

United States General Accounting Office

Selected Rules of the
Federal Highway Administration

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Resources, Community, and
Economic Development Division

B-223735

January 6, 1989

The Honorable Frank R. Lautenberg
Chairman, Subcommittee on
Transportation and Related Agencies
Committee on Appropriations
United States Senate

NCJRS

MAY 8 1989

The Honorable William Lehman
Chairman, Subcommittee on
Transportation and Related Agencies
Committee on Appropriations
House of Representatives

ACQUISITIONS

Your February 29, 1988, letter requested that we examine selected National Highway Traffic Safety Administration (NHTSA) activities, including certain rulemaking actions. On September 26, 1988, we briefed your representative on the results of our work. As agreed, we are providing this summary of the rulemaking review and approval process for three specific rulemaking subjects--rear seat lap/shoulder belts, side impact protection, and head restraints for light trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less.

In summary, we found that as of December 13, 1988, none of these rulemaking actions had been finalized. As of that date, each had been in process between 21 and 27 months. According to NHTSA, the agency takes about 2 years on average to issue a final rule, although individual issuance times can vary significantly. A proposed rule on rear seat lap/shoulder belts was published in the Federal Register on November 29, 1988, and its public comment period will close on January 30, 1989. Also, a proposed rule on head restraints was published in the Federal Register on December 13, 1988, and its public comment period will close on February 13, 1989. The public comment period for four separate side impact protection rulemakings closed in October 1988, and NHTSA was reviewing the comments before deciding whether to proceed further. Prospective issue dates were not available for any of the proposed rules.

The rulemaking process may consist of three stages: an Advance Notice of Proposed Rulemaking, a Notice of Proposed Rulemaking, and a final rule. An Advance Notice is a

preliminary notice announcing that NHTSA is considering a regulatory action. It describes the general area that may be subject to regulation and, following approval by NHTSA and the Office of the Secretary of Transportation (OST), is published in the Federal Register to solicit public comments on the issues and options being discussed. However, not all rulemaking actions begin with an Advance Notice; it is issued only when NHTSA believes it needs to gather more information before developing a Notice of Proposed Rulemaking. Once NHTSA develops a Notice and it is approved by OST and the Office of Management and Budget (OMB), it is published in the Federal Register to solicit public comments. After the comment period on the Notice closes, NHTSA reviews the comments as well as any other information it has gathered, reevaluates the proposed rule, and develops the final rule. The final rule, again after approval by both OST and OMB, is published in the Federal Register 30 days before its effective date.

Principal actions on each of the three rulemaking subjects follow.

- NHTSA started the rulemaking process on rear seat lap/shoulder belts in September 1986. NHTSA published an Advance Notice in the Federal Register on June 16, 1987. The comment period closed on July 31, 1987. Following the close of the Advance Notice comment period, NHTSA began working on a Notice of Proposed Rulemaking. The Notice was approved by OST on October 4, 1988, and forwarded to OMB for review and approval on that date. OMB completed its review and approved the Notice for publication in the Federal Register on November 23, 1988. The Notice was published in the Federal Register on November 29, 1988, and its comment period will close on January 30, 1989. As of December 13, 1988, 2 years and 3 months had elapsed since the start of the rulemaking process.
- As early as March 1987, NHTSA was drafting four separate side impact rulemakings. One of these is a Notice of Proposed Rulemaking to upgrade the test procedures for passenger cars to measure the potential for injuries to an occupant's chest and pelvis. The second is a Notice of Proposed Rulemaking for a new test dummy for use in the proposed upgraded test procedures. Both Notices were approved by OST on September 30, 1987, and forwarded to OMB for review and approval on that date. OMB completed

its review and approved the Notices for publication in the Federal Register on January 20, 1988. The Notices were published in the Federal Register on January 27, 1988, and the comment periods closed on October 24, 1988. NHTSA established a 9-month comment period for the two Notices to allow manufacturers time to conduct tests based on the proposed requirements and to include the test results in their comments on the Notices. As of December 13, 1988, NHTSA was reviewing the comments before deciding whether to proceed to the final rule stage.

The two other side impact rulemakings are an Advance Notice of Proposed Rulemaking to reduce head and neck and ejection injuries in passenger cars and an Advance Notice of Proposed Rulemaking to extend the existing requirements of the side impact safety standard for passenger cars to light trucks, vans, and multipurpose passenger vehicles. Both Advance Notices were approved by OST on August 12, 1988. The Advance Notices were published in the Federal Register on August 19, 1988, and the comment periods closed on October 18, 1988. As of December 13, 1988, NHTSA was reviewing the public comments before deciding whether to proceed to the Notice of Proposed Rulemaking stage. As of that date, 1 year and 9 months had elapsed since the start of these four rulemakings.

- Since October 7, 1986, NHTSA has been working on a Notice of Proposed Rulemaking to extend the current head restraints standard for passenger cars to light trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less. The Notice was approved by OST on April 20, 1988, and forwarded to OMB for review and approval on that date. OMB completed its review and approved the Notice for publication in the Federal Register on December 7, 1988. The Notice was published in the Federal Register on December 13, 1988, and its comment period will close on February 13, 1989. As of December 13, 1988, 2 years and 2 months had elapsed since the start of this rulemaking process.

