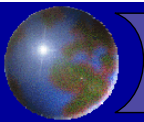


# National Highway Traffic Safety Administration Rulemaking and the GTR

Our Safety Mission: to save lives, prevent injuries, and reduce traffic-related healthcare and other economic costs.

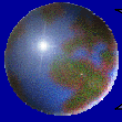
*Office of the Chief Counsel*



## *Key Terms*

---

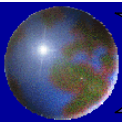
- Administrative Procedure Act (APA)
- Federal Motor Vehicle Safety Standard (FMVSS)
- Notice of Proposed Rulemaking (NPRM)



## *Key Concept: Self-Certification*

---

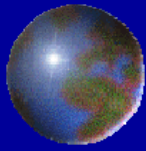
- The Vehicle Safety Act establishes a system of self-certification for enforcing FMVSSs.
- The Act requires manufacturers to certify that their product will meet the applicable FMVSSs when tested as described in those FMVSSs.
- NHTSA does not certify or approve products.
- NHTSA enforces FMVSSs by testing products purchased on the market and demonstrating that those products don't meet an applicable standard.



## *Key Questions to Answer*

---

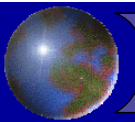
- What process is followed in order for a GTR to become an FMVSS?
- What are the substantive requirements in establishing an FMVSS?



What process is followed in order for a GTR to become an FMVSS?

## *The Notice and Comment Rulemaking Process*

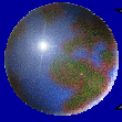
5



## *Administrative Procedure Act*

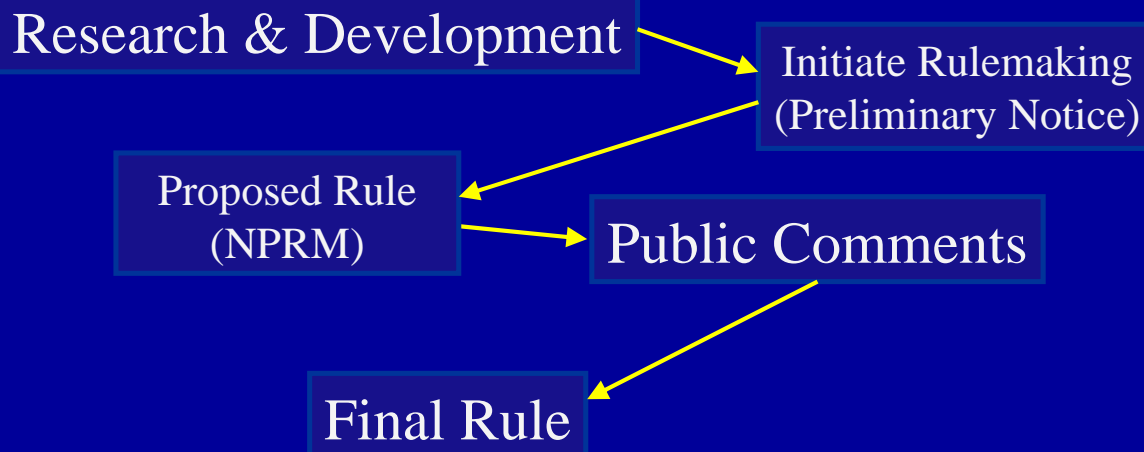
- Defines the notice and comment rulemaking process that NHTSA follows in establishing an FMVSS.
- The general steps are:
  - Issue Notice of Proposed Rulemaking
  - Receive and analyze public comments
  - Issue Final Rule, which includes responses to comments
- Public should have an opportunity to comment and understand the reasons for the agency's acceptance or rejection of their comments.

6

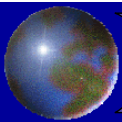


## *Typical NHTSA Rulemaking Steps*

---



7

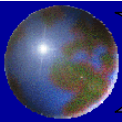


## *Preliminary Notice (Optional)*

---

- Can take the form of an “Advanced Notice of Proposed Rulemaking,” a “Request for Comment,” or other similar document
- Opportunity to comment early in rulemaking process
- Requests information on nature and extent of safety problem being considered problem
- Requests suggestions for regulatory solutions

8

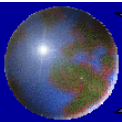


## *Notice of Proposed Rulemaking*

---

- Published in Federal Register
- Must apprise persons of issues involved
- Describes safety problem
- Explains regulatory solution (proposed requirements and test procedures), including the rationales for the selected levels of stringency
- Identifies bases for proposal, including key research reports and crash data
- Estimates benefits and costs of proposal and regulatory alternatives.

