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NHTSA's Authorities and Rulemaking Process

NHTSA Background and Authorities

The National Highway Traffic Safety Administration (NHTSA), part of the Department of Transportation (DOT), is primarily responsible for motor vehicle and highway safety. Congress established highway safety regulatory agencies in response to an increase in motor vehicle fatalities in the 1950s and 1960s. In 1966, two laws—the National Traffic and Motor Vehicle Safety Act (P.L. 89-563) and the National Highway Safety Act (P.L. 89-564)—created the National Traffic Safety Agency (NTSA) and the National Highway Safety Agency (NHTSA). NTSA and NHTSA initially were part of the Department of Commerce but were moved to the Federal Highway Administration (FHWA) when DOT was established in 1967. NTSA and NHTSA were later unified to become the National Highway Safety Bureau (NHSB). The Highway Safety Act of 1970 (P.L. 91-605) reestablished NHSB as the National Highway Traffic Safety Administration (NHTSA) and granted it autonomous operating power as a subagency of DOT, removing it from under FHWA. The act empowered NHTSA to execute safety programs to reduce traffic fatalities, injuries, and monetary losses.

NHTSA derives various authorities from several statutes. Under Title 49, Chapter 1, Section 105, of the *U.S. Code*, the administrator (who is appointed by the President with the advice and consent of the Senate) is the head of NHTSA. The NHTSA administrator carries out relevant duties and powers found in Title 23, Chapter 4, of the *U.S. Code*, which covers highway safety and additional duties and powers prescribed by the Secretary of Transportation. The Secretary, through the NHTSA administrator, may carry out Title 49, Chapter 301, of the *U.S. Code*, which covers motor vehicle safety. NHTSA also administers statutory authority of programs related to the National Driver Register, consumer information, bumper standards, odometers, automobile fuel economy, and theft prevention. NHTSA is delegated the authority to issue federal motor vehicle safety standards (FMVSS) under Title 49, Part 571, of the *Code of Federal Regulations*, which is authorized under Title 49, Chapter 301, of the *U.S. Code*.

NHTSA Regulations

FMVSS and corporate average fuel economy (CAFE) standards are two authorities under NHTSA that regulate vehicle safety and fuel economy, respectively.

In furthering its mission to save lives and prevent injuries, NHTSA has the authority to issue standards that promote a minimum safety threshold. NHTSA uses FMVSS to ensure safety in vehicle performance and design. FMVSS fall into the following categories: crash avoidance, crashworthiness, post-crash survivability, and other regulations. These

standards include design mandates for features such as brake hoses, rearview mirrors, warning devices, seat belts, airbags, and steering columns.

In 1975, the Energy Policy and Conservation Act (EPCA; P.L. 94-163) required NHTSA to administer vehicle fuel economy standards known as CAFE standards. CAFE standards regulate the average fuel economy of vehicles sold by a manufacturer. Stringency of CAFE standards has generally increased over time as the agency has updated them. This has incentivized some manufacturers to develop more fuel-efficient internal combustion engine vehicles. CAFE standards historically have offered manufacturers alternatives in compliance, such as purchasing credits from other companies and producing electric vehicles. Reductions of the civil penalties for violating CAFE standards and a proposed rule by NHTSA to remove electric vehicles from CAFE calculations and credit trading from CAFE compliance may cause manufacturers to alter plans to produce more fuel-efficient or electric vehicles.

Rulemaking Process

NHTSA may initiate rulemaking on its own, at the request of Congress, or on receipt from stakeholders of a petition (e.g., safety advocates or automotive companies) to create a new rule. Events that may motivate NHTSA to introduce a new rule on its own initiative include results of a NHTSA-conducted study, a crash investigation, or evaluation of a vehicle. NHTSA issues new standards, such as FMVSS and CAFE standards, through the rulemaking process. NHTSA's initiation, evaluation, and completion of a rulemaking is a multistep process, which can take years depending on the complexity or statutory authority. The multistep process includes the following:

- drafting an initial rule and potentially issuing an advance notice of proposed rulemaking,
- publishing a notice of proposed rulemaking in the *Federal Register* and placing it in the public docket,
- opening up a public comment period,
- evaluating comments,
- potentially modifying the proposed rule after evaluating comments,
- issuing a second notice for public comment if modifications to the proposed rule could not have been reasonably anticipated by the public,
- issuing a final rule, and

- establishing an effective date at least 30 days after publication.

