the highway loss reduction

STATUS REPORT

INSURANCE INSTITUTE for Highway Safety

Vol. 9, No. 17 September 27, 1974

FHWA Boobytraps Hinder Hazard Removal

Despite congressional good intentions, the federal road to highway hazard removal is strewn with bureaucratic potholes, confusing directional signs, and built-in budget boobytraps.

The Federal-aid Highway Act of 1973 authorized a total of $800 million to be spent over three fiscal years for four categories of highway hazard removal – rail-highway crossings, high-hazard locations, roadside obstacles, and the inclusive Safer Roads Demonstration Program. (See *Status Report*, Vol. 8, No. 15, Aug. 1, 1973.) Of the $800 million, the Congress earmarked $150 million for fiscal 1974, $325 million for the current fiscal year, and the remainder for fiscal year 1976.

However, only about $19 million had been obligated – contracted to be spent – by the states as of May 31, 1974, one month before the end of the fiscal year. As of July 31, 1974, the total unobligated balance for fiscal years 1974 and 1975 was just under $440 million.

In other words, as of July 31, 1974, the states could have spent almost half a billion dollars more than they did. Funds not spent two years after apportionment are lost.

Status Report interviews have revealed that the most widely given excuse for this lack of expenditure on the part of the states is the time it takes to set up programs in compliance with the dictates of the Act. James Foley, director of the Office of Highway Safety in the Federal Highway Administration, referred to the period since passage of the 1973 Act as "start up time." He said, "Unless a state had a highway hazard removal package of its own – on which it was going to spend its own money – it wouldn't be in a position to spend the money available to it for the first year."

Inside

FHWA OMITS DEADLINE

Section 230 of the 1973 Act, which created the "Federal-aid Safer Roads Demonstration Program," directed that "not later than June 30, 1974, each state shall identify projects . . . for the program." The Congress thus established a deadline that required completion of at least one section of a highway hazard removal program by the end of fiscal 1974. This deadline was not enforced by FHWA.

Foley told *Status Report* that the enforcement of the statutory deadline would have been "counterproductive," producing "a negative reaction from the states." But in fact, in the first transmittal to the states regarding the program (dated Dec. 7, 1973), no mention was made of the June 30, 1974, deadline. Instead, a subsequent phrase from the Act was quoted: "Prior to June 30, 1974, projects for the Safer Roads Demonstration Program . . . may be selected by the State . . . ." By omission of the deadline, June 30 could have been interpreted only as a date before which states *could* select their projects – not the date by which they had to do so.

Chester Phillips, FHWA chief of Traffic Operation Program Branch, said that the agency's directives "are not meant to be used by themselves. The states know what's expected of them." He admitted, however, that the omission of the deadline "could have acted as a roadblock" to the schedule set by the Congress.

Further confusion among the states over use of highway hazard removal funds has been caused by the federal government's "obligation limitations" policy and its effect on the hazard removal apportionments.

According to Foley, the White House's Office of Management and Budget has set "obligation limitations" for both fiscal years 1974 and 1975. These limitations have reduced the amount of money states can spend out of the sums apportioned them from the Highway Trust Fund.

FHWA did not instruct the states to apply the cuts resulting from obligation limitation across the board among all highway programs. Rather, the agency gave the states the option of sacrificing some programs entirely [such as hazard removal] so as to spend full original apportionments on others. Although FHWA Administrator Norbert Tiemann conceded that an across-the-board requirement would have been within the FHWA's authority, he stressed that "we want to give as much flexibility as possible (to the states)."

HAZARD FUNDS NOT SPENT

Foley admitted that it was possible for a state to place the burden of obligation limitation solely on the highway hazard removal programs, but said he regarded that situation as highly unlikely. However, a *Status Report* survey of the ten states with the highest apportionments for highway hazard removal programs shows that such a situation is indeed likely.

A look at obligated expenditures as of June 30, 1974, for highway hazard removal, compared to apportionments, shows minimal spending and generally vague plans for the future:

State	Available FY 74-75	Obligated By State	State	Available FY 74-75	Obligated By State
California	$37,835,040	$ 5,269,860	**Florida**	$14,066,042	$ 49,500
New York	33,330,199	100,540	**New Jersey**	12,682,646	0
Texas	26,566,158	0	**Indiana**	11,245,446	0
Pennsylvania	22,852,866	1,552,566	**North Carolina**	11,065,542	64,800
Illinois	22,248,668	890,896	**Georgia**	10,707,897	20,700

'OTHER PRIORITIES'

Highway officials in California, Pennsylvania, New Jersey and Georgia claim that their states plan to eventually spend the full apportionment available to them for highway hazard removal.