Section 1 of this report provides more detailed information on the rulemaking process. Sections 2, 3, and 4 provide more specific information on the three rulemaking subjects.

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To prepare this fact sheet, we obtained documentation from NHTSA on its rulemaking process and the three specific rulemaking subjects. Additional information was obtained from interviews with NHTSA's Chief Counsel, Associate Administrators for Rulemaking and Plans and Policy, and officials responsible for NHTSA rulemakings within the Department of Transportation's Office of the General Counsel. Additionally, we interviewed OMB's Branch Chief, Assistant Branch Chief, and desk officer responsible for NHTSA rulemakings within the Office of Information and Regulatory Analysis, Commerce and Lands Branch. Further, we examined OMB's public docket file for the side impact Notice of Proposed Rulemakings to identify the comments, concerns, and/or problems OMB may have had with the rulemakings. This was the only one of the rulemakings we reviewed that had progressed far enough to have an OMB public file at the time we conducted our work. We conducted our detail work from April to October 1988. However, we updated the status of the rulemakings through December 13, 1988.

As agreed, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 7 days from the date of this letter. At that time, we will provide copies to the Secretary of Transportation, the NHTSA Administrator, and other interested parties. If you have any questions about this fact sheet, please contact me on (202) 275-1000.

Major contributors to this fact sheet are listed in appendix I.



Kenneth M. Mead
Associate Director

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ABBREVIATIONS

ANPRM	Advance Notice of Proposed Rulemaking
DOT	Department of Transportation
FHWA	Federal Highway Administration
GAO	General Accounting Office
NHTSA	National Highway Traffic Safety Administration
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
OST	Office of the Secretary of Transportation

SECTION 1

BACKGROUND ON NHTSA'S RULEMAKING PROCESS

The responsibilities of the National Highway Traffic Safety Administration (NHTSA) under its statutory authority include improving highway safety, reducing motor vehicle crashes and related fatalities and injuries, providing information and cost savings to consumers in areas such as bumpers and theft protection, and improving automotive fuel efficiency. NHTSA's goals and objectives are to pursue policies that encourage the development of nonregulatory approaches in meeting its statutory mandate; ensure that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action; and consider alternatives consistent with the Administration's regulatory principles.

In relation to motor vehicle safety, NHTSA's rulemaking process determines whether a federal motor vehicle safety standard should be established or modified. In promulgating any safety standard, NHTSA must consider whether the standard is practicable, meets the need for motor vehicle safety, and is stated in objective terms.

The rulemaking process may be initiated either by NHTSA as a result of its research activities or by a petition from organizations, such as manufacturers and consumer groups, or individuals. According to NHTSA officials, the rulemaking process for a NHTSA-initiated or a petition-initiated rulemaking generally involves the same amount of time--about 2 years. NHTSA-initiated rulemakings, however, are generally preceded by 2 to 3 years of research to identify a safety problem and to determine whether a technical solution exists.

NHTSA'S RULEMAKING OFFICES

Within NHTSA, three offices are primarily responsible for preparing rulemaking documents: the Associate Administrator for Rulemaking, the Associate Administrator for Plans and Policy, and the Office of the Chief Counsel. According to NHTSA officials, these three offices have a total of 80 personnel--engineers, economists, lawyers, and clerical staff--involved in the rulemaking process.

The primary regulatory activity of the Associate Administrator for Rulemaking involves federal motor vehicle safety standards. The Office of the Associate Administrator for Rulemaking prepares the initial set of documents supporting and analyzing a potential rulemaking, prepares summaries of public comments to a specific rulemaking, and coordinates the various rulemaking activities.

The Associate Administrator for Plans and Policy is responsible for preparing studies that analyze the costs and benefits of a proposed rulemaking. According to NHTSA, Plans and Policy's studies analyze four factors: (1) the cost to manufacturers and consumers, (2) the social impact, (3) the impact on employers, and (4) the benefits in terms of lives saved and/or injuries prevented. NHTSA officials informed us that the Associate Administrator's office prepares 20 regulatory studies, on average, each year.

The Office of the Chief Counsel is responsible for drafting the various types of rulemakings for publication in the Federal Register. Additionally, this office responds to interpretation requests on NHTSA rulemakings from manufacturers and individuals. According to NHTSA's Chief Counsel, the office receives between 100 and 300 such requests annually. During recent years, the number of requests has been closer to 300.

In addition to the three rulemaking offices, NHTSA's offices of the Associate Administrator for Enforcement and the Associate Administrator for Research and Development participate in the rulemaking process by reviewing and commenting on proposed rulemakings.

The Rulemaking Work Load

According to the Associate Administrator for Rulemaking, NHTSA has approximately 100 rulemakings ongoing annually.¹ Approximately 80 percent of these are a result of petitions for rulemaking. NHTSA receives between 30 and 40 such petitions annually.