9

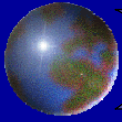


## *Public Comments*

---

- Provide agency with additional information, e.g., compliance difficulties
- Challenge the agency's
  - Factual assumptions
  - Analyses
  - Conclusions
  - Policy choices
- Suggest changes to proposal

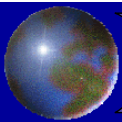
10



## *Supplemental NPRM*

---

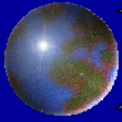
- Extra step required in some rulemakings
  - Obtain comments on significant changes in proposal not reasonably anticipated from the NPRM
  - Obtain comments on significant new factual information



## *Final Rule*

---

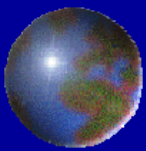
- Establishes the final requirements that have the force of law.
  - Instead of issuing final rule, agency can withdraw its proposal.
- Final Rule explains the agency's acceptance or rejection of each significant relevant comment
  - Describes changes made to rule in response to comments
  - Explains choices among
    - Alternative regulatory approaches
    - Alternative levels of stringency



## *Post-Final Rule*

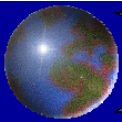
---

- Congressional Review
- Petitions for Reconsideration
- Enforcement
- Judicial Review



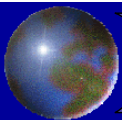
What process is followed in order for a GTR to become an FMVSS?

*The GTR as a Part of the  
Notice and Comment  
Rulemaking Process*

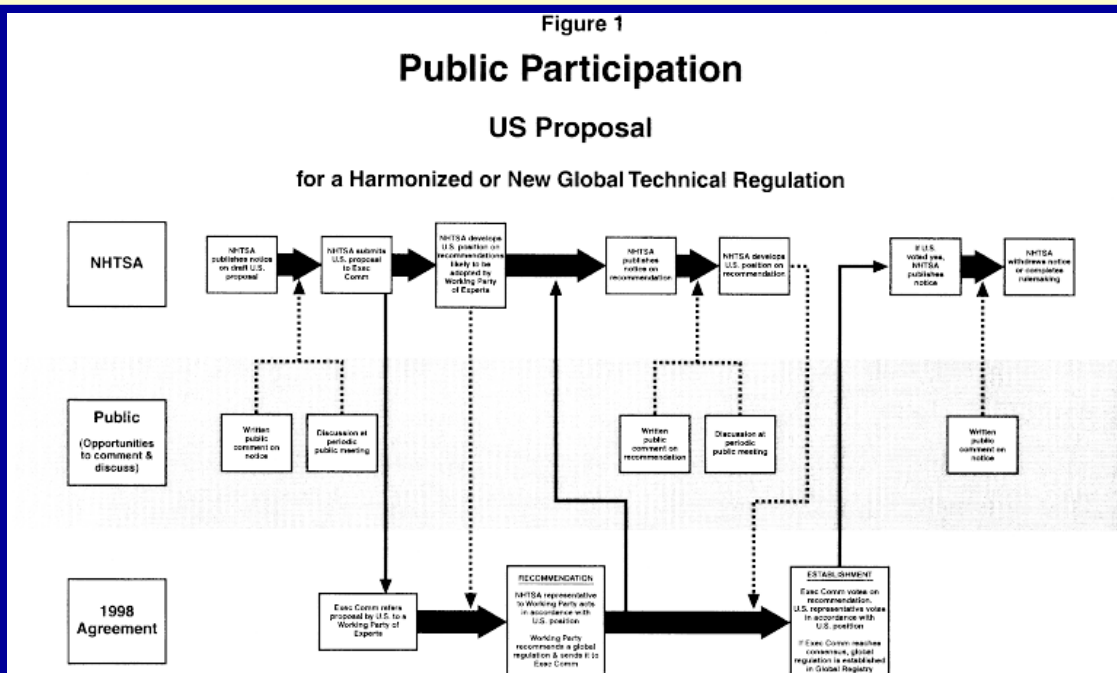


# NHTSA Rulemaking and the GTR

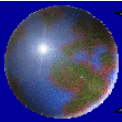
- The same process is required for a GTR to become an FMVSS.
- NHTSA utilizes the notice and comment rulemaking process to incorporate a GTR into an FMVSS.
- The preliminary notice stage and NPRM stages are used to propose a GTR as a potential FMVSS.



