

 248401

Memorandum

U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Subject: **ACTION:** Final Regulatory Flexibility Analysis
Head Impact Protection, FMVSS 201

Date: JUL 11 2003

From: Rose A. McMurray *Rose A. McMurray for*
Associate Administrator
for Planning, Evaluation and Budget

Reply to
Attn. of:

To: Docket

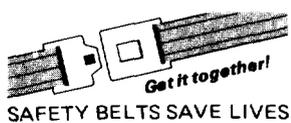
JG
Thru: Jacqueline Glassman
Chief Counsel

Please submit the attached "Final Regulatory Flexibility Analysis, Head Impact Protection, FMVSS 201", June 2002, to Docket No. 2002-12480.-4

Attachment

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U.S. DEPARTMENT OF TRANSPORTATION





U.S. Department
Of Transportation



**FINAL REGULATORY FLEXIBILITY
ANALYSIS
FMVSS No. 201**

*Office of Regulatory Analysis and Evaluation
Plans and Policy
June 2002*

Introduction

This Final Regulatory Flexibility Analysis accompanies the interim final rule on Federal Motor Vehicle Safety Standard (FMVSS) No. 201; Head Impact Protection. The interim final rule delays the date on which vehicles built in two or more stages must meet the upper interior head protection performance requirements of Standard No. 201 from September 1, 2002 until September 1, 2003.

The agency is issuing this interim final rule to provide the agency time to complete a rulemaking action initiated by petitions for rulemaking requesting that NHTSA consider modifying the requirements of Standard No. 201 as they apply to vehicles manufactured in two or more stages. The agency's consideration of these issues raised in these petitions for rulemaking cannot be concluded in sufficient time to maintain the original September 1, 2002 compliance date. As that rulemaking action may result in modification of FMVSS No. 201 as it applies to these multistage manufactured vehicles, the agency has decided to extend the compliance date until the final action is taken on the petitions.

The agency believes that the interim final rule will have a significant economic impact on a substantial number of small businesses, by foregoing their compliance costs for one year. A quantitative estimate of the extent of the positive impact of the interim final rule on small businesses could not be made at this time.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions.

Section 603 of the Act requires agencies to prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. Section 603(b) of the Act specifies the content of a FRFA. Each FRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the final rule;
- A description of and, where feasible, an estimate of the number of small entities to which the final rule will apply;
- A description of the projected reporting, record keeping and other compliance requirements of a final 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;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the final rule.
- Each final regulatory flexibility analysis shall also contain a description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities.

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

On August 18, 1995, NHTSA issued a final rule amending FMVSS No. 201 to require improved head protection. This action would provide head protection during a crash when an occupant's head strikes the upper interior of the vehicle, i.e., the roof pillars, side rails, headers, or the roof itself. Better head protection is important because of the large number of individuals killed and injured in vehicle crashes as a result of head injuries.

While upper interior padding and other energy absorbing designs are highly effective in reducing the likelihood of death or serious injury to the head and face in motor vehicle crashes, the degree of their effectiveness is reduced if vehicles are not properly padded or equipped with other energy absorbing designs. NHTSA believes that passenger safety would be improved when all vehicles are adequately equipped with padding or other energy absorbing designs for head impact protection.

The August 18, 1995 final rule requires that the upper interior of all passenger vehicles be adequately padded on locations on which an occupant's head is likely to strike in a crash. The final rule prescribes procedures for an in-vehicle compartment test using a free-motion head-form. The impact speed is 24 km/h (15 mph) and the performance requirement is a Head Injury Criterion score of 1000.

The 1995 final rule was also issued in response to the mandate in the NHTSA Authorization Act of 1991 (sections 2500-2509 of the Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L.102-240). ISTEA required NHTSA to address several vehicle safety matters through

rulemaking. One of these matters, set forth in section 2503(5), is improved head impact protection from interior components (i.e., roof rails, pillars, and front headers) of passenger cars. This interim final rule is being issued in response to petitions for rulemaking by the Recreation Vehicle Industry Association (RVIA) and the National Truck Equipment Association (NTEA). The agency agrees that second stage manufacturers and alterers will have a harder time complying with the standard than the original equipment manufacturers. The agency is allowing another year of lead time with this interim final rule, so that second stage manufacturers and alterers will have more time to design compliance equipment for those original equipment vehicles that are not put into compliance with FMVSS No. 201 until the end of the phase-in period, which ends September 1, 2002. Furthermore, this interim final rule provides the agency sufficient time to conclude the rulemaking action addressing the issues raised by RVIA and NTEA in their petitions for rulemaking.