NHTSA does not have a formal process for setting priorities for its rulemakings. NHTSA Order 800-3, issued on July 26, 1983, established internal procedures for processing rulemaking petitions applicable to safety standards. This order prescribed three classifications for rulemaking petitions based on a petition's complexity. According to NHTSA, on February 19, 1988, the order was abolished because its prescribed procedures were considered overly complicated and added burdens to the efficient processing of petitions.

While NHTSA does not have a formal system for assigning priorities to rulemakings, NHTSA officials informed us that they do

¹The rulemakings involve safety, fuel economy, theft, and bumper standards. On August 17, 1988, NHTSA had 92 ongoing rulemakings. Of these, 72 involved safety standards, 12 involved fuel economy standards, 6 involved theft standards, and 2 involved bumper standards.

assign priorities to specific rulemakings. The priorities are based on an Associate Administrator's intuitive knowledge of a specific rulemaking. Also, the Associate Administrator for Rulemaking and the Chief Counsel meet once a month to discuss the status of ongoing rulemakings. Additionally, they meet with NHTSA's Administrator, Deputy Administrator, and Associate Administrator for Plans and Policy every 2 to 3 months to discuss the status of ongoing rulemakings.

THE RULEMAKING PROCESS

The rulemaking process may consist of three stages: an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), and a final rule. An ANPRM is a preliminary notice announcing that NHTSA is considering a regulatory action. It describes the general area that may be subject to regulation and, following approval by NHTSA and the Office of the Secretary of Transportation (OST), is published in the Federal Register to solicit public comments on the issues and options being discussed. Not all rulemakings begin with an ANPRM; it is issued only when NHTSA believes it needs to gather more information before developing an NPRM. Once NHTSA develops an NPRM and it is approved by OST and the Office of Management and Budget (OMB), it is published in the Federal Register to solicit public comments. After the comment period on the NPRM closes, NHTSA reviews the comments as well as any other information it has gathered, reevaluates the proposed rule, and develops the final rule.² The final rule, again after approval by both OST and OMB, is published in the Federal Register 30 days before its effective date.

The ANPRM and the NPRM rulemaking stages involve two steps: proposal and review. The proposal step begins when the Office of the Associate Administrator for Rulemaking develops a Rulemaking Support Paper based on its analysis of NHTSA research or a petition for rulemaking. This paper is reviewed by NHTSA's Chief Counsel and Associate Administrators for Plans and Policy, Enforcement, and Research and Development to obtain comments on whether a rulemaking should be initiated. When a decision is reached to initiate a rulemaking, the Office of the Associate Administrator for Plans and Policy prepares either a Regulatory Impact Analysis for major rulemakings or a Regulatory Evaluation for other rulemakings.³ A major rulemaking is defined as a rulemaking that will have

²At this point, NHTSA could decide not to issue a final rule because further changes are necessary. If so, it could either issue another proposal or terminate the rulemaking.

³Executive Order No. 12291 requires that a Regulatory Impact Analysis be prepared for all major rulemakings. It should contain a benefit-cost analysis of the proposed rulemaking. The Department of Transportation requires that a Regulatory Evaluation be prepared on all nonmajor rulemakings and that it contain an analysis of the economic consequences of the proposed rulemaking.

economic costs of \$100 million or more annually or that is projected to have significant effects on employment, inflation, or industry viability.

Once the Rulemaking Support Paper and the Analysis/Evaluation are prepared, the Chief Counsel's office drafts the proposed rulemaking. The rulemaking is then reviewed and commented on by NHTSA's Associate Administrators for Rulemaking, Plans and Policy, Enforcement, and Research and Development. After the comments are resolved, the rulemaking is then sent to NHTSA's Administrator for approval. Upon approval, the rulemaking is forwarded to the Office of the General Counsel within OST for review and approval.⁴

OST's Review

OST's review of a rulemaking begins when the Office of the General Counsel receives the rulemaking. According to officials in the Office of the General Counsel, all significant and major rulemakings are circulated to all Assistant Secretaries and any affected modal administration for review on the same day the Office of the General Counsel receives the rulemaking. These offices are given a 1-week deadline for their review. However, the process of resolving concerns regarding a specific rulemaking may take longer.

Once the review comments have been resolved, the rulemaking is then reviewed by the General Counsel and, upon approval, forwarded to the Secretary of Transportation for review and approval.

An ANPRM is published in the Federal Register after it is approved by the Secretary. However, after the Secretary approves an NPRM or a final rule, the rulemaking must be sent to OMB for review and approval before it can be published in the Federal Register.

OMB's Review

According to the Regulatory Program of the United States Government, OMB's Office of Information and Regulatory Analysis is responsible for reviewing all draft rulemakings to ensure that the

⁴For final rules, the Associate Administrator for Rulemaking is responsible for analyzing comments to the proposed rule and recommending the final rule. The Chief Counsel is responsible for drafting the final rule. NHTSA's rulemaking development and review process for final rules is the same as for proposed rules.

