

New Agency Urged

'Virtual Halt' Of Vehicle Safety Effort Hit

Sharply criticizing the "virtual halt" of the federal motor vehicle safety program "over the past two years," a House subcommittee has recommended that the program be revitalized by removing it from the Department of Transportation and placing it, along with the Food and Drug Administration and the Consumer Product Safety Commission, in a new, independent regulatory agency.

"Independence from special interests exerted through executive branch offices and responsiveness to the law will be increased by combining the National Highway Traffic Safety Administration's [motor vehicle] safety functions with those [safety regulatory functions] of other safety agencies into a single Consumer Safety and Health Commission," the Oversight and Investigations Subcommittee of the House Commerce Committee concluded in a lengthy analysis of NHTSA and other regulatory agencies. "This merger also would reduce duplication and overlapping of regulatory functions and procedures."

NHTSA's newly appointed administrator, John Snow, said that while "we welcome" the subcommittee report, NHTSA disagrees with it on a number of points. (See box, page 2.)

The subcommittee report dealt with three specific, large issues involving NHTSA: motor vehicle safety standards-setting, the role of benefit-cost analysis in NHTSA decisions and the defect-recall programs.

STANDARDS

In NHTSA's motor vehicle standards cases, the "vast majority of the written comments are submitted by regulated industry . . . NHTSA's docket room, where all comments on pending rulemaking are filed, sees heavy traffic, but the docket excludes some internal memoranda, such as certain messages from other offices in the Department of Transportation and communications with other executive offices. The process is open but not wide open," the subcommittee found.

"Issuance and improvement of safety standards for new motor vehicles are the chief operative elements of NHTSA's mandate to reduce fatalities and injuries. Nevertheless, this program recently has been subject to across-the-board delays of long-promised standards.

"This slowdown is an example of virtual abandonment of a major Congressional directive [the National Traffic and Motor Vehicle Safety Act of 1966, over which the House Commerce Committee has oversight jurisdiction] that is only ten years old"

The subcommittee found that after "an initial burst of activity in the first three years of its existence, NHTSA's issuance of new standards leveled off in the period from 1970-1973, during which 16 new standards were issued, and then fell off precipitously in the 1974-1975 period, with but a single new

standard issued in the two year period. NHTSA promulgated four new standards early in 1976. However, three of these are addressed to school bus safety and were issued in response to a direct Congressional mandate." As to "significant amendments" to existing standards, the subcommittee found that NHTSA has issued "only a handful" in recent years.

"Much more numerous, however, are improvements proposed by NHTSA but never issued. These include seating and seat strength, a child-seating system and standards . . . dealing with 'passenger crashes,' and others," the subcommittee said. It also referred to the continued lack of standards on "sharp protrusions from motor vehicles which unnecessarily multiply injuries inflicted on pedestrians, bicyclists and motorcyclists when they are struck by these protrusions."

In summary, the subcommittee said, "in recent years NHTSA has produced fewer and fewer significant rulemaking actions. What NHTSA has not done speaks louder than the few regulatory agency actions it has produced in recent years."

The subcommittee said the causes of the NHTSA "slowdown" include the following:

- "The growing complexity of rulemaking actions."
- "The narrow base of public support for specific rulemaking actions."
- "Increasing resistance from industry," meaning motor vehicle and equipment manufacturers regulated by NHTSA.
- "Political interference in NHTSA rulemaking by the White House Domestic Council, the Office of Management and Budget, and others."

Snow Responds To Report

National Highway Traffic Safety Administrator John Snow, in a statement indicating that his agency will give the subcommittee report a "complete and thorough analysis," took issue with it on a number of counts, including these:

- *"Slowdown" in standards activities:* "To the contrary, we have been very active in this area." But newer standards "require more intense analysis, and research, and stimulate more resistance on the part of industry. In that context, new standards do take longer to move from the proposed stage to a final rule."

Earlier, at the American Automobile Association's annual meeting in San Francisco, Snow had said that other than the pending passive restraint docket (FMVSS 208), "I don't see any major safety advances for our vehicles in the very near term."

- *Lack of standards evaluation:* "We have in place now an effective program for evaluating our standards . . ." Snow did not elaborate, nor has any such program been announced by NHTSA in past. Recently, however, NHTSA requested proposals from private contractors on methods of evaluating highway safety standards.

