

IX. REGULATORY FLEXIBILITY ACT AND UNFUNDED MANDATES REFORM ACT ANALYSIS

A. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. §601 et seq.) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions.

5 U.S.C. §Section 603 requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (RFA) describing the impact of proposed rules on small entities. Section 603(b) of the Act specifies the content of a RFA. Each RFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and legal basis for, the proposed rule;
3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4. A description of the projected reporting, record keeping and other compliance requirements of a proposed rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

6. Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Description of the reasons why action by the agency is being considered

NHTSA is considering this action to preserve and enhance the benefits of air bags for all occupants while eliminating or minimizing the risk of air bag induced injuries.

The sheer number and variety of available technological opportunities creates special challenges from a regulatory perspective. While the availability of multiple technologies provide more opportunity to the current problem with air bags, it also means that the agency must take special care to ensure that the regulatory language it adopts would not be unnecessarily design-restrictive.

While air bags are highly effective in reducing the likelihood of death or serious injury in motor vehicle crashes, the degree of their effectiveness depends upon the correct combination of the air bags speed and aggressiveness of inflation and the positioning of the occupant at the time of deployment.

2. Objectives of, and legal basis for, the final rule

This document proposes to require that motor vehicles be tested to minimize or eliminate the risk of air bag injury to (a) drivers which end up too close to the air bag and (b) children if placed in the front passenger-side seat.

NHTSA has issued this proposal under the authority of the NHTSA Reauthorization Act of 1998 and 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50. The agency is authorized to issue Federal motor vehicle safety standards that meet the need for motor vehicle safety.

3. Description and estimate of the number of small entities to which the proposed rule will apply

The proposed rule would affect motor vehicle manufacturers, second-stage or final-stage manufacturers, alterers, air bag manufacturers, dummy manufacturers, and manufacturers of seating systems. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. To qualify as a small business in the Motor Vehicles and Passenger Car Bodies (SIC 3711), the firm must have fewer than 1,000 employees. For air bag manufacturers and seating systems suppliers to qualify as a small business in the Motor Vehicle Parts and Accessories category (SIC 3714), the firm must have fewer than 750 employees. Test dummy manufacturers must have fewer than 500 employees to qualify as a small business.

Currently, there are about 4 small motor vehicle manufacturers in the United States. These manufacturers will have difficulty certifying compliance with the proposed tests, just as it is currently hard for them to meet the air bag requirements. Many of these manufacturers have in the past petitioned NHTSA for temporary relief on the air bag rule because of economic hardship. This proposal would add to their difficulties. Much of the air bag work for these small vehicle manufacturers is done by air bag suppliers.

There are a significant number (several hundred) of second-stage or final-stage manufacturers and alterers that could be impacted by the proposal. These manufacturers buy incomplete vehicles or add seating systems to vehicles without seats, or take out existing seats and add new seats. Many of these vehicles are van conversions, but there are a variety of vehicles affected. The common thread for these vehicles and most of the problems arise when the seat becomes involved. If a manufacturer uses a sensing system in the seat for weight sensing or presence sensing, then the second-stage manufacturer or alterer may need to use seats from the original manufacturer or will have to rely on a seat supplier to provide the same technology. If not, then the second-stage manufacturer or alterer may only be able to recover the seat, or they would have to certify compliance in some other way. The generic sled test has made it easier currently for these manufacturers to certify compliance. They will have a more difficult time and more expense certifying to the proposed vehicle tests and with some advanced air bag systems. The agency does not have estimates of the costs to these manufacturers at this time. If they rely on seating suppliers to provide the same technology, then it involves only an additional expense which will be passed on to the consumers. One of their more difficult challenges is getting changed models from the first-stage manufacturer in time to certify vehicles in the beginning of the model year. For a discussion of this issue see the leadtime discussion at the end of Chapter VII.

NHTSA knows of 11 suppliers of seating systems, that supply seats to van converters and others, that are small businesses. Depending on the technology chosen to meet the proposed advanced air bag rule, these suppliers will have to keep up with the technology in order to retain their business.

There are about five main suppliers of air bag systems. (TRW, Autoliv, Breed, Takata, Delphi.) None

of these suppliers would be considered a small business. There might be some second and third tier manufacturers of components of air bags or of sensors that are small businesses, but the agency does not believe there are a substantial number. These proposed rules should have a positive effect on the air bag manufacturers and on the second and third tier manufacturers of air bag components.

The proposed rule should have a positive effect on the manufacturers of test dummies and the manufacturers of instrumentation for test dummies. In order to do the required tests, an increased number of dummies would be needed. There are currently four manufacturers of dummies or parts of dummies (First Technology Safety Systems, Advanced Safety Technology Corp., UTAMA, and GESAC). All of these would qualify as small businesses with less than 500 employees. There are four manufacturers of load cells (R.A. Denton, First Technology Safety Systems, Sensor Developments, Inc., and Sensotec) and two manufacturers of accelerometers (Endevco and Entran). All of these manufacturers are believed to be small business except Endevco.

4. Description of the projected reporting, record keeping and other compliance requirements for small entities

The proposal would adopt new performance requirements that would enhance the safety of children and small stature adults. Motor vehicle manufacturers would have to certify that their products comply

with the proposed requirements. Manufacturers could use any means to determine that their products comply, so long as they exercise due care in making their certification.

With the phase-in leadtime, manufacturers would be required to report to the agency how they met the phase-in schedule. Reporting of compliance is a small cost, simply requiring clerical skills for its preparation, compared to the flexibility it provides manufacturers in meeting the proposal.

5. Duplication with other Federal rules

There are no relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

6. Description of any significant alternatives to the proposed rule

NHTSA tentatively believes that there are no alternatives to the proposal which would accomplish the stated objectives of 49 U.S.C. §30101 et seq. and which would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives, the agency is proposing a longer lead time for small manufacturers (those with less than 5,000 vehicle sales worldwide) to reduce their burden to the extent possible.

As discussed above, depending upon what technologies are employed and how they affect front seating systems, this proposal could affect a substantial number of small businesses. If seating systems are affected by the new technology and if seating suppliers handle this new technology well, they may be able to supply the same technology as used by the original first-stage manufacturers. Thus, the economic impact on the substantial number of small businesses need not be significant.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a

written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). The assessment may be included in conjunction with other assessments, as it is here.

This proposal on advance air bags is not likely to result in expenditures by State, local or tribal governments of more than \$100 million annually. However, it is estimated to result in the expenditure by automobile manufacturers and/or their suppliers of more than \$100 million annually. Since this proposal allows a variety of methods to meet the proposal, which have a variety of costs ranging from \$20 to \$127 per vehicle for 15.5 million vehicles, it will easily exceed \$100 million. The final cost will depend on choices made by the automobile manufacturers.

These effects have been discussed in the Preliminary Economic Assessment, see for example the chapters on Cost, Benefits and the previous discussion in this chapter on the Regulatory Flexibility Act.