President's regulatory principles are being carried out.⁵ If according to OMB's interpretation a draft rulemaking is not consistent with those principles, OMB returns the draft rulemaking to the agency for revision. The Office of Information and Regulatory Analysis reviews major rulemakings with special attention. A Regulatory Impact Analysis must accompany major rulemakings at both proposed and final stages. According to Executive Order No. 12291, entitled "Federal Regulation," agencies must submit NPRMs on major rulemakings, accompanied by a preliminary Regulatory Impact Analysis, to OMB at least 60 days before publication in the Federal Register and final rules on major rulemakings, accompanied by a final Regulatory Impact Analysis, to OMB at least 30 days before publication. For nonmajor rulemakings, agencies must submit NPRMs and final rules to OMB at least 10 days before publication in the Federal Register.

⁵Regulatory Program of the United States Government, April 1, 1988 to March 31, 1989, Executive Office of the President, OMB (Washington, D.C.: U.S. Government Printing Office, 1988), p. 14.

SECTION 2

REAR SEAT LAP/SHOULDER BELT RULEMAKING

The current Federal Motor Vehicle Safety Standard Number 208, Occupant Crash Protection, requires that passenger cars, except convertibles, be equipped with lap/shoulder belts in each front outboard (side) seating position and lap belts, at least, in all other seating positions. The standard also requires that multipurpose passenger vehicles and trucks with a gross vehicle weight of 10,000 pounds or less be equipped with lap/shoulder belts in the front outboard seating positions and either a lap or a lap/shoulder belt in all other seating positions. Buses with a gross vehicle weight under 10,000 pounds must be equipped with either a lap or a lap/shoulder belt in the driver position.

On August 8, 1986, the National Transportation Safety Board issued a report on three-point (lap/shoulder) belts. The report concluded that the safety benefits of rear seat lap belts were in doubt and that NHTSA should immediately proceed to require the installation of lap/shoulder belts in rear seats. Also in August 1986, NHTSA granted a petition from the Los Angeles Area Child Passenger Safety Association that requested NHTSA to require the installation of rear seat lap/shoulder belts. As a result of these two actions, NHTSA started the rulemaking process on rear seat lap/shoulder belts in September 1986.

According to NHTSA, if a final rule is published, this rulemaking will have followed the three-stage rulemaking process--ANPRM, NPRM, and final rule. The ANPRM stage began in September 1986 and was completed on July 31, 1987. Since July 31, 1987, NHTSA has been working on the second stage--the NPRM. The NPRM was approved by OMB on November 23, 1988, and published in the Federal Register on November 29, 1988. The following is a chronology of the process from September 1986 through November 29, 1988.

ADVANCE NOTICE OF PROPOSED RULEMAKING

Initial processing of the ANPRM started in September 1986 and was completed on April 6, 1987, when the formal review and approval process began.

As shown in table 2.1, the Department of Transportation's (DOT) review of the ANPRM between April 6 and May 22, 1987, took 42 days. NHTSA's review between April 6 and April 16, 1987, took 10 days, and OST's review between April 20 and May 22, 1987, took 32 days.

Table 2.1: Chronology of DOT's Review of the Rear Seat Lap/Shoulder Belt Advance Notice of Proposed Rulemaking

<u>Action</u>	<u>Date of action taken</u>
Draft ANPRM received by NHTSA's Associate Administrator for Rulemaking from the Chief Counsel's office	April 6, 1987
Draft ANPRM circulated within NHTSA for comment	April 7, 1987
Comments received by the Associate Administrator for Rulemaking and ANPRM sent to the Chief Counsel for revisions	April 9, 1987
Revised ANPRM sent to the NHTSA Administrator for review	April 16, 1987
ANPRM approved by the NHTSA Administrator and sent to OST for review	April 16, 1987
ANPRM received by OST (Office of the General Counsel)	April 20, 1987
ANPRM circulated to the Assistant Secretaries for comment	April 20, 1987
Comments on the ANPRM received by the General Counsel's office ^a	April 24, 1987
ANPRM sent to the Secretary of Transportation for review	May 12, 1987
ANPRM approved by the Secretary	May 22, 1987
ANPRM published in <u>Federal Register</u>	June 16, 1987
ANPRM public comment period closed	July 31, 1987

^aBecause the General Counsel did not receive one set of comments until May 4, 1987, it was delayed in forwarding the ANPRM to the Secretary for review.

Source: NHTSA and OST's Office of the General Counsel.

DEVELOPMENT OF THE NOTICE OF PROPOSED RULEMAKING

After the ANPRM's comment period closed, NHTSA began the NPRM stage by summarizing the public comments to the ANPRM and drafting the Rulemaking Support Paper. Between September 24 and October 8, 1987, the Associate Administrator for Rulemaking circulated the Rulemaking Support Paper within NHTSA for comment. On the basis of information obtained from NHTSA, we found a 6-month interval between October 8, 1987, when the Office of the Associate Administrator for Rulemaking received comments on the Rulemaking Support Paper, and April 11, 1988, when the revised Support Paper was sent to the Office of the Chief Counsel.

We asked NHTSA why this stage of the process took 6 months. According to NHTSA officials, on November 5, 1987, NHTSA decided to prepare a consumer information bulletin that would show when the manufacturers planned to equip their vehicles with rear seat lap/shoulder belts. While NHTSA was collecting this information from the automobile manufacturers, the manufacturers kept revising their plans. Because the changes in the manufacturers' plans had an impact on the number of vehicles affected by the proposed rulemaking, NHTSA had to recalculate the costs and benefits of the proposed rulemaking several times. According to NHTSA, the manufacturers' plans did not become stable until February 1988.