- *Benefit-cost analysis:* "Cost-benefit analysis is not the critical determinant of our rulemaking decision, although we do view such analyses as useful management tools and a necessary aspect of responsible decision-making The benefits and costs of proposed motor vehicle safety standards must continue to be considered"

Because of the “slowdown,” the subcommittee suggested, the “continuing cost to society of U.S.A. automobile death and injury” has been kept at a needlessly high level. “There is good evidence,” it said, “that NHTSA safety standards save lives and reduce injuries to a significant and substantial extent.” (See *Status Report*, Vol. 11, No. 7, May 3, 1976; Vol. 11, No. 14, Aug. 30, 1976.) Additional standards, “including the upgrading of several existing standards, could materially reduce the numbers of deaths or injuries further without excessively raising costs,” it added. Yet, the subcommittee said, “despite a clear mandate from Congress to continue issuing standards, and the knowledge that further standards can lower fatality and injury rates, NHTSA has issued few standards since 1974.”

BENEFIT-COST

The subcommittee found that one major cause of the NHTSA “slowdown” has been “involvement of the Council on Wage and Price Stability and the need for additional economic analysis prior to issuing standards.” The council, it said, has urged that “at a minimum, a benefit-cost analysis or economic impact analysis should be performed in preparing any major regulatory decision, so that the results may be taken into account.”

But this contradicts the Congressional intent, the subcommittee said, that the Secretary of Transportation, in issuing motor vehicle safety standards through NHTSA, be “left to exercise his judgment in the application of a broad calculus of safety benefits, with a built-in bias toward standards which meet the need for motor vehicle safety.” Moreover, it said, benefit-cost analysis is “least defensible as a prerequisite to health and safety rulemaking, where benefits are difficult to quantify. Its advocacy by executive bureaus is improper when Congress, explicitly or implicitly, has stated that benefit-cost analysis should not be required before issuing a regulation.”

The subcommittee proposed “guidelines for NHTSA in applying the benefit-cost device,” including these:

- The agency should “acknowledge the genuine limitations of benefit-cost analysis with respect to proposed rulemaking, now and for the immediate future. In its place the administrator should press to obtain as much cost data as possible before reaching a regulatory decision.”
- The administrator should “also press for as refined a prediction as possible of projected benefits, expressed not in dollar values but as fatalities and injuries which can be avoided or reduced.”
- Benefit-cost analysis, thus “refined” by NHTSA, should be applied “at the outset *not* to the process of issuing new standards but in assessing the merits of standards in effect. In the *evaluation* of applied safety standards benefit-cost analysis will find fertile ground for development and growth The attempt to prophesy the future, if necessary, is better based on experience instead of imagination.”
- NHTSA should develop “a capability to eliminate useless standards. Such a change in policy . . . presupposes a rare commodity, the courage to recognize and admit past error or changed circumstances.”

DEFECTS, RECALLS

NHTSA’s defect program, the subcommittee found, has “gone into low gear. The list of ‘current investigations’ contains open cases dating back to 1969 and 1970. Recently closed investigations have taken almost three times as long to complete (28.7 months) as cases closed in 1971 and 1972 (10 months).

“NHTSA closes some investigations with a finding of no safety defect even in the face of substantial evidence of a serious hazard.” The subcommittee cited NHTSA’s “investigation of failures in the lower

control arms of full-size 1965-1969 Ford vehicles, which lasted six years. Despite numerous reported failures, NHTSA found no defect. A possible factor in the finding was the high cost of replacing lower control arms and the large number of vehicles affected.” (See *Status Report*, Vol. 11, No. 8, May 19, 1976.)

The subcommittee concluded that NHTSA’s defect-recall program has “served significantly to clear the road of hazardous vehicles. It can encourage the manufacturers to exercise care in designing and producing cars and trucks. NHTSA should pursue defect investigations with vigor.”

The subcommittee concluded its report by recommending, in addition to NHTSA’s inclusion in an independent “Consumer Safety and Health Commission,” the following:

- NHTSA should “proceed to issue long-promised new standards, and upgrade existing standards where appropriate, without further unnecessary delay.” The agency’s “rulemaking stagnation does not comport with the letter or the spirit of the Vehicle Safety Act.”

