fatal injuries	41 (40.9)

Table 2: Estimated Monetized Benefits (in millions of 2020 dollars)

	Economic benefits	Value of statistical life	Total benefits
3 Percent Discount Rate	\$26.24	\$142.72	\$168.97
7 Percent Discount Rate	\$23.63	\$128.53	\$152.16

Table 3: Estimated Costs (2020 economics)

Average cost per child restraint system designed for children in a weight range that includes weights up to 40 lbs.	\$0.58
Total annual cost	\$7.37 million

Table 4: Annualized Costs and Benefits (in millions of 2020 dollars)

	Annualized costs	Annualized benefits	Net benefits
3 Percent Discount Rate	\$7.37	\$168.97	\$161.60
7 Percent Discount Rate	\$7.37	\$152.16	\$144.79

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 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 under the Act.

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

NHTSA stated that the final rule does not result in costs to state, local, or tribal governments, in the aggregate, or to the private sector of \$158 million (\$100 million, adjusted for inflation) or more in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, NHTSA did not discuss the Act.

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

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

NHTSA promulgated a proposed rule on January 28, 2014. 79 Fed. Reg. 4570. NHTSA stated that it received 29 comments from child restraint manufacturers, the Juvenile Products Manufacturers Association, consumer advocates, the National Transportation Safety Board, research bodies and testing organizations, a supplier of honeycomb, and members of the general public. NHTSA responded to comments in the final rule.

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

NHTSA stated that there are no collections of information in this final rule.

Statutory authorization for the rule

NHTSA promulgated the final rule pursuant to sections 322, 30111, 30115, 30117, and 30166 of title 49, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

NHTSA stated that OMB determined that the final rule is significant pursuant to the Order, and NHTSA therefore considered the impact of the final rule through preparation of a final regulatory impact analysis.

Executive Order No. 13132 (Federalism)

NHTSA determined that the final rule will not have substantial direct effects 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, and therefore that no additional consulting is required under the Order.