On November 29, 1988, NHTSA published an NPRM in the Federal Register (53 FR 47982) to require manufacturers to install lap/shoulder belts in all forward-facing rear outboard seating positions in passenger cars, light trucks, multipurpose passenger vehicles, and small buses. The proposed rule, if adopted as a final rule, would apply to all passenger cars, except convertibles, manufactured on or after September 1, 1989. It would also apply to convertible passenger cars, light trucks, multipurpose passenger vehicles, and small buses manufactured on or after September 1, 1991. The NPRM's public comment period will close on January 30, 1989.

As shown in table 2.2, DOT's review and approval of the rear seat lap/shoulder belt NPRM between May 12 and October 4, 1988, took 142 days. NHTSA's review between May 12 and June 3, 1988, took 22 days, and OST's review between June 6 and October 4, 1988, took 120 days. Table 2.3 shows OMB's review of the NPRM between October 6 and November 23, 1988--a total of 48 days.

Table 2.2: Chronology of DOT's Review of the Rear Seat Lap/Shoulder Belt Notice of Proposed Rulemaking

<u>Action</u>	<u>Date of action taken</u>
Draft NPRM received by NHTSA's Associate Administrator for Rulemaking from the Chief Counsel's office	May 12, 1988
Draft NPRM circulated within NHTSA for comment	May 20, 1988
Comments received by the Associate Administrator for Rulemaking and NPRM sent to the Chief Counsel for revisions	May 26, 1988
Revised NPRM sent to the NHTSA Administrator for review	May 31, 1988
NPRM approved by the NHTSA Administrator and sent to OST for review	June 3, 1988
NPRM received by OST (Office of the General Counsel)	June 6, 1988
NPRM circulated to the Assistant Secretaries for comment	June 7, 1988
Comments on the NPRM received by the General Counsel's office	June 14, 1988
NPRM sent to the Secretary of Transportation for review	June 16, 1988
NPRM approved by the Secretary and sent to OMB for review	October 4, 1988

Source: NHTSA and OST's Office of the General Counsel.

We met with General Counsel officials to determine why OST's review of the rear seat lap/shoulder belt NPRM took 120 days. They informed us that although the NPRM was sent to the Secretary for review on June 16, 1988, the NPRM and Regulatory Evaluation were returned to NHTSA on June 28, 1988, for a response to the Secretary's concerns regarding the documents. According to the General Counsel officials, the Secretary's primary concern was how NHTSA expressed the costs and benefits of the proposed rule in the NPRM and the Regulatory Evaluation. On August 16, 1988, NHTSA sent the revised NPRM and Regulatory Evaluation to the Office of the General Counsel. The revised NPRM was then sent to the Secretary for review on September 7, 1988. Twenty-seven days later, the Secretary approved the NPRM and sent it to OMB for review.

As shown in table 2.3, OMB received the rear seat lap/shoulder belt NPRM for review and approval from DOT on October 6, 1988. OMB's review of the NPRM between October 6 and November 23, 1988, took 48 days.

Table 2.3: Chronology of OMB's Review of the Rear Seat
Lap/Shoulder Belt Notice of Proposed Rulemaking

<u>Action</u>	<u>Date of action taken</u>
NPRM received by OMB	October 6, 1988
NPRM approved by OMB	November 23, 1988
NPRM published in the <u>Federal Register</u>	November 29, 1988
NPRM public comment period will close	January 30, 1989

Source: OMB and NHTSA.

SECTION 3

SIDE IMPACT PROTECTION RULEMAKINGS

The current Federal Motor Vehicle Safety Standard Number 214, Side Door Strength, which applies only to passenger cars, specifies performance requirements for each side door to mitigate occupant injuries from side impact crashes. As a result of NHTSA's analysis of accident data on side impact crash injuries, NHTSA decided to initiate four separate side impact rulemakings. Two of the rulemakings involved NPRMs: one upgrading the test procedures for passenger cars to measure the potential for injuries to an occupant's chest and pelvis and one proposing the specifications and calibration requirements for a test dummy that would be appropriate for use in the proposed new procedures. The other two rulemakings involved ANPRMs: one to reduce head and neck and ejection injuries in passenger cars and one to extend the safety standard to light trucks, vans, and multipurpose passenger vehicles.

NHTSA officials did not know exactly when they began drafting the side impact protection rulemakings. However, according to the NHTSA Administrator's March 24, 1987, testimony before the Subcommittee on the Department of Transportation and Related Agencies, House Appropriations Committee, NHTSA was drafting the side impact rulemakings at that time. NHTSA's Administrator also stated that NHTSA anticipated publishing the rulemakings during the summer of 1987.

The NPRMs were published in the Federal Register on January 27, 1988, and their comment period closed on October 24, 1988. As of December 13, 1988, NHTSA was reviewing the comments it received before deciding whether to proceed to the final rule stage. Both ANPRMs were published in the Federal Register on August 19, 1988, with the comment periods closing on October 18, 1988. NHTSA was also reviewing, as of December 13, 1988, the comments it received in response to the ANPRMs before deciding whether to proceed to the NPRM rulemaking stage.