- It should “eliminate the excessive delays in bringing defect investigations to a close. No investigation should be permitted to remain open for more than two years, and all but the most complex should be brought to a conclusion within one year, to afford adequate public safety.”

- NHTSA should “develop a workable system for evaluating existing standards,” and should “proceed to eliminate any found conclusively to be ineffective.”

- “Until benefit-cost studies can be based on acceptable data, NHTSA should accord little or no weight to them in agency rulemaking. At the same time, NHTSA should press – with even more intensity than in the past – its efforts to develop a data base which will make reasonable, adequate benefit-cost studies possible. Before this is accomplished, the Department of Transportation, the Council on Wage and Price Stability and others should be held to the limits of statutory law and prevented from imposing unreasonable requirements on NHTSA.”

The 700-page subcommittee report, *Federal Regulation and Regulatory Reform*, will be available November 1 in limited numbers from the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, Room 2323, Rayburn Bldg., Washington, D.C. 20515.

DOT Refutes AAA Air Bag Allegations

The U.S. Department of Transportation has found “no evidence whatsoever” to support allegations by the American Automobile Association that air bags failed to inflate in some severe head-on collisions involving air bag equipped cars operated by the U.S. Park Police.

According to Vernon Roberts, a DOT official who investigated Park Police air bag crashes, the agency has studied “every such crash of which the Park Police were aware.” In all of them, he said, the air bags “performed well, as they were designed and intended to do,” and there were “none in which the air bags should have deployed but didn’t.”

When told of DOT’s response, a spokesman for AAA said that his organization’s purpose in making the allegations was “just to get this on the public record . . . we are not in a position to stand behind the data.” Jerry C. Connors, manager of Congressional relations at AAA, told *Status Report* that his organization had not checked the “data” on its own, nor had it discussed the allegations with DOT crash investigators prior to making them public.

Federal Register Briefings Set

Although the *Federal Register* almost daily carries information that affects the lives of most Americans, it remains little known or understood by most citizens. In an effort to promote public awareness of the *Register*, which is the basic document covering federal agency rulemaking activities, the Office of the *Federal Register* has begun a series of free briefings on what the *Federal Register* is and how to use it.

Among the items appearing in the *Register* are federal executive orders, notices of proposed rulemaking, amendments to existing rules, new rules and notices of public meetings of government advisory committees.

The public briefings are held every Wednesday in Washington, D.C. and also will be held periodically in other major cities throughout the U.S. In addition, the Office of the *Federal Register* will consider private briefings for organizations in places other than D.C. Such briefings will be held at no charge except for the travel expenses of the person presenting the briefing.

Persons wishing to schedule or obtain additional information on the briefings outside of Washington, D.C. should contact Robert Lewis at 202/532-5240. For information on briefings in Washington, contact William Short at 202/532-5282.

In addition, persons unable to attend a briefing can obtain single copies of the material used in the briefing, at no cost, by writing: Educational Kit, Office of the *Federal Register*, National Archives and Records Service, 8th and Pennsylvania Ave., N.W., Washington, D.C. 20408.

AAA issued its allegations in the form of a press release and a letter to Secretary of Transportation William T. Coleman, and based them on a letter sent to DOT in August by Dr. J. Blaine Harrell, a retired member of the District of Columbia Board of Police and Fire Surgeons. Dr. Harrell's letter alleged that within the Park Police fleet of 48 air bag equipped Chevrolets, "five incidents involving severe frontal impacts occurred during the period of observation. In three the air bags failed to inflate."

DOT's Roberts called this a "gross exaggeration and distortion" of the Park Police cars' performance. He said that the crashes cited by Harrell were investigated by the National Highway Traffic Safety Administration at the time, and that the three were not "severe frontal impacts." He said this was verified by sophisticated recorders that had been installed in the cars to measure velocity changes in crashes.

Harrell's letter claimed that in one crash, "a patrol car veered from the road into a group of trees. The injured officer was on sick leave for two years." What Harrell failed to point out, Roberts said, is that in the crash there were impacts to the side and the undercarriage of the car, and that resulting injuries to the police officer's back may have resulted from these impacts. (None of the Park Police cars were equipped with lap belts, which when used can provide restraint protection in some non-frontal crashes. The air bags are designed to work in severe frontal and front-angle impacts.)