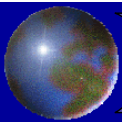
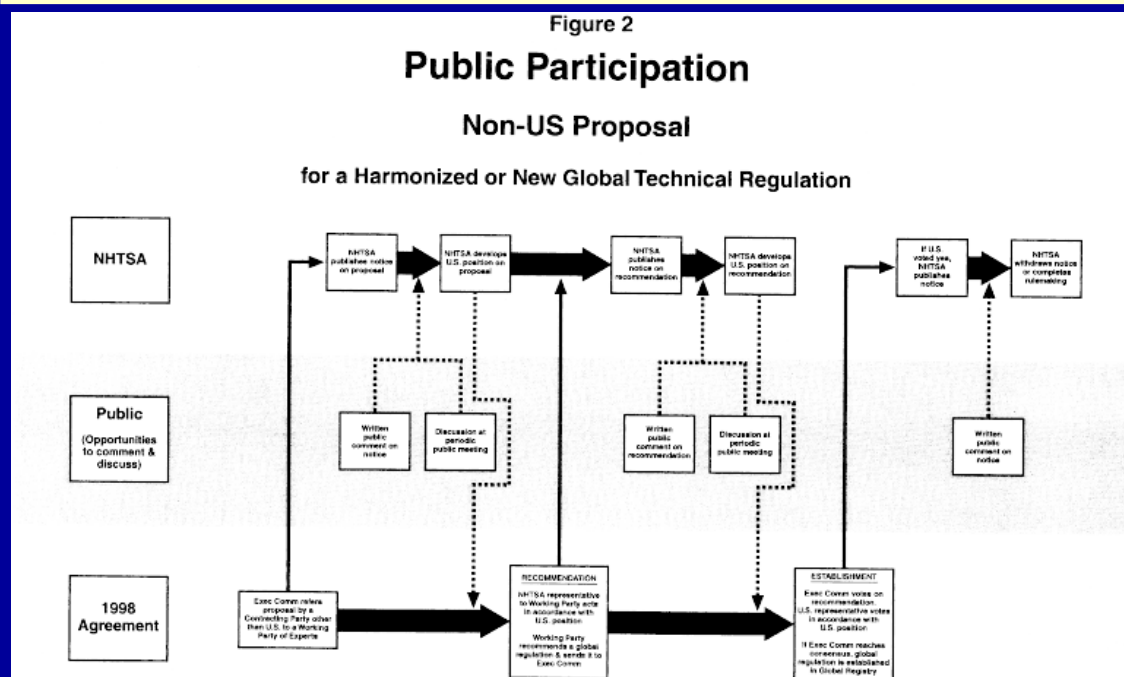
# GTR to FMVSS (US Proposal)





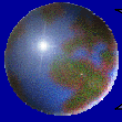


# GTR to FMVSS (Non-US Proposal)



# NHTSA Rulemaking and the GTR

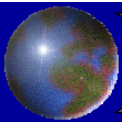
- Preliminary notices are used to solicit public comment for consideration in developing the U.S. position on the GTR.
- After the establishment of a GTR that the U.S. supported, NHTSA proposes the adoption of the GTR as an FMVSS.
- After public comment, NHTSA may adopt the GTR as an FMVSS.



## *Important Conclusions*

---

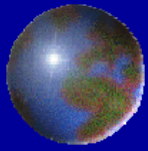
- The chances that NHTSA will be able to adopt a GTR quickly and fully as an FMVSS is increased if
  - The GTR meets the substantive requirements for an FMVSS, and
  - The written report to the Executive Committee recommending the establishment of the GTR contains the information needed for an NPRM and its accompanying economic analysis.



## *Important Conclusions*

---

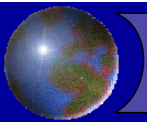
- Most importantly:
  - Apprise persons of issues involved
  - Describes safety problem
  - Explains regulatory solution (proposed requirements and test procedures), including the rationale for the selection of the regulatory approach and level of stringency
  - Discusses the regulatory alternatives discussed and the reasons for their rejection.



What are the substantive requirements in establishing an FMVSS?

## *The Same Legal Standards Apply to a Rulemaking in Response to a GTR*

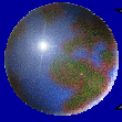
21



## *Rulemaking Authority from Congress*

- Congress generally delegates rulemaking authority to a regulatory agency by enacting an “enabling” statute:
  - That includes a provision delegating rulemaking authority to the agency with respect to a specified policy goal, e.g., vehicle safety; and
  - That specifies the factors that the agency must consider in deciding what rule to adopt.
- The APA generally establishes the process the agency must follow to establish a rule.
- Thus, must consider two statutes (the APA and the enabling statute).