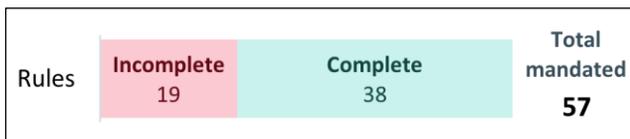
NHTSA must adhere to the Administrative Procedure Act (APA), which sets guidelines for the federal rulemaking process. Since the APA requires the agency to consider and review comments, a high volume of public comments for a proposed rule may affect NHTSA's ability to swiftly implement a rule. Public comments may address the feasibility of a proposed rule, and, depending on interest in the proposed rule, the agency may receive hundreds of thousands of comments. NHTSA reviews these comments and may use them to inform its decisionmaking. For example, the agency may reconsider a rule if a comment addresses material errors of fact or law, raises new evidence, or cites practicality issues in complying with the new rule. NHTSA has signaled its intention to use an alternative process in rulemaking, the negotiated rulemaking process (for more on this topic, see CRS Report R46756, *Negotiated Rulemaking: In Brief*).

According to a 2024 report to Congress by NHTSA, “the need to conduct complex technical research before sufficient data exists to meet statutory requirements to take the action” may affect timing of rulemakings. Issue complexity, technological feasibility, costs, Administration priorities, and agency resources and capacity, among other potential factors, may impact the pace at which NHTSA is able to promulgate rules.

Congressional Report and Rulemaking Requirements

Congress may request reports from NHTSA to track progress and monitor delays of rulemakings. Some Members of Congress have requested that NHTSA move more quickly in its research and rulemaking processes. From 2012 to 2015, Congress ordered NHTSA to issue 19 reports and 22 rules. By 2022, NHTSA had completed all 19 reports (and 2 of the reports with statutory deadlines met those deadlines) and issued 6 of the 22 rules (all 6 exceeded their statutory deadlines). The U.S. Government Accountability Office investigated these delays and recommended “NHTSA update its procedures on rulemaking and developing reports to Congress to require the use of leading project schedule management practices.” In NHTSA’s most recent report to Congress on rulemaking progress, the agency had completed 38 out of the 57 congressionally mandated rules from the last 3 surface transportation reauthorization acts (see **Figure 1**), which were signed into law in 2012, 2015, and 2021.

Figure 1. NHTSA Rulemaking from Surface Transportation Reauthorization Acts



Source: Adapted by CRS from NHTSA, *Report to Congress: Rulemaking Status Report*, December 2024, p. 2.

Policy Options

Congress may decide to explore options to oversee or alter NHTSA’s rulemaking progress. Congress may consider exercising oversight authority over the agency, changing funding levels of the agency, and reevaluating the agency’s authorities.

Congressional Oversight

Congress may choose to exercise oversight authority over NHTSA by requiring rulemakings and reports, setting deadlines on rules and reports, or holding hearings. Congress may require NHTSA to develop and publish new rules on topics such as new FMVSS, updates to CAFE standards, or alterations to other existing standards. For example, in the last surface transportation reauthorization bill (P.L. 117-58), Congress mandated 11 rulemakings from NHTSA. The FY2025 budget reconciliation law (P.L. 119-21) is another example of legislation that updated NHTSA standards, as it reduced civil penalties for violating CAFE standards to \$0. Congress also has requested biannual reports from NHTSA on topics such as rulemaking progress and automated vehicle policies. Congress may request new reports from the agency to gain insight into rulemaking progress. Other congressional options could include setting timelines on pending or new rules and holding hearings about delayed rulemakings.

Agency Capacity

When evaluating the responsiveness of NHTSA and speed of rulemaking, Congress may choose to reconsider the agency’s funding levels. At several hearings in the 119th Congress, some Members of Congress stated that NHTSA’s current resource levels impede its ability to issue rulemakings in a timely manner. The Trump Administration requested \$1.6 billion in funding for the agency for FY2026, which would have been a 6.8% decrease from the amount provided in FY2025. The final FY2026 bill (P.L. 119-75) appropriated \$23 million less than requested funding levels. Additionally, NHTSA reportedly had 554 active employees as of January 2026, which is down from its peak of 790 in 2024. Alternatively, Congress may determine staffing levels at the agency are sufficient to fulfill its mission and may opt to explore other avenues to support the agency’s rulemaking.

NHTSA’s Authorities

Congress has numerous options related to NHTSA’s current authorities and requirements. Congress may revisit laws authorizing NHTSA’s processes, such as the National Traffic and Motor Vehicle Safety Act, EPCA, and APA, to address constraints on the agency’s rulemaking ability and how NHTSA advances traffic safety. Congress could determine that these laws are sufficient for the agency to execute safety programs to reduce traffic fatalities, injuries, and monetary losses and that changes may diminish the agency’s ability to achieve these goals. Congress could explore other laws (e.g., the Regulatory Flexibility Act, the Congressional Review Act, and the Paperwork Reduction Act) that the agency must follow in the rulemaking process, to evaluate whether they inhibit the agency’s ability to issue rulemakings in a timely manner. Congress could offer some exemptions from these laws.

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