Harrell also alleged that a patrol car "crashed through a rail and plunged head-on into deep water. Injuries occurred." According to Roberts, the car did not hit a rail; it hit the water, bottom first. The only injuries that occurred were cuts caused when the driver climbed out a rear window that was broken so that he could escape from the sinking car, he said.

(Cont'd on page 6)

Finally, Harrell claimed that a patrol car, “at high speed, collided front to side with a second vehicle at an intersection. Injuries occurred.” Roberts said that no high-speed intersection collisions of Park Police cars were reported to NHTSA, but that one low-speed collision, resulting in minor injuries, was investigated.

AAA’s press release also charged that two front-into-rear crashes of Park Police cars took place in which the air bags deployed but injuries occurred, and that in yet another crash, the driver was “trapped by a bag and had to be cut free.”

Roberts said that according to DOT’s investigative data, “only one front-to-rear impact took place,” in which the closing speed of the crash was estimated at 12-18 miles per hour, and only minor injuries occurred. He added that the alleged incident in which a driver was “trapped” by an inflated air bag “definitely did not happen.”

A Park Police spokesman told *Status Report* that his office has called AAA to object to the press release. AAA’s Connors said he “couldn’t say whether or not we talked about this with the Park Police” before issuing the allegations.

Peltzman Criticism Of Safety Rules Refuted

An economist who hypothesized that drivers react to vehicle safety standards by driving more dangerously – and thus kill more pedestrians, bicyclists and motorcyclists – has been refuted on the basis of his data, his methods and data he failed to consider.

Leon Robertson, the Insurance Institute for Highway Safety’s senior behavioral scientist, has prepared a critique of this hypothesis which shows that the opposite is true: state and federal safety standards have resulted in lives saved and injuries prevented.

Sam Peltzman, a University of Chicago economist, hypothesized in a much-publicized paper last year that drivers respond to increased vehicle occupant crash protection by increased “risky driving” so that they will free up more time to increase their earnings – thus supposedly increasing the overall crash rate and the number of injuries to pedestrians, motorcyclists and bicyclists.

In attempting to prove his theory, Peltzman prepared a model based on certain variables such as consumption of distilled spirits, the number of young people in the population and the number of pedestrian, bicyclist and motorcyclist deaths. Peltzman said this model showed that fatality rates would have been unchanged or lower if the vehicle safety standards had not taken effect.

Robertson, however, pointed out that Peltzman “did not report rudimentary checks on the validity of his model such as its adequacy in predicting fatalities prior to regulation.” When Robertson ran these checks he found that the Peltzman model did not even fit the actual fatality rates prior to regulation. “Since the model does not accurately project actual death rates prior to regulation, it cannot be used to estimate the effects of regulation,” Robertson said.

Robertson explained that Peltzman used faulty data in constructing his model. Included in the Peltzman errors reported by Robertson were these:

- The Peltzman model did not take into account that a “substantial proportion of deaths to vehicle occupants and non occupants alike occur in or by trucks, which were not affected by many of the state belt installation laws and most of the federal safety standards.”

- Peltzman treated the deaths of pedestrians, bicyclists and motorcyclists as a homogeneous group. Robertson explained that the types and severity of crashes for motorcyclists and pedestrians are

quite different. He also pointed out that “motorcyclists are often killed in crashes where no other vehicles are involved – 39 percent in one recent study – and also kill pedestrians.”

- Peltzman’s measure of the consumption of distilled spirits ignored the “large consumption of beer.”
- Peltzman assumed that the same proportions of losses were covered by insurance throughout the period studied. Robertson explained that the number of states enacting laws “requiring insurance of most or all drivers during the relevant time period renders such an assumption invalid.”
- The components of the Consumer Price Index of auto repair services that Peltzman used did not reflect the types of property damage that occur in crashes.
- Peltzman used the percentage of 15-24 year olds in the population as a measure of youth involvement in crashes, ignoring the fact that the actual number of youths involved in crashes was known.

Robertson then constructed a modified model correcting the mistakes made by Peltzman. Robertson’s model was designed to show the number of fatalities that would have occurred if the occupant safety standards had not been enacted. He found that occupant fatalities were about 20 percent less than projected if there had been no standards – demonstrating that the vehicle safety standards had reduced death rates for vehicle occupants. Non occupant rates were also less than projected and Robertson pointed out that this finding was consistent with the known effects of the motorcycle helmet use laws enacted in most states.

