

NHTSA Rulemaking Process

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General Principles

- General requirements: Federal agencies develop and issue rules in accordance with several statutes and executive orders that require that certain procedures be followed and certain factors considered.
- Specific agency procedures: Additional requirements apply where an agency's authorizing statute requires certain procedures or dictates certain deadlines or substantive provisions.

Administrative Procedure Act

- Enacted in 1946 to ensure public participation and common procedures in Federal rulemaking
- Defines rules and distinguishes them from orders (5 U.S.C. § 551)
- Sets forth basic procedural requirements for all rules (5 U.S.C. § 553)
- Publish notice of proposed rulemaking (NPRM) in Federal Register, including either substance of proposed rule or description of subjects and issues

Administrative Procedure Act

- After NPRM, provide opportunity for written comment with or without opportunity for oral presentation
- Consider the relevant matter presented
- In final rule, include a statement of the rule's basis and purpose
- Publish final rule at least 30 days before its effective date (with some exceptions)

Administrative Procedure Act

Establishes criteria by which rules (and other final agency actions) may be reviewed by federal courts (5 U.S.C. § 706); based on its review of the record, the court may:

- compel agency action unlawfully withheld or unreasonably delayed
- hold unlawful and set aside agency action found to be:

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law

contrary to constitutional right, power, privilege, or immunity

in excess of statutory jurisdiction, authority, or limitations, or short of statutory right

without observance of procedure required by law

Other General Federal Laws

Regulatory Flexibility Act (5 U.S.C. §§601-612)

- If a rule will have “a significant impact on a substantial number of small entities,” agency must prepare a Regulatory Flexibility Analysis explaining burdens and alternatives

Congressional Review of Rules (5 U.S.C. §§801-808)

- Agencies must submit all final rules to Congress before they take effect, which gives Congress an opportunity to overturn them
- “Major” rules (e.g., one with costs over \$100 million per year) cannot take effect for at least 60 days after submission

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

- Agencies must consider paperwork and other information collection burdens that a rule or other action will impose; OMB must approve any new requirement before it can be enforced

Executive Orders

Executive Order 12866: Regulatory Planning and Review (1993)

- Establishes as policy that benefits of a rule should justify its costs
- Encourages collaborative rulemaking and requires comment period of at least 60 days
- Requires publication of semi-annual agenda of all regulatory actions
- Requires that all “significant” rules be submitted to OMB for review at both NPRM and final rule stages, and that agency send summary of all pending rules to OMB for decision on significance (the “60-day list”); note significance criteria
- Requires preparation and submission of an assessment of costs and benefits of rule

Executive Orders

Executive Order 13563: issued January 18, 2011

- Supplemental to and affirms EO 12866
- Emphasizes: selecting options that maximize benefits and minimize burdens
- Requires analyses of existing significant rules that might be outmoded, ineffective, insufficient, or excessively burdensome

NHTSA's Own Statutes

National Traffic and Motor Vehicle Safety Act (49 U.S.C. chapter 301)

- Authorizes NHTSA to issue safety standards for motor vehicle or equipment performance that are practicable, meet the need for motor vehicle safety, and are stated in objective terms
- Requires consideration of available motor vehicle safety information
- Mandates to do particular rules (e.g., air bags, rollover protection) may be included in the Safety Act or be part of other statutes such as reauthorization legislation

Federal Motor Vehicle Safety Standards (FMVSS) 49 CFR Part 571

- 100 Series
 - Crash Avoidance Standards
 - Light systems, braking systems, rearview mirrors, controls & displays, tires, etc
- 200 Series
 - Crashworthiness Standards
 - Occupant protection, seating systems, advanced air bags, seat belt assemblies, child restraint systems, etc
- 300 Series
 - Post-Crash Standards
 - Fuel System Integrity, flammability of interior materials, component integrity

NHTSA'S RULEMAKING PROCESS

- Decision to begin rulemaking based on:
 - Congressional mandate
 - Research showing safety problem
 - Experience indicating need for amendment, or
 - Petition from public
- Research and information collection

NHTSA'S RULEMAKING PROCESS

- Drafting rulemaking support paper
- Drafting proposed rule (preamble and text)
- Drafting economic analysis
- Review within NHTSA
- Significant rule: review by OST then OMB (60 to 90 days) prior to issuance
- Approval and issuance of NPRM

NHTSA'S RULEMAKING PROCESS

- Review of comments
- Drafting of final rulemaking support paper, economic analysis, and rule
- Review within NHTSA
- Significant rule: review by OST, then OMB prior to issuance
- Approval and issuance of final rule
- Petition for reconsideration: if received, may require additional notice and review