Illinois officials plan to cut the state's expenditure proportionate to its obligation limitation. In other words, if it receives only 70 per cent of its apportionment, it will spend only 70 per cent of its highway hazard removal funds. New York would make similar proportionate cuts should the need arise. Florida is undecided.

Indiana plans to obligate approximately one million dollars – about 90 per cent less than it could spend. Roger Marsh, executive director of the Indiana State Highway Commission, said, "states are given this latitude" and Indiana feels that its needs lie elsewhere.

North Carolina and Texas are undecided as to the amounts that they will spend. However, both states regard funds apportioned for highway hazard removal as money "coming out of" regular construction funds. "It's so difficult to really schedule expenditure," Richard Banderstraten of the Texas State Highway Engineer's Office told *Status Report*. "Needs change every six months and we like to be flexible," he said.

FHWA Relaxes Road Supervision Role

The Federal Highway Administration has started a new program under which it can grant states the power to regulate their own highway construction and hazard removal programs on most of the federal-aid highway system.

The program, known as "certification acceptance," was implemented with no advance notice or invitation for public comment, other than to state and local governments.

The program first came to public light on May 15, 1974, when it was published in the *Federal Register* effective immediately. FHWA said that it had been "widely circulated to state and local government officials" sometime in late summer, 1973.

According to the language of the program, its purpose "is to provide an alternative procedure for administering certain highway projects to be constructed with federal fund participation in lieu of the detailed Federal Highway Administration procedure . . . ." FHWA claimed in the *Federal Register* that the states "have reached a degree of maturity such that they no longer need careful and detailed scrutiny of their implementation of federal-aid highway programs."

Under the program any state may "certify" that it meets the list of criteria set forth in the regulation. If FHWA "accepts" the state's certification, it grants the state the right of self supervision of most of its federal-aid highway programs.

FHWA said in the *Federal Register* that because of acknowledged "interest in the matter," it would "be receptive to further comments and suggestions after issuance of this regulation." On July 5, the Center for Auto Safety responded to that announcement with a submission to FHWA in which it objected to the regulation itself, as well as to the limited circulation of the draft regulation.

The center expressed special concern "with the excessive discretion and flexibility allowed to the states" by the regulation. "We strongly believe the lack of close supervision [resulting from the regulation] . . . will lead to tragic and death-dealing errors in the design and construction of federal-aid highways," the center said.

In April, even before the regulation was implemented, Georgia became the first – and is so far the only – state to apply for "certification."

During the week of July 15, center researchers visited Georgia. They reported finding none of the assumed "maturity" in the state's implementation of highway planning, construction and maintenance programs. In a letter to FHWA Administrator Norbert T. Tiemann, the center urged the agency to "reject Georgia's application for certification acceptance" because acceptance would "jeopardize the ultimate success of the nation's highway safety effort." (See following story.)

Tiemann responded to the center's objections in a September 12 letter in which he said, "We do not share your fears that FHWA's effectiveness in the field of highway safety will be lessened by certification acceptance." Georgia's application was "with some exceptions found to be satisfactory," he said, and it was therefore accepted.

CAS, Georgia Differ On State's 'Maturity'

Center for Auto Safety researchers visited Georgia during the week of July 15, 1974, to ascertain that state's qualifications for "certification acceptance" under the new Federal Highway Administration ruling of May 15.

Instead of the claimed "maturity," the researchers said they discovered "serious operating deficiencies which critically impair the state's ability to provide a system of highways that is economical, efficient and safe."

The researchers said they found that:

- as late as 1972 Georgia was ignoring roadside hazards – specifically, exposed bridge piers – built into a newly constructed segment of Interstate 16, and was reporting that segment "completed to full Interstate standards." Because such hazards are on the Interstate system, they would not be affected by the "certification," although they could be symptomatic of immaturity, the center said;

- the Georgia Division of Highways had no system of internal review of plans equivalent to the review then provided by the FHWA;

- the Division of Highways lacked "a state construction manual and a comprehensive state design manual . . .";

- the state maintained an "antiquated" system of FHWA directives and did not have its own state system of directives.

The center reported its findings to FHWA by letter dated August 20. Georgia's application for "certification" was accepted September 3. It was not until September 13 that some of the charges made by the center were answered in a letter to the FHWA from Georgia highway engineer Thomas Moreland.

Arguing that the center's allegations were both "inaccurate and unwarranted," Moreland said that:

- the exposed bridge piers in question are 30 feet from the road and thus meet federally-approved safety requirements. A spokesman for the center acknowledged this to be true.

- the Georgia Division of Highways has "an adequate system of internal review . . . ";
- the division's files of FHWA directives are kept up to date.

The letter conceded, however, that Georgia has neither a state construction manual nor a comprehensive state design manual.

The center is deliberating further action on the issue of "certification acceptance."