Robertson also cited several other studies that found occupant deaths reduced by increased occupant protection without increases in non occupant deaths, contrary to Peltzman’s theory, including one study Robertson conducted for IIHS. (See *Status Report*, Vol. 11, No. 7, May 3, 1976.) For example, occupant death rates decreased after Australia’s belt use law went in force with no increase in non occupant death rates. Also, a recent General Accounting Office study estimated that federal safety standards saved approximately 28,000 lives between 1966 and 1974. (See *Status Report*, Vol. 11, No. 14, Aug. 30, 1976.)

Robertson’s critique of Peltzman’s theory is scheduled to be published in the *Journal of Economic Issues*. Prepublication copies of “A Critical Analysis of Peltzman’s ‘The Effects of Automobile Safety Regulation’” can be obtained by writing to “Critical Analysis,” Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

Pennsylvania Pre-Sale Safety Rules Struck Down

Federal regulation of motor vehicles precludes state pre-sale enforcement of identical safety standards, a federal court has recently ruled. States do, however, have the authority to enforce such standards “on a post-sale basis in order to assure a continuing and effective national traffic safety program,” the court said.

The court held that Pennsylvania’s rules requiring state pre-sale approval of motor vehicle equipment covered by federal standards are preempted by the federal motor vehicle safety standard program. However, the ruling does not preclude pre-sale state standards that apply to items not covered by federal standards nor does it preclude pre-sale state standards that regulate *aspects* of an item that are not covered by a federal standard.

Although the decision directly affects only Pennsylvania’s program, if it is upheld on appeal it may have a significant impact on similar pre-sale approval programs in other states.

Pennsylvania's rules required manufacturers and sellers of certain vehicle equipment to receive state certification before such equipment could be used or sold in the state. This certification was required even if the manufacturer had already certified that the item met the applicable federal standard.

As part of the state certification process, the manufacturer or seller was required to provide the state with samples of its equipment for testing, or submit independent laboratory test reports proving that the equipment conformed to the applicable state safety regulations. Pennsylvania officials allowed manufacturers and sellers to submit the test data and other information to the American Association of Motor Vehicle Administrators (AAMVA) for certification. (The District of Columbia and all states except California and Virginia also accept AAMVA certification that motor vehicle equipment conforms to applicable state rules.)

In his opinion striking down the program, Judge R. Dixon Herman of the U.S. District Court for the Middle District of Pennsylvania, ruled that the National Traffic and Motor Vehicle Safety Act of 1966 "completely preempts . . . any state method of enforcement of identical standards on vehicles or vehicle equipment prior to the first purchase." A state's enforcement of the same standards as the federal government would "merely constitute a duplicative effort" and could not be done "without creating doubts and confusion as to the applicable and required standard and thereby impairing the effectiveness of the federal standard and the federal method of enforcement"

Pennsylvania is currently appealing the decision, which is *Truck Safety Equipment Institute v. Kane*, Civil Action 75-636, U.S. District Court for Middle District of Pennsylvania, decided Sept. 16, 1976.

Restraint System Film Wins Top Award

Crashes That Need Not Kill, a film on automobile restraint systems, has been awarded the highest honor given to films submitted for official United States showing abroad.

The 28-minute, color film documents the scientific development, here and abroad, of restraint systems that can save thousands of lives and prevent tens of thousands of injuries in car crashes. (See *Status Report*, Vol. 11, No. 13, Aug. 17, 1976.)

The new documentary film, sponsored by the Insurance Institute for Highway Safety and produced by Harvest Films, was awarded the "Golden Eagle" by the Council on International Nontheatrical Events. Winners of the "Golden Eagle" are then entered by the U.S. in international film competitions. This is the third Institute film to be so honored. The other two were . . . *In The Crash* and *Boobytrap!*

Crashes That Need Not Kill is currently being aired on television stations across the country. A shortened version is also being shown in movie theaters.

The film was written and narrated by Albert Benjamin Kelley, IIHS senior vice president, who co-directed the film with producer Leo Trachtenberg.