NOTICE OF PROPOSED RULEMAKINGS CONCERNING CHEST AND PELVIS INJURIES

On January 27, 1988, NHTSA published two NPRMs in the Federal Register concerning side impact protection. One NPRM proposed amending the side door strength standard, while the other NPRM, which supplemented the first NPRM, proposed the specifications and calibration requirements for a new side impact test dummy. The comment period for both NPRMs closed on October 24, 1988. According to NHTSA officials, the 9-month comment period was established to allow manufacturers time to conduct tests based on the proposed requirements and to include the test results in their comments on the NPRMs.

The side impact NPRM that would amend the side door strength standard (53 FR 2239) requested comments on NHTSA's proposal to require an additional test demonstrating that a passenger car's doors could protect its occupants. In a full-scale crash test, the car would be struck on either side by a moving barrier simulating another vehicle, and newly developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's chest and pelvis. The companion NPRM (53 FR 2254) described the newly developed instrumented test dummy and requested comments on NHTSA's proposed specifications and calibration requirements.

On the basis of information obtained from NHTSA, we found that the review process for both NPRMs began on July 6, 1987. As shown in table 3.1, DOT's review of the side impact NPRMs between July 6 and September 30, 1987, took 85 days. NHTSA's review between July 6 and September 17, 1987, took 73 days, and OST's review between September 18 and September 30, 1987, took 12 days. Table 3.2 shows OMB's review of the NPRMs between October 2, 1987, and January 20, 1988--a total of 110 days.

Table 3.1: Chronology of DOT's Review of the Side Impact Notice of Proposed Rulemakings

<u>Action</u>	<u>Date of action taken</u>
Draft NPRMs received by NHTSA's Associate Administrator for Rulemaking from the Chief Counsel's office	July 6, 1987
Draft NPRMs circulated within NHTSA for comment	July 29, 1987
Comments received by the Associate Administrator for Rulemaking and NPRMs sent to the Chief Counsel for revisions	August 28, 1987
Revised NPRMs sent to the NHTSA Administrator for review	September 16, 1987
NPRMs approved by the NHTSA Administrator and sent to OST for review	September 17, 1987
NPRMs received by OST (Office of the General Counsel)	September 18, 1987
NPRMs circulated to the Assistant Secretaries for comment	September 18, 1987
Comments on the NPRMs received by the General Counsel's office	September 24, 1987
NPRMs sent to the Secretary of Transportation for review	September 24, 1987
NPRMs approved by the Secretary and sent to OMB for review	September 30, 1987

Source: NHTSA and OST's Office of the General Counsel.

On October 2, 1987, OMB received the side impact NPRMs from DOT for review and approval. On the basis of our review of OMB's public docket file on the side impact NPRMs and information provided to us by NHTSA, we found that OMB's review of the NPRMs between October 2, 1987, and January 20, 1988, took 110 days. The chronology of OMB's review is in table 3.2.

Table 3.2: Chronology of OMB's Review of the Side Impact Notice of Proposed Rulemakings

<u>Action</u>	<u>Date of action taken</u>
NPRMs received by OMB	October 2, 1987
OMB letter sent to notify NHTSA that its review would take longer than 60 days	December 10, 1987
OMB and NHTSA met to discuss five issues OMB had concerning the NPRMs	December 16, 1987
NHTSA provided response to OMB on one of the five issues	December 17, 1987
NHTSA provided OMB its changes to the preliminary Regulatory Impact Analysis and NPRMs, which responded to the remaining issues	January 13, 1988
NPRMs approved by OMB	January 20, 1988
NPRMs published in <u>Federal Register</u>	January 27, 1988
NPRMs public comment period closed	October 24, 1988

Source: NHTSA and OMB public docket file on the side impact NPRMs.

We contacted OMB's desk officer for NHTSA rulemaking actions to determine why OMB's review of the side impact NPRMs took 110 days. According to the desk officer and his superiors, it is OMB's policy not to release such information outside the Executive Office of the President. However, on the basis of our review of OMB's public docket file on the side impact NPRMs and discussions with NHTSA officials, we found that OMB had requested NHTSA to address five issues in the NPRMs and/or the preliminary Regulatory Impact Analysis. The NPRMs and preliminary Regulatory Impact Analysis were revised to reflect NHTSA's responses to these issues and resubmitted to OMB on January 13, 1988. In general, OMB requested that NHTSA include a discussion on

- what was included and not included in calculating the economic cost to society and the willingness-to-pay concept for life and injury valuation,
- how safety benefits accrue over the life of the vehicles affected,
- what the costs are of the door retention part of the proposed standard, and
- how the confidence levels around the Thoracic Trauma Index (a measurement taken from the test dummy) compare with the probability-of-injury curves (these relate the test dummy measurements to the probabilities of people suffering various injury levels).

