

Appendix: Background on Regulation at NHTSA

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NHTSA is an agency within the Department of Transportation responsible for administering the Motor Vehicle Safety Act (Safety Act). The Safety Act is the principal federal statute for promulgating motor vehicle safety standards. During my time as Deputy Administrator and Acting Administrator and consistent with my roles, I was heavily involved in the agency's rulemaking efforts, which included issuance of a number of final rules establishing safety standards.

The Safety Act was enacted "to reduce traffic accidents and deaths and injuries resulting from traffic accidents." 49 U.S.C. § 30101. The Act mandates that NHTSA prescribe motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. *Id.* § 30111(a). Under the Act, "motor vehicle safety" means "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle," and "motor vehicle safety standard" means a minimum performance standard for motor vehicles or motor vehicle equipment, *id.* §§ 30102(a)(9), (10).

When prescribing federal motor vehicle safety standards, NHTSA must consider all relevant available motor vehicle safety information, whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed, and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths. *Id.* §§ 30111(a), (b). To ensure that a safety

standard is practicable, the agency must consider all relevant factors, including technological ability to achieve the goal of the standard and cost. Safety, however, is the preeminent factor for NHTSA to consider when promulgating safety standards.

In 2015 alone, 35,092 people lost their lives and 2.44 million people were injured in traffic crashes in the United States. According to NHTSA's most recent study, motor vehicle crashes in the United States in 2010 had an estimated \$871 billion economic and societal impact on Americans, or the equivalent of nearly 2 percent of the U.S. GDP in that year.

In my experience, the significant benefits of safety standards almost always outweigh the costs required to meet them. The largest costs typically result from automakers adopting and incorporating new technologies into vehicles, while the largest benefits come from saving lives and preventing injuries. For example, in August 2014, while I served as Acting Administrator of NHTSA, the agency issued an advance notice of proposed rulemaking to require all new light vehicles to include crash-avoidance technologies that allow vehicles to communicate with one another to enable them to warn drivers of imminent crashes. This system is known as vehicle-to-vehicle (V2V) communications. NHTSA noted at that time that its belief that “V2V capability will not develop absent regulation, because there would not be any immediate safety benefits for consumers who are early adopters of V2V. V2V begins to provide safety benefits only if a significant number of vehicles in the fleet are equipped with it and if there is a means to ensure secure and reliable communication between vehicles. NHTSA believes that no single manufacturer would have the incentive to build vehicles able to ‘talk’ to other vehicles, if there are no other vehicles to talk to—leading to likely market failure without the creation of a mandate to induce collective action.” 79 Fed. Reg. 49270 (2014). The notice of proposed rulemaking reiterated this view. 82 Fed. Reg. 3854 (2017). It proposed a phased-in V2V

standard, with costs changing over the period of the phase-in. NHSTA estimated that the technology would prevent 425,000–524,500 crashes that year and afford estimated monetary benefits of between \$53 and \$71 billion. *Id.* These benefits would dwarf NHTSA's estimated that the safety standard would have net positive benefits within 3-5 years. *Id.* at 3982-4000.

Likewise, while I served as Acting Administrator, NHTSA issued a proposed rule to upgrade the federal motor vehicle safety standard for child-restraint systems to ensure that child passengers are protected in side crashes. The proposed upgrades would include a first-ever side impact test for car seats sold in the U.S. that are designed for children weighing up to 40 pounds. NHSTA estimated that the proposed rule would prevent 5.2 fatalities and 64 non-fatal injuries annually. NHTSA further estimated that the annual cost of the proposed rule would be approximately \$3.7 million, reflecting product changes with a retail cost of approximately \$0.50 per child-restraint system, and would achieve annual net benefits of \$162.0 million to \$178.9 million. See 79 Fed. Reg. 4570, 4572 (2014).

Similarly, in November 2013, NHTSA issued a final rule requiring lap and shoulder seat belts for each passenger and driver seat on new motorcoaches and other large buses. This rule enhances the safety of these vehicles by significantly reducing the risk of fatalities and serious injuries in frontal crashes and the risk of occupant ejection in rollovers. On average, 21 motorcoach and large bus occupants are killed and 7,934 are injured annually in motor vehicle crashes, according to NHTSA data. Requiring seat belts could reduce fatalities by up to 44 percent and reduce the number of moderate to severe injuries by up to 45 percent. NHTSA estimated that installing lap/shoulder seat belts on new covered buses will save 1.7 – 9.2 lives and prevent 146 – 858 injuries annually. NHTSA further estimated total costs to range from \$6.4

to \$8.6 million for the 2,200 buses sold per year in 2008 dollars, for a net benefit of X. See 78 Fed. Reg. 70416, 70418–19 (2013).

To rescind a safety standard, NHTSA must go through the same procedural rulemaking process and apply the same substantive considerations as required when it promulgates a new standard. It must make a reasoned analysis based on the rulemaking record, taking into account the substantive concerns of the Safety Act. Thus, safety must remain the primary concern of the rulemaking.

If an executive order required NHTSA to offset the costs of a new safety standard (without consideration of the standard's benefits) by repealing at least two regulations, NHTSA would likely be unable to issue new safety standards at all as it would require reversing life-saving regulations, putting Americans at risk of injury or death, contrary to the Safety Act. The rulemaking record for repeal of an existing standard would seldom if ever support repeal under the executive order, as current motor vehicle safety standards afford considerable benefits. In addition, NHTSA would be forced to consider costs in a way unauthorized by the Safety Act, as cost would essentially become the preeminent factor in NHTSA's decision making. An executive order requiring costs to be offset by repeal of other regulations would impose a new cost consideration not authorized by the Safety Act and prevent issuance of reasonable, practicable, and appropriate motor vehicle safety standards that would reduce traffic accidents and associated deaths.

While I was at NHTSA, the agency issued final safety standards to address seatbelts in motorcoaches, as discussed above, and rearward visibility. I do not believe that it would have been possible to achieve the benefits of the motor vehicle safety standards issued while I was at NHTSA if NHTSA had been required to offset its costs by repealing regulations or by finding

other agencies willing to repeal two or more existing regulations to enable NHTSA to issue a new safety standard. In addition, NHTSA issued notices of proposed rulemaking with respect to at least five other safety standards. I do not believe that it would have been possible to notice these proposed rules if NHTSA had been required to identify when it published the proposed rules two existing rules that would be repealed to offset the costs of the proposed rules.

The net result would have been to leave hundreds of thousands of Americans exposed to an increased risk of death or injury.

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