Copies of the film may be purchased for \$200 or obtained on a first-come, first-served free loan basis. (There is currently a six-month waiting list for free loan prints.) Loan and purchase requests should be sent to Harvest Films, A-V, Inc., 309 Fifth Ave., New York, N.Y. 10016. Television stations should contact Association Films, Inc., 1701 N. Fort Myer Dr., Suite 601, Arlington, Va. 22209.

Virginia Construction Hazard Suit Settled

Highway construction hazards in Virginia are to be corrected as a result of the settlement of a suit against the Virginia Department of Highways and Transportation.

The suit was brought by a major labor union representing highway construction workers, staff of the Center for Auto Safety and other motorists. It centered on driving and working conditions on Interstate I-495, the beltway encircling Washington, D.C.

Earlier, the Federal Highway Administration, originally a defendant along with the Virginia agency, settled by agreeing to issue new rules aimed at setting stricter national safety standards for construction zones. (See *Status Report*, Vol. 11, No. 15, Sept. 23, 1976.)

As part of the newly reached court supervised settlement, Virginia agreed that it would review the use of timber barricades, which the suit charged fail to protect motorists or construction workers in construction zones. Virginia said that in the future it would use traffic control devices which contain and redirect errant vehicles while minimizing damage to the vehicle. A Virginia official told *Status Report* that while the settlement "does not prohibit" use of timber barricades and "does not necessarily" require removal of existing barricades, "as a practical matter" almost all of those barricades have been removed from I-495.

BARRICADE HAZARD CONFIRMED

The hazard presented by timber barricades was recently confirmed in a study by the Virginia Highway and Transportation Research Council, an organization sponsored jointly by the Virginia Department of Highways and Transportation and the University of Virginia. The study, *Evaluation of Timber Barricades and Precast Concrete Traffic Barriers for Use in Highway Construction Areas*, found that the frequency of crashes increased approximately 119 percent on I-495 during construction and that 52.5 percent of those crashes involved "vehicle contact with one or more of the timber barricades."

Of the barricade-involved crashes, it found 73.5 percent "involved vehicles which straddled or penetrated the barricades." The study recommended that precast concrete traffic barriers should be used where "a positive barrier is warranted on a freeway construction project."

In the court supervised settlement of the suit, Virginia agreed, among other things, to:

- correct unsafe traffic control practices on all Federal-aid highway projects currently under construction in the state;
- assign at least one safety officer to each future Federal-aid construction project "to assure that traffic safety features on the project are functioning safely and as intended;"
- develop traffic control plans for each future construction zone to regulate "such critical items as the removal of confusing pavement markings, placement and design of barricades and barriers, length of acceleration lanes for vehicles entering the highway, and provisions for disabled vehicles"

The settlement agreement was announced on Oct. 14, 1976. The case is *Building and Construction Trades Department, AFL-CIO v. Coleman*, Civil Action 76-155A, U.S. District Court for the Eastern District of Virginia. A limited number of the Virginia Highway and Transportation Research Council report are available from: Librarian, VHTRC, P.O. Box 3817, University Station, Charlottesville, Va. 22903.

UPDATE . . .

VIN PETITION DENIED: The National Highway Traffic Safety Administration has denied auto maker petitions to adopt the International Standards Organization standard on vehicle identification numbers (VINs).

The agency said that because the ISO standard permits a VIN with variable length it "could reduce transcription accuracy." Various state officials, insurance industry representatives and others have told NHTSA that such variable length VINs have led to a high rate of error in recording VINs and have required the use of complicated and expensive record keeping systems.

NHTSA is currently considering a fixed length VIN containing a vehicle description section that auto makers can use as they see fit. (See *Status Report*, Vol. 11, No. 15, Sept. 23, 1976.)

The petitions requesting adoption of the ISO standard were submitted by BMW, the Motor Vehicle Manufacturers Association and Volkswagen.

NTSB Urges Grade Crossing Priorities

The Federal Highway Administration (FHWA) should develop a formula for determining when to close a hazardous railroad grade crossing, according to the National Transportation Safety Board (NTSB).

The NTSB recommendation followed its investigation of a fatal train-truck crash in Beckemeyer, Ill. which killed 12 people. The board pointed out that there are more than 158,000 grade crossings on non Federal-aid roads that lack automatic warning systems such as flashing lights or gates. Jurisdiction for these crossings rests with state and local governments. The FHWA formula suggested by NTSB could be used by local officials to assess grade crossings in their jurisdictions.