Senate Votes 64 To 21 Against Interlocks

The Senate has gone on record as opposing ignition interlocks, but without actually passing legislation that would outlaw them.

In a 64 to 21 vote, the Senate endorsed an amendment offered by Sen. Thomas F. Eagleton (D-Mo.) and Sen. James L. Buckley (CR-N.Y.). With changes made during debate, the Buckley-Eagleton measure would have outlawed interlocks and would have required public hearings before the Department of Transportation could issue any other occupant restraint standards – including an air bag-type passive restraint standard, such as it currently is proposing.

The amendment was tacked to a Public Works Committee highway bill. Following the Senate vote on the measure, Buckley withdrew the amendment to avoid "a procedural problem" since the matter is under the motor vehicle oversight authority of the Commerce Committee, not the Public Works Committee.

However, Buckley said in withdrawing his amendment that the "strong affirmative" vote had placed the Senate "clearly on record in opposition to the mandating of the systems and, therefore, in effect, we had instructed the Senate conferees to accede to the House position." Technically, the Senate vote is not binding on the conferees.

The Senate motor vehicle safety bill, passed earlier this year, does not deal with ignition interlocks or passive restraints. The House version of the bill does. Members of the Senate and House Commerce Committees will meet in conference to settle differences between the two versions. (See *Status Report*, Vol. 9, No. 16, Sept. 9, 1974.)

Recent passage of the House version, which would outlaw interlocks and standard-equipment passive restraints, brought urgings from the auto casualty insurance industry, an international public health organization and a state safety council that the Congress not hinder the Department of Transportation's standard setting authority. It also generated a strong endorsement of air bags from a former senior auto executive.

The AMERICAN MUTUAL INSURANCE ALLIANCE, representing more than 100 auto casualty insurance companies, "strongly urged," in a letter to the House and Senate conferees, that they "reject any provisions in the pending legislation which would discourage the implementation of the combined air bag lap belt system." The Alliance said it "conceded that the interlock system, while an effective restraint, has not met with public acceptance and that the rule requiring interlocks should be withdrawn." However, "the provision in the House amendment prohibiting the mandatory installation of air bags is, it is submitted, unwise," the Alliance said.

NATIONWIDE INSURANCE, the fifth largest auto insurer in the U.S., said, "The death warrant will be signed for thousands of motorists if the current movement to water down automobile safety standards is successful." In a letter to the conferees, Nationwide President John E. Fisher said that "There may be certain inconveniences and annoyances connected with the interlock system, but these pale in comparison to the savings in lives, reduction in serious injuries and prevention of great family anguish that result from safety belt use."

Fisher said that his company also "strongly supports passive safety restraint systems and opposes any attempt to inhibit the use of these proven life-saving devices." Fisher continued, "Allowing such devices (passive restraints) as options only would be as foolhardy as permitting collapsible steering columns and safety glass as options only."

John Z. DeLorean, a former General Motors vice president, who has been retained by ALLSTATE to analyze air bag data, told a Senate gathering that "there's nothing in the world I'd rather have than an air bag" equipped car in a crash. He said that there are "no technical problems with [air bag] installation in small cars, in fact, because of their size, they need the air bag more." Addressing questions of expense, DeLorean equated air bag costs to vinyl tops or "a set of fancy hubcaps . . . . Getting the air bag in production will reduce the cost," he said.

The AMERICAN ASSOCIATION OF AUTOMOTIVE MEDICINE, an international organization of physicians and other public health officials, at its annual conference in Toronto, passed a resolution endorsing air bags and urging "that no law be enacted that would in any way eliminate or weaken the existing statutory authority of the U.S. Department of Transportation to adopt motor vehicle safety standards, based on adequate research and public hearing, requiring that the most effective available occupant restraint systems be included as standard equipment on new motor vehicles."

Freeman L. Evans, executive director of the Mississippi Safety Council, sent a letter to every member of the state's congressional delegation, urging them to "vote against any effort to repeal the DOT authority to require interlock ignition systems and the forthcoming 'passive restraint' system."

NHTSA Reopens Ford Control Arm Investigation

The National Highway Traffic Safety Administration has reopened its investigation of Ford lower control arms on some 5.5 million 1965-1970 Ford made cars. The arms are a critical front-end suspension component with a documented history of failure.

After a five-month review of its earler investigation, the agency now feels that it needs to "ask Ford a few more questions," an NHTSA official told *Status Report.*

The "entire impetus" for the review came from a hearing in March during which the Insurance Institute for Highway Safety – which discovered and first reported the defect more than three years ago – the Center for Auto Safety and an independent metallurgist presented evidence indicating that NHTSA's original investigation was inadequate. (See *Status Report*, Vol. 9, No. 6, March 26, 1974.)