2. Objectives of, and legal basis for, this interim final rule

The RVIA and NTEA members manufacture unique recreation, vocational, and work-related vehicles according to their consumer's demand. This demand precludes the use of standardized components or common compliance tests across the industry. The limited sales volume of these vehicles reduces the opportunity to spread compliance test costs to a large number of vehicles. Thus, RVIA and NTEA contend that the resulting increases in costs for individual vehicles would be so great that their members would not be able to sell the finished product. The agency is embarking on rulemaking to address the issues raised by RVIA and NTEA in their petitions for rulemaking. The interim final rule would provide the agency sufficient time to conclude the rulemaking action and the RVIA and NTEA members more time to work on their vehicles.

However, delaying the compliance date until September 1, 2003, would have a slight negative impact on the safety of occupants in multistage manufactured vehicles.

NHTSA has issued this Interim Final rule under the authority of 49 U.S.C. 322, 21411, 21415, 21417, and 21466; 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 interim final rule will apply

The Regulatory Flexibility Act of 1980 (Public law 96-354) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions.

Business entities were generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration assistance. The SIC codes have changed. Business entities are now defined as small businesses using the North American Industry Classification System (NAICS) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.201 (as of January 1, 2002), is the number of employees in the firm.

There are a variety of businesses that will be impacted by the interim final rule. To qualify as a small business, the possible categories and corresponding number of employees include: a) In the Motor Vehicle Seating and Interior Trim Category (NAICS 336360), the firm must have fewer

than 500 employees, b) In the “All Other Motor Vehicle Parts Manufacturing” category (NAICS 336399), the firm must have fewer than 750 employees, c) In the “All Other Transportation Equipment Manufacturing” category (NAICS 336999), the firm must have fewer than 500 employees, and d) In the “Transportation Equipment Manufacturing” category (NAICS 336213 Motor Home Manufacturing), the firm must have fewer than 1,000 employees.

The agency believes that the interim final rule would have a significant impact on some of these businesses. Most of the manufacturers of vehicles built in two or more stages have fewer than 500 employees, thus they would qualify as a small business. The extension of the date by which these manufacturers must produce vehicles that meet the upper interior head protection requirements of Standard No. 201, allows the manufacturers additional time to meet the standard and thereby prevents adverse effects that might have been underestimated in the prior rulemaking.

There are approximately 1,970 van converters and multistage manufacturers in this industry, known as second stage manufacturers and alterers. Second stage manufacturers and alterers purchase:

1. pickup truck cab-chasses or finished pickups and add equipment for special purposes, such as towing equipment, dump trucks bodies, etc.;
2. cutaway vans to make van boxes, motor homes, or other vehicles;
3. finished vans or vans without seats for van conversions;
4. incomplete vehicles (stripped chassis) for motor homes and many other special types of vehicles.

The RIVA and NTEA members manufacture or alter approximately 437,000 vehicles annually.

At present, the upper interior components that are located rearward of a transverse vertical plane 600 mm (24 inches) behind the seating reference point of the rearmost seating position of the vehicle are excluded from the head protection performance requirements of FMVSS No. 201.

For those vehicles where changes are made to the original manufacturer's upper interior padding or head impact protection designs, where changes or additions are made to the upper interior component of the vehicle, and for those vehicles using an incomplete vehicle (making their own cabs), the second stage manufacturer or alterer would probably have to certify compliance with FMVSS No. 201. In the majority of cases when a pickup truck cab chassis or finished pickup truck is used, the agency anticipates that the original manufacturer's certification will be passed through to the second stage manufacturer, because the cabs of most of these vehicles aren't changed and the padding or other head impact protection designs are already installed would remain intact. Cutaway vans probably need to be certified by the second stage manufacturer from the B-pillar rearward. Van conversions could use the original manufacturer's certification or may need to be certified by the second stage manufacturer, depending upon what type of additions are made. Van conversions may pose the biggest problem when they add cabinets or wooden structures with lights/speakers along the roof rail. For vehicles using the original manufacturer's stripped chassis, the agency believes that all applicable components will need to be certified by second stage manufacturers.

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

This interim final rule would not adopt any new performance requirements, it simply extends the compliance date that selected manufacturers have to certify their vehicles. Second stage manufacturers and alterers have until September 1, 2003 to comply with the upper interior head protection performance requirements.

5. Duplication with other Federal rules

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

6. Description of any significant alternatives to the proposed interim final rule

One alternative is for manufacturer associations (NTEA or RVIA) to sponsor some generic tests and determine the amount and type of padding needed for some basic structures.

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). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in \$109 million ($106.99/98.1 = 1.09$). The assessment may be included in conjunction with other assessments, as it is here.

This interim final rule is not estimated to result in expenditures by State, local or tribal governments of more than \$109 million annually. It is not going to result in the expenditure by second stage manufacturers of more than \$109 million annually.