

Insurers Move To Save Automatic Restraints

Two major elements of the insurance industry have filed suit to overturn the National Highway Traffic Safety Administration's (NHTSA) recent decision to drop automatic restraint requirements for new cars.

State Farm Mutual Insurance Co., the nation's largest auto insurer, petitioned the U.S. Court of Appeals for the District of Columbia for a review of the October 23 NHTSA decision and order. Separately, the National Association of Independent Insurers (NAII), the country's largest trade association representing property/casualty insurers, filed a motion seeking a stay of the NHTSA rescission order pending review of its legality and asked for an expedited hearing. Also, in accordance with legal procedure, both State Farm and NAII petitioned NHTSA to stay its passive restraint order until the court reaches a decision.

Makers Agree to Warn Jeep Owners of Hazards

The makers of the Jeep CJ series of multipurpose vehicles have agreed, under pressure from the Federal Trade Commission (FTC), to warn present and future Jeep owners of the hazards of on-road use of the vehicles.

The FTC announced November 30 that representatives of the Jeep Corporation and its parent company, American Motors Corporation, had agreed to issuance of a consent order requiring them to "cease and desist" what are charged to be "deceptive acts or practices" connected with the advertising and sale of Jeeps.

Under terms of the proposed consent order, signed October 6 by the manufacturers' representatives and approved November 27 by the FTC, the Jeep makers must do the following:

- Affix a sticker to the instrument panel or

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Failure to install automatic restraints in large and mid-size cars for the 1983 model year could result in an additional 3,000 deaths and more than 50,000 serious injuries, NAII said in its petition.

In October, NHTSA issued a final rule dropping the automatic restraint provisions of Federal Motor Vehicle Safety Standard (FMVSS) 208 which would have required auto makers to provide

On December 7, the U.S. Court of Appeals denied the request for stay of NHTSA's order rescinding the automatic restraint provisions of FMVSS 208 and scheduled a hearing on the other issues.

30 mph automatic frontal crash protection for front seat occupants. The rule had already been delayed a year by NHTSA. Had it been allowed to remain in force, it would have applied to large and mid-sized 1983 car models. (See *Status Report*, Vol. 16, No. 17, Nov. 5, 1981.)

In its request for a stay of NHTSA's order, State Farm said, "It bears emphasizing that petitioners seek a stay not to . . . commence a new action, but rather to preserve a situation that has

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been in effect for nearly five years and to *continue* a regulatory process that was launched over a decade ago.”

NHTSA had cut short the normal 180-day wait before most orders become final by 140 days – ostensibly to accommodate auto manufacturers’ lead time schedules for 1983 models.

Both NAII and State Farm challenged the NHTSA decision as being “arbitrary” and “capricious.” Lowell Beck, president-elect of NAII, told reporters, “The NAII and Automobile Owners Action Council [which joined in the action] are engaging in this suit because we believe the administrator had no logical basis and no substantial evidence to support his action.

“The passive restraint rule was the result of almost a decade of very substantial deliberation,” Beck said. “But for the recent decision of the administrator to rescind the rule, full implementation could have saved as many as 10,000 American lives each year and prevented tens of thousands of serious injuries.”

Apart from the human tragedy of auto crashes, Beck cited their high societal costs and their implications for insurers and consumers. A week before issuing its decision, Beck noted, NHTSA issued a study predicting an annual highway death toll of 70,000 as more small cars move onto the nation’s roads. “Yet, [NHTSA] has rescinded the only standard which might have prevented that result. . . ,” Beck said. He added future auto insurance costs will rise because of the shift to smaller, lighter, less crashworthy cars and because of inflation.

NHTSA Decision Based on Faulty Premise

At the core of NHTSA’s decision to rescind the automatic restraint requirement, both NAII and State Farm contended, was a decision to accept auto manufacturer arguments that the standard would be met with automatic seat belts that were easily, and permanently, detachable.

