

vehicle manufacturers over the past two years to assess our original phase-in requirements, as well as the vehicle manufacturers' projections for meeting the phase-in schedule. We have also monitored the advanced air bag systems that they have been developing, as well as met with individual restraint system suppliers. While DC has commented that it is disappointed that the agency has denied its recommendation of a 10 percent first year phase-in, GM has indicated an ability to meet the original first-year requirement of 35 percent. As previously noted, four of the five larger manufacturers that commented on the NPRM, *i.e.*, GM, Subaru, Nissan and BMW, specifically indicated that the reduction of the first year phase-in to 20 percent would give them the necessary flexibility and relief to meet the new phase-in schedule. Thus, the remaining 15 percent of their respective fleets that no longer need to meet the first year phase-in requirements could be deferred to year two, if more development time is needed, or could be certified in model year 2003 to earn advanced credits.

Although the Alliance represents many manufacturers, the only member that provided specific comments supporting the Alliance position that the reduction to 20 percent is not sufficient was DC.

DC noted that the agency's original driver automatic protection rule included a phase-in of 10–25–40–100 percent, and argued that the advanced air bag final rule raises issues of even greater complexity. There is no reason, however, why the specific production year percentages for phase-ins of different rules should be the same. We also note that, as part of the May 2002 final rule for advanced air bags, we eliminated altogether the first year of the phase-in schedule we had proposed, which would have required 25 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2002, to comply with the advanced air bag requirements.

Finally, for model year 2003, which began approximately one year before the required phase-in begins, significant numbers of production vehicles are being certified to comply with the advanced air bag requirements. GM has announced introduction of a passenger sensing system that is being installed in nearly 1.6 million vehicles. This system is standard on most of GM's model year 2003 full-size pickups and sport-utility vehicles, including the Chevrolet Silverado and GMC Sierra pickups (except commercial models or chassis-cabs) and Chevrolet Suburban, Tahoe and Avalanche; GMC Yukon XL, Yukon and Denali; and Cadillac Escalade and

Escalade EXT. GM has certified that the system meets the advanced air bag requirements. NHTSA has performed some compliance tests on three of the GM C/K trucks that were certified to the advanced air bag requirements. These included the infant, three-year-old and six-year-old child dummy suppression (presence) tests, the 5th percentile adult female driver low risk deployment tests, the belted 5th percentile adult female offset deformable barrier crash test, the frontal unbelted 5th percentile adult female and 50th percentile adult male crash tests. The three units tested passed the applicable performance requirements.

Other manufacturers are certifying, for purposes of the risk minimization requirements for children, on the basis of a combination of air bag suppression (for the infant and three-year-old child dummy tests) and low risk deployment (for the six-year-old child dummy tests) in model year 2003. This demonstrates that vehicle manufacturers are not constrained to a particular advanced air bag technology, and that both suppression and low risk deployment certification methods are viable options for meeting the advanced air bag requirements ahead of the required phase-in schedule. We are also aware that vehicle manufacturers are working with multiple technology suppliers and are not reliant upon a single entity for production.

As with the phase-in of any new requirement involving the use of new technology, we will, of course, continue to monitor the ability of the automobile manufacturers to meet the specified requirements.

## V. Rulemaking Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule was reviewed under E.O. 12866, "Regulatory Planning and Review." This action is "significant" under the Department of Transportation's regulatory policies and procedures.

This rule reduces the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. However, the rule does not change the requirements for vehicles equipped with advanced air bags. Readers who are interested in the costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment

(FEA) for the May 2000 final rule. The estimated benefits compared to pre-model year 1998 (pre-depowered air bags) in that rule for the suppression technologies were estimated to be 93 fatalities and 151 AIS 3–5 injuries. These benefits can be considered to accrue over the 20–25 year lifetime of one model year's fleet. As noted in the NPRM, the reduction in the phase-in schedule for the model year 2004 fleet from 35 percent to 20 percent could result in the potential loss in benefits over the lifetime of the model year 2004 fleet of 14 lives and 23 AIS 3–5 injuries.

### B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis was prepared for the May 2000 final rule as part of the FEA. This action will not have a significant economic impact on small businesses because the only change it makes to the May 2000 final rule is to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this amendment should only slightly affect the price of new motor vehicles.

### C. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

### D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final