Concerning the fifth issue, an OMB official, at the December 16, 1987, meeting between OMB and NHTSA, requested information on the number of fatalities in side impact crashes if everyone wore restraints. According to NHTSA officials, this information was provided to OMB over the telephone on December 17, 1987.

ADVANCE NOTICE OF PROPOSED RULEMAKINGS
CONCERNING ADDITIONAL SIDE IMPACT
PROTECTION

On August 19, 1988, NHTSA published two ANPRMs in the Federal Register concerning side impact protection. One ANPRM involved possible requirements for passenger cars, while the other ANPRM involved light trucks, vans, and multipurpose passenger vehicles. The comment period for both ANPRMs closed on October 18, 1988.

The side impact ANPRM for passenger cars (53 FR 31712) requested comments to assist NHTSA in developing a requirement to reduce the risk of head and neck and ejection injuries in side impact crashes between vehicles in which side protection is a relevant factor. NHTSA also requested comments on whether additional requirements should be considered to better protect occupants when a side collision involves a stationary object, such as a pole or tree.

The side impact ANPRM for light trucks, vans, and multipurpose passenger vehicles (53 FR 31716) requested comments on whether the existing requirements of the side impact safety standard for passenger cars or similar requirements should be extended to these vehicles. NHTSA also requested comments on whether additional requirements should be considered to better protect occupants when a side collision involves a stationary object, such as a pole or tree.

On the basis of information obtained from NHTSA, we found that the review process for both ANPRMs began on March 31, 1988. As shown in table 3.3, DOT's review of the side impact ANPRMs between March 31 and August 12, 1988, took 131 days. NHTSA's review between March 31 and May 13, 1988, took 43 days, and OST's review between May 16 and August 12, 1988, took 88 days.

Table 3.3: Chronology of DOT's Review of the Side Impact Advance Notice of Proposed Rulemakings

<u>Action</u>	<u>Date of action taken</u>
Draft ANPRMs received by NHTSA's Associate Administrator for Rulemaking from the Chief Counsel's office	March 31, 1988
Draft ANPRMs circulated within NHTSA for comment	April 5, 1988
Comments received by the Associate Administrator for Rulemaking and ANPRMs sent to the Chief Counsel for revisions	April 7, 1988
Revised ANPRMs sent to the NHTSA Administrator for review	May 3, 1988
ANPRMs approved by the NHTSA Administrator and sent to OST for review	May 13, 1988
ANPRMs received by OST (Office of the General Counsel)	May 16, 1988
ANPRMs circulated to the Assistant Secretaries and the Federal Highway Administration for comment	May 23, 1988
Comments on the ANPRMs received by the General Counsel's office	July 11, 1988
ANPRMs sent to the Secretary of Transportation for review	July 15, 1988
ANPRMs approved by the Secretary	August 12, 1988
ANPRMs published in <u>Federal Register</u>	August 19, 1988
ANPRMs public comment period closed	October 18, 1988

Source: NHTSA and OST's Office of the General Counsel.

We met with General Counsel officials to determine why OST's review of the two side impact ANPRMs took 88 days. We found that 49 of the 88 days involved NHTSA resolving the Federal Highway Administration's (FHWA) concerns regarding the ANPRMs. According to the attorney responsible for NHTSA rulemakings within the General Counsel's office, FHWA had some concerns because the ANPRMs did not take into account FHWA's ongoing highway safety research on side impact crashes with objects such as breakaway poles. Between May 23 and July 11, 1988, FHWA and NHTSA worked together to resolve FHWA's concerns. NHTSA agreed with FHWA's comments, and FHWA sent its comments to the Office of the General Counsel on July 11, 1988. On July 15, 1988, the Office of the General Counsel sent the two ANPRMs to the Secretary, who approved them on August 12, 1988.

SECTION 4

HEAD RESTRAINTS RULEMAKING

The current Federal Motor Vehicle Safety Standard Number 202, Head Restraints, applies to passenger cars only and specifies head restraint requirements to reduce the frequency and severity of neck injuries in rear end and other collisions. On October 7, 1986, NHTSA received a petition for rulemaking from a private citizen to require head restraints on vehicles other than passenger cars. NHTSA received a second petition from a private citizen on August 25, 1987, requesting NHTSA to issue a safety standard that would "minimize spinal, cerebral, cranial, and vertebral injuries that occur when light trucks are involved in rear end collisions." Since October 1986, NHTSA has been working on an NPRM to amend the current standard to include vehicles other than passenger cars.

On December 13, 1988, NHTSA published an NPRM in the Federal Register (53 FR 50047) to extend the applicability of the head restraints standard to light trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less. NHTSA also requested public comments on issues relating to the use of certain types of energy-absorbing glazing materials and mounting systems in the rear window of light trucks to minimize head and spinal injuries. The proposed rule, if adopted as a final rule, would be effective on September 1, 1991. The NPRM's public comment period will close on February 13, 1989.

Initial processing of the NPRM started in October 1986 and was completed in November 1987, when the formal review and approval process began. As shown in table 4.1, DOT's review of the NPRM on head restraints between November 9, 1987, and April 20, 1988, took 163 days. NHTSA's review between November 9, 1987, and March 9, 1988, took 121 days, and OST's review between March 9 and April 20, 1988, took 42 days. Table 4.2 shows OMB's review of the NPRM between April 20 and December 7, 1988--a total of 231 days.