NHTSA concluded that most automatic seat belts would be of that design and thus, since they would be like manual belts, the public would not use them. Most important, NAII said in its petition, NHTSA – without any discussion of the matter – found the “permanently detachable automatic seat belt would constitute an acceptable passive restraint under Standard 208.”

Such a detachable seat belt design “does not meet either the letter of the passivity requirement in Standard 208 or the spirit of both that regulation and the Safety Act. . . ,” NAII said. “It is ludicrous to suggest that such a system is either passive or consistent with motor vehicle safety.”

NAII noted NHTSA had been presented with at least seven different automatic seat belt designs that would have satisfied a regulatory provision in the standard requiring an emergency release mechanism, such as a “spool out” mechanism that would allow rescuers to extricate crash victims. In addition, air bags – if used – would deflate automatically, allowing easy exit.

“The words ‘detachable automatic seat belt’ present a contradiction in terms,” the NAII petition stated, “but they also presented NHTSA with a perceived excuse for unilaterally rescinding the entire passive restraint program, a comprehensive automobile safety regulatory program hammered out over more than a dozen years of legislation, rulemaking, and litigation.”

Even if NHTSA allowed the installation of permanently detachable automatic seat belts under the standard’s provisions, at least consumers would have the option of using seat belts that would meet a dynamic crash test requirement, NAII argued. Currently, the manual seat belts now in cars are not required to be crash tested or to meet any injury criteria.

More Groups Join In Court Test Of Decision

At the request of attorneys, both the State Farm action and that brought by the NAI and the Automobile Owners Action Council to overturn the automatic restraint decision have been joined in federal court for argument.

Additional parties also have joined in the legal controversy. Intervening on behalf of NHTSA, the defendant, are the Motor Vehicle Manufacturers Association, the Pacific Legal Foundation/Consumer Alert, and the Automobile Importers of America. Filing *amicus curiae* (friend of the court) briefs on behalf of the petitioners are the American Public Health Association, the Epilepsy Foundation of America, and the American College of Preventive Medicine.

NHTSA surveys had shown that seat belt usage rates in Volkswagen Rabbits and Chevettes equipped with automatic belt systems were “in the 72-89 percent rate,” NAI noted, while the usage rate for manual belts is only 11 to 12 percent. “NHTSA dismissed the Rabbit and Chevette experience as nonrepresentative and then made the following truly remarkable finding:

[I]f the percentage increase [in belt use] is zero or extremely small due to the substantial similarity of the designs and methods of using detachable automatic belts and manual belts, then the data regarding manual belt usage would be as reliable a guide to the effects of detachable automatic belts on belt usage as data regarding usage of nondetachable automatic belts.

“In other words, if you assume that the public cannot distinguish between manual seat belts and detachable automatic seat belts, the usage rates will likely be the same,” NAI continued.

“There is no polite way to say it. NHTSA’s analysis of belt usage rates was absurd. Even the worst of the detachable automatic seat belts, the one with the device that permits the belt to be rendered permanently inoperative, has at least some use-inducing features, i.e., the belt will automatically deploy at least once. It is patently unreasonable to assume that only a negligible number of additional people in the United States will use seat belts if passive restraints are required, yet that is precisely the finding made by NHTSA.”

In addition, NAI said, even if it is ultimately found that automatic seat belts are inconsistent with the needs of automobile safety, NHTSA’s decision is flawed because it did not consider the “obvious alternative” of an air bags-only option, since air bags are both “practicable” and “meet the need for motor vehicle safety.”

Tax Incentives Proposed For Air Bag Installation

Sen. John Danforth (R.-Mo.) introduced a bill November 24 that would seek to shift the cost of equipping autos with air bags away from manufacturers and car buyers to society as a whole.

Car makers would be permitted to claim a \$300 tax credit for each car equipped with air bags and a \$300 excise tax would be levied on each car sold without air bags, starting with the 1984 model year, Danforth said.