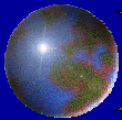
22



## *APA Requirements*

---

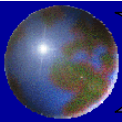
- NPRM must “fairly apprise interested persons” of the issues involved
- Final rule must be a logical outgrowth of the NPRM; i.e., its contents should be reasonably anticipated by anyone reading the NPRM
- If agency wishes to adopt a final rule that could not be reasonably anticipated, the agency must first issue a supplemental NPRM to provide a new opportunity for comment.



## *APA Requirements*

---

- Agency’s reasoning and decisions in final rules must not be arbitrary and capricious:
  - Provide a rational connection between the facts and the choices made by the agency
  - Consider alternatives to its proposal
  - Consider relevant factors
  - Explain its conclusions on issues raised by commenters

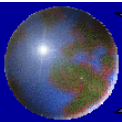


## *Vehicle Safety Act Requirements*

---

- To establish an FMVSS, must show that the FMVSS:
  - meets a safety need,
  - is practicable (technologically and economically), and
  - states its requirements in a way that permits compliance to be determined in an objective fashion.
- FMVSSs must be performance oriented.
- FMVSSs must be appropriate for each vehicle type to which it applies.

25

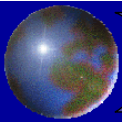


## *Meeting the Need for Safety*

---

- NHTSA generally uses crash data and research to show there is a safety need and that the regulation will address the need.
- Examples of NHTSA's crash information sources:
  - Fatality Analysis Reporting System (FARS)
    - Data on all fatal traffic crashes in the U.S.
  - National Automotive Sampling System (NASS)
    - More detailed, nationally representative data from police reports on fatal and nonfatal traffic crashes.
- Research to identify countermeasures and develop performance requirements and test procedures to evaluate their effectiveness.

26

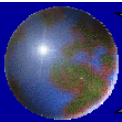


## *Practicability*

---

- Relates to the technical and economic feasibility of the standard.
- Establishes the outer boundary of what reasonable burdens can be imposed on the industry.
- Also considers whether or not the public is likely to accept and use the likely methods of compliance with the FMVSS.

27

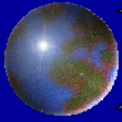


## *Objectivity*

---

- A stringent requirement that an FMVSS define virtually all the relevant factors in determining compliance.
- Courts have explained that "objective" means:
  - Determination of compliance is "based upon the readings obtained from measuring instruments as opposed to the subjective opinions."
  - Tests to determine compliance should be "capable of producing identical results when test conditions are exactly duplicated."

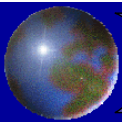
28



## *Rationale for Objectivity Requirement*

---

- Manufacturers must be able to determine with reasonable confidence that their products comply and thus will not be subject to an agency enforcement action.
- NHTSA needs objective requirements and test procedures to show it is a matter of objective fact, not opinion or judgment, that a manufacturer's product failed to meet an FMVSS.

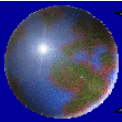


## *Case Example: Chrysler v. DOT*

---

- Occupant crash protection standard (FMVSS No. 208)—specified that compliance was to be determined in a crash test and forces imparted to a crash dummy could not exceed certain limits. (472 F.2d 659).
- Held not objective because of the lack of criteria specifying how flexible the neck could be, etc.
- Because these possible variations in the construction of the dummy could change the outcome of a compliance test, the standard was not objective.



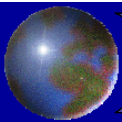


## *Case Example: Chrysler v. DOT*

---

- Cases indicate FMVSSs cannot simply require that performance be “adequate” or “sufficient,” e.g., cannot simply say “stop quickly.”
- FMVSS must objectively establish what is “adequate” or “sufficient” by stating the criteria in quantified terms or otherwise defining the criteria & any factor that can change the outcome of the test.
  - e.g., define the crash barrier, the direction of the vehicle, the speed, the loading of the vehicle, the measuring device, the criteria to be met, etc.
  - Depending on the test, even ambient temperature can be relevant.

31



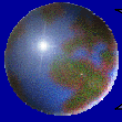
## *Important Conclusions*

---

- Rulemaking to adopt a GTR is subject to the same requirements as a rulemaking to base a new FMVSS on a standard developed by a voluntary consensus standard organization, e.g., SAE or ISO.
- To adopt a GTR as an FMVSS, NHTSA must explain the safety need and show how the regulation addresses the safety need, that the regulation is practicable, and that compliance can be determined through objective measurements.
- The objectivity requirement means FMVSSs must be very specific about the conditions under which the vehicle must meet the standard.

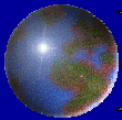
32





---

*Questions?*



---

*Thank You*