Table 4.1: Chronology of DOT's Review of the Head Restraints
Notice of Proposed Rulemaking

<u>Action</u>	<u>Date of action taken</u>
Draft NPRM received by NHTSA's Associate Administrator for Rulemaking from the Chief Counsel's office	November 9, 1987
Draft NPRM circulated within NHTSA for comment	December 7, 1987
Comments received by the Associate Administrator for Rulemaking and NPRM sent to the Chief Counsel for revisions	January 21, 1988
Revised NPRM sent to the NHTSA Administrator for review	March 3, 1988
NPRM approved by the NHTSA Administrator and sent to OST for review	March 9, 1988
NPRM received by OST (Office of the General Counsel)	March 9, 1988
NPRM circulated to the Assistant Secretaries for comment	March 9, 1988
Comments on the NPRM received by the General Counsel's office	March 18, 1988
NPRM sent to the Secretary of Transportation for review	April 8, 1988
NPRM approved by the Secretary of Transportation and sent to OMB for review	April 20, 1988

Source: NHTSA and OST's Office of the General Counsel.

In October 1988, we contacted OMB's desk officer for NHTSA rulemaking actions to determine why the NPRM had been there for approximately 6 months and to determine the current review status of the NPRM. The desk officer and his superiors informed us that it is OMB's policy not to release such information outside the Executive Office of the President.

The NPRM was approved by OMB on December 7, 1988. As shown in table 4.2, OMB's review of the NPRM between April 20 and December 7, 1988, took 231 days. Within that time period, DOT's Associate Deputy Secretary and the Secretary of Transportation had separate meetings with OMB officials to discuss OMB's concerns regarding the NPRM.

Table 4.2: Chronology of OMB's Review of the Head Restraints Notice of Proposed Rulemaking

<u>Action</u>	<u>Date of action taken</u>
NPRM received by OMB	April 20, 1988
OMB officials and DOT's Associate Deputy Secretary meet to discuss OMB's concerns regarding the NPRM	August 19, 1988
Meeting between OMB officials and the Secretary of Transportation at which time OMB agreed to approve the NPRM if NHTSA added two questions to the NPRM and the Regulatory Evaluation	November 30, 1988
NHTSA provided OMB its changes to the NPRM and Regulatory Evaluation	December 5, 1988
NPRM approved by OMB	December 7, 1988
NPRM published in the <u>Federal Register</u>	December 13, 1988
NPRM public comment period will close	February 13, 1989

Source: OMB and NHTSA.

According to an official in NHTSA's Office of the Associate Administrator for Plans and Policy, OMB officials agreed, at the November 30, 1988, meeting with the Secretary, to approve the NPRM if NHTSA added two questions to the NPRM and the Regulatory Evaluation: (1) What are the costs associated with whiplash injury? (2) What would be the costs, regarding the marginal cost benefit, if the proposed requirements were limited to certain classes of trucks defined by weight and by type (e.g., pickup trucks, vans). The NPRM and Regulatory Evaluation were revised to include the two questions and resubmitted to OMB on December 5, 1988.

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GLOSSARY

Advance Notice of
Proposed Rulemaking

A preliminary notice, published in the in the Federal Register, announcing that an agency is considering a regulatory action. The agency may issue an Advance Notice before it develops a detailed proposed rule. The Advance Notice describes the general area that may be subject to regulation and asks for public comments on the issues and options being discussed. An Advance Notice is issued only when an agency believes it needs to gather more information before proceeding to a formal regulatory proposal.

Major regulation

Any regulation that is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Notice of Proposed
Rulemaking

The document an agency issues and publishes in the Federal Register that describes and solicits public comments on a proposed regulatory action.

Regulatory Evaluation

Required for any proposed rulemaking that does not require a Regulatory Impact Analysis. The evaluation should include an analysis of the economic consequences of the proposed rulemaking, quantifying, to the extent practicable, its estimated cost to the private sector, consumers, and federal, state, and local governments, as well as its anticipated benefits and impacts.

Regulatory Impact
Analysis

Required by Executive Order No. 12291 for any proposed major rule. The analysis assesses the potential benefits, costs, and net benefits of a

Rulemaking Support
Paper

proposed rulemaking.

The initial set of documents, prepared by NHTSA's Office of the Associate Administrator for Rulemaking, that forms the basis of a proposed rulemaking. The Paper includes information describing the safety problem, an analysis of potential alternatives to reduce fatalities and injuries related to the problem, the associated costs and benefits of the proposed rulemaking, and highlights of the proposed rulemaking.

Significant Rulemaking

As prescribed by DOT, a rulemaking that (1) is a major regulation; (2) concerns a matter on which there is substantial public interest or controversy; (3) has a major impact on another operating administration, other parts of the Department, or other federal agencies; (4) has a substantial effect on state and local governments; (5) has a substantial impact on a major transportation safety problem; (6) initiates a substantial regulatory program or change in policy; (7) is substantially different from international requirements or standards; or (8) involves important Department policy.

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