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Tax Incentives Proposed For Air Bag Installation (Cont'd from page 3)

The bill was introduced as a result of the current administration's recent order rescinding the automatic restraint standard, FMVSS 208. (See *Status Report*, Vol. 16, No. 17, Nov. 5, 1981.)

"Accidents, in addition to killing people, cost money," said Danforth. "According to NHTSA [National Highway Traffic Safety Administration] the federal government absorbs over \$6 billion of these costs every year, through Social Security, Medicare, Medicaid, aid to families with dependent children, disability insurance, and lost corporate and personal income taxes."

A fleet of 120 million cars equipped with air bags could mean an annual savings of \$3.78 billion, Danforth noted, in contrast to an estimated federal cost of \$2.6 billion in foregone tax receipts. That would mean a net savings of \$1.2 billion for taxpayers.

The excise tax on cars without air bags would reflect the higher social costs of less safe cars, Danforth said. Also, while consumers could still choose to buy cars without air bags, the excise tax would help recapture lost tax revenues attributable to the tax credit and would provide an economic disincentive for the purchase of more dangerous autos.

Air bags, said Danforth, are "clearly the preferable alternative" to automatic seat belts. By providing the tax credit for air bags only, Danforth said, the arguments propounded by NHTSA head Raymond Peck against implementation of FMVSS 208 would be moot. Peck had based his decision on the argument that auto makers would install only automatic seat belts and that they would be disconnected by many motorists. In addition, Danforth said his proposal answers objections that the auto industry is too weak financially to handle the economic burden posed by air bag development and installation.

Danforth is a member of the Senate Finance Committee, the group which would have jurisdiction over his bill, and chairs its International Trade Subcommittee. He said Sen. Robert Packwood (R.-Ore.), who chairs the Subcommittee on Taxation and Debt Management, has agreed to schedule hearings on the tax proposals before January 29.

The tax proposals preempt Danforth's earlier bill filed immediately after Peck's decision to rescind the automatic restraint requirement. The former measure would have required separate enactment, Danforth noted, while the tax proposal can be attached as a rider to any tax or debt management bill – a far simpler and more easily accomplished legislative task. Nonetheless, Danforth acknowledged he may face stiff opposition from the Treasury Department, which is now faced with a growing budget deficit.

Quoted Without Comment

With such increased bead flexibility, it is possible to mount the beads of heavy truck tires over the flanges of the drop-center rim embodied in the present invention, a feat impossible to accomplish with present truck tires. Thus, applicant's one-piece drop-center rim can replace the two-piece and three-piece, and, indeed, in some cases, the four- and five-piece truck rims in use today. The integral one-piece rim enables substantial savings in cost over the multi-piece rims and eliminates all the difficulties with tolerances and clearances which plague the manufacturers and users of such rims. Not only is there a savings in cost, but the hazards and dangers which are often encountered in mounting and demounting heavy truck tires are completely eliminated. With the new drop-center truck rims, there is no locking ring to fly off into the face or body of the user.

– *From an application for patent filed Feb. 16, 1953, by Robert Pope Powers, Akron, Ohio, assignor to The Firestone Tire & Rubber Co., Akron, Ohio; patent No. 2,817,381 issued Dec. 24, 1957.*

European Bumper Standard A Poor Model, Institute Warns

The European Economic Community (ECE) bumper standard, mentioned at the recent U.S. bumper hearings as a possible model for American action, is inferior to even the *earliest* rear-end requirements for 1973 models under the safety bumper standard – requirements that were upgraded for 1974 and later models – and inadequate to today's needs, the Insurance Institute for Highway Safety has told the National Highway Traffic Safety Administration (NHTSA).