An FHWA representative told *Status Report* that FHWA has already substantially completed work on a set of criteria addressed to consolidating or closing grade crossings. He also said that current "hazard index formulae" (systems used for determining hazards at individual crossings) could be used by local communities to rate grade crossings that are close to each other. The communities could then close the crossings found to be most dangerous.

As an example, the FHWA official said that the small town of Beckemeyer had four other grade crossings besides the one where the fatalities occurred. Several of the other crossings had automatic warning systems.

He said that the new criteria being developed by FHWA may become part of the *Manual on Uniform Traffic Control Devices*, published by FHWA, or may be distributed to local jurisdictions through the FHWA field offices in the form of directives.

Ideally, according to the board, all grade crossings should have an automatic warning device such as a gate or warning lights. But the resources that would be needed to accomplish such a goal "are so enormous that for the foreseeable future, this appears to be outside the bounds of practicality as a total solution to the grade crossing problem," the board said.

The NTSB said that the alternatives for dealing with unprotected crossings were:

- develop additional resources;
- develop new, reliable less expensive signal systems;
- reduce the number of grade crossings;
- a combination of the above.

The concept of establishing priorities for highway safety efforts was recently emphasized by FHWA in the area of roadside hazard elimination. This past spring, the agency circulated a study sponsored by the Insurance Institute for Highway Safety which FHWA described as a "unique quantitative method for assessing" roadside hazards and identifying "some factors which appear to be significantly involved in the occurrence of fatal accidents." The study sets out basic criteria by which highway engineers can identify sites with "hazards most likely to be struck" by errant vehicles. (See *Status Report*, Vol. 11, No. 7, May 3, 1976.)

Single copies of the full NTSB report can be obtained by writing for report number NTSB-RHR-76-3, National Transportation Safety Board, Washington, D.C. 20594.

Ford Seat Brackets Defective, Court Rules

A federal court has upheld the National Highway Traffic Safety Administration's determination that seat back brackets in 1968 and 1969 Ford Mustangs and Cougars are defective. Still pending is a court decision whether Ford will be penalized for its failure to obey NHTSA's original order to recall the affected cars.

NHTSA defect determinations have now been challenged six times by auto makers. In addition to the current decision, federal courts have upheld the agency two other times, in cases involving wheels on 1960-65 Chevrolet and GMC pickup trucks (see *Status Report*, Vol. 10, No. 19, Nov. 25, 1975) and carburetors on 1965 and 1966 Chevrolets and 1966 Buicks (Vol. 11, No. 14, Aug. 30, 1976). The agency's sole loss was on its pitman arms decision involving 1959-1960 Cadillacs (Vol. 8, No. 18, Oct. 5, 1973). Of the remaining two cases, one involved motor mounts in 1965 and 1967 Buicks and some 1970 Cadillacs, and was settled out of court when General Motors agreed to recall the cars (Vol. 11, No. 14, Aug. 30, 1976). The other, involving windshield wipers on 1971, 1972 and 1973 Mercury Capris, is still pending (Vol. 11, No. 3, Feb. 18, 1976).

The Ford seat back case arose out of an August 1975 NHTSA order directing Ford to recall the cars and repair or replace the seat brackets. NHTSA claimed that the bracket failure could cause the seat back to collapse, leading to a possible loss of vehicle control. Ford immediately took NHTSA to court, challenging the constitutionality of several of the defect recall provisions of the 1966 National Traffic and Motor Vehicle Safety Act. The U.S. Supreme Court subsequently rejected Ford's attack on the constitutionality of the act. (See *Status Report*, Vol. 11, No. 7, May 3, 1976.)

In the current case, Ford conceded that the seat brackets had failed in the past in significant numbers, but argued that there was "no evidence as to any future risk to safety due to future failure of the bracket." Judge George Hart of the U.S. District Court for the District of Columbia, however, found that the loss of control that can occur when the seat back collapses poses "imminent danger of an accident with the grave possibility of resulting personal injury or death."

The decision is *U.S. v. Ford Motor Company*, Civil Action No. 75-134, U.S. District Court for the District of Columbia, decided Oct. 1, 1976.

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the highway
loss reduction

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