NHTSA had closed its investigation in December, 1973, by concluding, despite almost 300 confirmed failures, that the arms were not defective.

Child Restraint Proposal Draws Strong Reaction

The National Highway Traffic Safety Administration's proposal to substantially upgrade its child restraint standard (FMVSS 213) has received strong support from physicians and public interest groups and sharp opposition from auto and child restraint manufacturers. Several manufacturers of highly rated child restraints have claimed that the NHTSA proposal would ban their products, thus reducing, rather than promoting, safety for children.

The agency's proposal, which would take effect Sept. 1, 1975, would replace the standard's current static pull test with crash sled tests designed to dynamically simulate 30 mile per hour frontal and 20 mile per hour lateral and rearward crashes. A simulated rollover test also would be required. During the testing each child restraint would be required to retain a test dummy in the system and "suffer no loss of structural integrity."

The proposal would also close a current loophole that allows car beds and infant carriers to escape coverage by the standard.

STANDARD OVERDUE

Calling the new child restraint proposal long overdue, public interest groups, individual physicians and Consumers Union expressed strong support for NHTSA's action. The Center for Auto Safety observed that the "need for such a revision was clearly established nearly two years ago" as a result of the CU sponsored tests in which "many child restraint devices on the market were incapable of providing effective crash protection, even though they fully met the present FMVSS 213."

Physicians for Automotive Safety, joined by Action for Child Transportation Safety, expressed concern that many "ineffective seats" will come on the market between now and the September, 1975, effective date of the NHTSA proposal. The groups urged NHTSA to immediately adopt an interim standard that would require restraints to remain intact and retain a test dummy in a 30 mile per hour barrier crash.

Some manufacturers claimed that the proposed standard would eliminate seats and harnesses of proven value and substantially increase the price of child restraints. General Motors claimed that the NHTSA proposal "would eliminate" both of its child restraints "from the market." Ford agreed, saying its child restraint would also have to be "taken off the market" because of the "combination of complex, stringent, unwarranted requirements" of the proposal. Rose Manufacturing Co., which makes the Sears Roebuck harness child restraint, also claimed that its product might be excluded from the market if the NHTSA proposal were adopted. The GM and Ford products were among those top-rated in the University of Michigan impact tests of child restraints conducted for Consumers Union.

DUMMY DIFFICULTY CITED

Several manufacturers criticized NHTSA for not issuing complete specifications for the test dummy to be used in the new standard, saying that they could not comment on the proposed standard without more details. The Motor Vehicle Manufacturers Association urged NHTSA to withdraw the proposal until the agency obtains more biomechanical data for children and develops "more objective specifications for dummies." (The claimed difficulty of specifying an adequate adult test dummy was one of the grounds for auto makers' success in delaying, through a lawsuit, the implementation of the occupant protection standard, FMVSS 208. See *Status Report*, Vol. 7, No. 23, Dec. 18, 1972.)

Other manufacturer criticism centered around the vehicle seat to be used in the testing required by the proposal. Volkswagen criticized wording in the standard that, it said, requires "manufacturers to design for bench seats regardless of whether the child restraint is meant for use in bench or bucket seats." Volvo

asked for provision in the amendments for a "child restraint system designed for one specific make and model vehicle . . . allowing the child restraint to be integrated into the vehicle," such as the Volvo child restraint. Other manufacturers criticized the agency for not specifying a standard vehicle seat to be used in the testing.

Volkswagen, citing an Austrian law, also noted that "because rear seats offer a much safer crash environment, European countries are requiring that young children be transported only in the rear seat." In the U.S., it said, "such regulation could perhaps be attached to [the] mandatory seat belt use incentive plan." NHTSA's present incentive grant scheme for states that pass belt use laws does not include any requirements for child restraints. Belt use laws introduced in state legislatures have generally excluded young children. (See *Status Report*, Vol. 9, No. 5, March 5, 1974.)

Correction

Status Report recently reported, in a story on the General Accounting Office's assessment of cost-benefit analyses, Vol. 9, No. 15, Aug. 16, 1974, that "NHTSA estimated the average cost of a motor vehicle crash as $46,000, while the National Safety Council estimated the average cost at only $15,800."

The numbers actually represent estimates by those organizations of *annual* – not average – crash costs. NHTSA's estimate was $46 billion. The National Safety Council's estimate was $15.8 billion.

the highway loss reduction

STATUS REPORT

Editor: Ralph Hoar
Writers: Tim Ayers, Ben Kelley, Stephen Oesch, Lloyd Slater, Christine Whittaker

INSURANCE INSTITUTE for HIGHWAY SAFETY
WATERGATE SIX HUNDRED • WASHINGTON, D.C. 20037
(AREA CODE 202-333-0770)