

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

December 1, 2017

U.S. Department of Transportation
Docket Management Facility
1200 New Jersey Ave. S.E., Room W12-140
Washington, D.C. 20590-0001

Submitted via www.regulations.gov.

**Comments of Consumers Union to the U.S. Department of Transportation
Office of the Secretary of Transportation on the Notification of Regulatory Review
Docket No. DOT-OST-2017-0069**

Consumers Union (CU), the policy and mobilization division of Consumer Reports,¹ submits the following comments to the U.S. Department of Transportation (DOT) Office of the Secretary of Transportation in the above-referenced matter. CU works side by side with consumers for a fairer, safer, and healthier world, and has engaged with DOT on transportation safety and fuel economy-related rulemaking proceedings for several decades.

DOT states in its Federal Register notice that “improvement of regulations is a continuous focus for the Department,” that “there should be no more regulations than necessary,” and that “those regulations should be straightforward, clear, and designed to minimize burdens.” While these considerations should be part of a rigorous regulatory process, DOT’s top priority should be delivering on its mission to: “Serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system.”² Certainly, federal rules developed in the past should achieve their purposes in an appropriately effective and cost-effective manner, and should be strengthened or revised as warranted with that goal in mind.

It is essential that any regulatory revision occur as part of a well-considered process that has the advancement of public interest priorities at its core. Focusing disproportionately or exclusively on the costs of a rule or undervaluing its benefits would reduce or eliminate benefits to the public. This is particularly troubling with respect to rules that help protect consumers’ safety, save them money in the marketplace, or promote their health through cleaner air and reduced carbon emissions.

¹ Consumers Union works for pro-consumer energy policies, product and food safety, health reform, financial reform, privacy, and other consumer issues in Washington, D.C., the states, and in the marketplace. Consumer Reports is the world’s largest independent product-testing organization, which uses its more than 50 labs, auto test center, and survey research center to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

² U.S. Department of Transportation, “About Us” (online at www.transportation.gov/mission/about-us) (accessed Dec. 1, 2017).

Several recent ill-conceived executive orders focus solely on the cost of compliance. Executive Order 13771, in particular, includes provisions requiring executive departments and administrative agencies to remove two existing rules in order to promulgate a new one, and to institute budget-like allowances for the cost of regulations on businesses.³ It is irresponsible to put the health, safety, and economic security of families on the back burner to satisfy an arbitrary call to reduce the number of regulations, but E.O. 13771 does just that.

By contrast, existing principles and procedures laid out by the earlier E.O. 13563 and the Regulatory Flexibility Act would be appropriate for DOT to follow.⁴ Consumers are best served when rule review activities, as exemplified by these policies, focus not primarily on corporate costs but rather on maximizing the benefits of a rule to the public while avoiding burdens that are unnecessary for a rule to achieve its objectives.

Among the economically significant rulemakings listed in Appendix A of DOT's notice, there are several that yield particularly clear benefits for consumers. Thorough cost-benefit analyses have determined that these rules deliver net benefits to the public. The rules should not be undermined by efforts to reduce corporate compliance costs. For example:

- **Motor vehicle safety rules:** Such rules typically involve new or updated federal motor vehicle safety standards that require all new vehicles in a certain class to better protect consumers on the road. These standards involve performance requirements that do not demand that a certain design or technology be used, but rather encourage manufacturers to determine the best way to improve safety in accordance with the standard. Among others listed in the Federal Register notice that benefit consumers, the National Highway Traffic Safety Administration (NHTSA) 2009 final rule on roof crush resistance is estimated to yield net benefits to the public of \$250-825 million per year.⁵ NHTSA's 2011 final rule on ejection mitigation is estimated to yield annual net benefits of \$1.3-1.7 billion.⁶ NHTSA's 2013 final rule on occupant protection is estimated to yield \$15-152 million in annual net benefits.⁷ NHTSA's 2015 final rule on electronic stability control systems for heavy vehicles is estimated to yield annual net benefits of \$312-525 million.⁸ In aggregate, these four rules are estimated to save 550-566 lives and prevent 2,192-3,048 injuries per year.⁹

³ Executive Office of the President, "Reducing Regulation and Controlling Regulatory Costs" (Jan. 30, 2017) (online at www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs).

⁴ Executive Office of the President, "Improving Regulation and Regulatory Review" (Jan. 18, 2011) (online at www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review); 5 U.S.C. 601 et seq.

⁵ See Comments of the Center for Auto Safety to the U.S. Department of Transportation on its Notification of Regulatory Review (DOT-OST-2017-0069) at 3.

⁶ 76 Fed. Reg. 32-15 (Jan. 19, 2011).

⁷ 78 Fed. Reg. 70468 (Nov. 25, 2013).

⁸ 80 Fed. Reg. 36052 (June 23, 2015).

⁹ See 74 Fed. Reg. 22377 (May 12, 2009), 76 Fed. Reg. 3214 (Jan. 19, 2011), 78 Fed. Reg. 70468 (Nov. 25, 2013), and 80 Fed. Reg. 36052 (June 23, 2015).

- **Fuel economy rules:** DOT misstates the statutory purpose of the Department and the enabling legislation for NHTSA’s Corporate Average Fuel Economy (CAFE) program when it writes in the Federal Register notice: “Further, regulations and other agency actions should promote clean and safe development of our Nation’s vast energy resources, while avoiding regulatory burdens that unnecessarily encumber energy production...” In fact, DOT’s mission does not address the development of energy resources at all.¹⁰ Further, under 49 U.S.C. 101, the Department’s statutory purpose includes, “the *efficient* use and *conservation* of the resources of the United States” (emphasis added). With respect to fuel efficiency, the Energy Policy and Conservation Act that established fuel economy standards identified energy conservation as an overarching goal,¹¹ which by definition helps reduce the need for energy production. It is therefore troubling to see fuel economy standards for vehicles included among rules that, in DOT’s words, “may provide greater opportunity for identifying and alleviating unnecessary burdens.” In order to meet its statutory obligations, DOT’s existing and augural standards to improve efficiency in the light-duty and heavy-duty vehicle fleets should be at least maintained, if not strengthened, and no new fuel efficiency regulation or change to existing regulations should increase fuel consumption.

While it is important to ensure that regulations developed in the past are still achieving their purposes, DOT must focus on its statutory objectives both in those reviews and in moving forward aggressively with the many needed new protections for consumers on our roadways. If a rule is no longer serving a beneficial function or is inadequate to protect safety, fuel economy, or another consumer priority, DOT should use the review process to strengthen it. If such strengthening is not feasible, DOT only should weaken or eliminate such rules if consumers are not harmed as a result. When undertaking rule review activities, DOT must not compromise the purposes for which a rule was initially developed, nor divert resources that are necessary for work that is central to the Department’s mission.

In addition to strengthening rules when warranted, DOT also should incorporate pro-consumer comments and finalize pending rules that would yield significant benefits for the public. For example, it is estimated that the proposed rule to strengthen the protection that child car seats provide children in side-impact crashes would prevent five fatalities and 64 non-fatal injuries annually, and provide net benefits of \$162-179 million annually.¹² Similarly, it is estimated that the proposed rule requiring vehicle-to-vehicle (V2V) communications capability on all new light vehicles would prevent some 425,000-595,000 crashes, save 955-1,321 lives, and have annual net benefits of \$48-68 billion.¹³ DOT should build on its previous successes in safety and fuel economy rulemakings, and make these rules final without delay. The Department

¹⁰ According to the U.S. Department of Transportation, “The mission of the Department is to: *Serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.*” U.S. Department of Transportation, *supra*.

¹¹ P.L. 94-163.

¹² 79 Fed Reg. 4597 (Jan. 28, 2014).

¹³ 82 Fed. Reg. 3859, 3899 (Jan. 12, 2017).

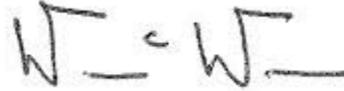
should not dedicate undue administrative time or resources to any overriding effort to reduce corporate costs.

Thank you for your consideration of our comments.

Respectfully submitted,



Shannon Baker-Branstetter
Senior Policy Counsel
Consumers Union



William Wallace
Policy Analyst
Consumers Union