In a letter to the NHTSA bumper docket, the Institute pointed out these reasons for the conclusions:

- The ECE standard (Regulation No. 42) is not directed at economic damage to automobiles as the U.S. Part 581 standard is required to do by the Motor Vehicle Information and Cost Savings Act of 1972.
- Regulation 42 is a *design* standard and only *performance* standards are permitted under the U.S. legislation.
- The ECE standard is written to prevent damage only to certain safety components of a vehicle and as such is a weak version of FMVSS 215. Adoption by NHTSA would mean abandonment of any effort at preventing property damage, contrary to the requirements of the 1972 act.
- An impact test speed of 4 km per hour, or 2.5 mph, is effectively lower than even the 2.5 mph standard now being considered by NHTSA, because the ECE standard specifies a pendulum or moving barrier test rather than the fixed barrier test called for under Part 581.

The ECE standard has been in effect only since June 1, 1980, the Institute pointed out, and “represents merely a belated, fledgling, weak attempt by the European countries to come to terms with needless damage – both to safety-related components and costly-to-repair crash parts – generated in very low-speed impacts.”

Having completed two days of hearings in October and November, NHTSA is currently considering proposals to roll back the current U.S. bumper standard impact test speed from 5 mph. (See *Status Report*, Vol. 16, No. 18, Nov. 24, 1981.)

Study Recommends Car Seats to Protect Young Air Travelers

Finding that unrestrained infant passengers are at considerably greater risk of being killed in an aircraft crash than belted adult passengers, a new research study recommends that child restraints developed for automobile travel be applied to aircraft use.

The recommendation is made in a report in the November 1981 issue of the *American Journal of Public Health* by Daniel Fife, M.D.; Bernard Rosner, Ph.D.; and Walter McKibben, Ph.D.

“Child restraint systems for automobile use (car seats) are readily available,” the authors pointed out. “They are less than optimal, but they are a vast improvement on the current system of holding the infant on the parent’s lap.”

The report compared infant death rates to non-infant death rates in airliner crashes with survivors. Based on the U.S. crash data the infants were estimated to be several times as likely as adults to die in survivable air crashes.

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Study Recommends Car Seats to Protect Young Air Travelers (Cont'd from page 5)

Figuring it would take an investment of only \$300,000 to supply the necessary auto seats for all regular U.S. airline flights over a five-year period, the researchers estimate that three lives would be saved in that time by use of the restraints.

The Federal Aviation Administration has been studying the problem of child restraints for some time, and last year was criticized by the General Accounting Office for the delays in adopting procedures to protect child passengers. (See *Status Report*, Vol. 15, No. 9, June 10, 1980.)

Copies of the new research study, "Relative Mortality of Unbelted Infant Passengers and Belted Non-Infant Passengers in Air Accidents with Survivors," are available from Daniel Fife, M.D., Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037.

Makers Agree To Warn Jeep Owners of Hazards (Cont'd from page 1)

windshield frame of each new Jeep CJ vehicle warning the user that, "This multipurpose vehicle handles and maneuvers differently from an ordinary passenger car. As with other vehicles of this type, sudden sharp turns and abrupt maneuvers may result in loss of control. Read driving guidelines in Owner's Manual and Supplement. WEAR SEATBELTS AT ALL TIMES."

- Include in the Owner's Manual and Supplement specific warnings about on-road operation including this statement: "Utility vehicles have higher ground clearance and narrower track to make them capable of performing in a wide variety of off-road applications. Specific design characteristics give them a higher center of gravity than ordinary cars. An advantage of the higher ground clearance is a better view of the road allowing you to anticipate problems. They are not designed for cornering at the same speeds as conventional 2WD vehicles any more than low-slung sports cars are designed to perform satisfactorily under off-road conditions. If at all possible, avoid sharp turning maneuvers. As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident."

- Provide free copies of the Supplement to each dealer for distribution to prospective Jeep customers at the point of sale.

- Send to "each identifiable current registered owner of Jeep CJs [CJ-5, CJ-6, and CJ-7] from the 1972 model year to the effective date of this Order" a copy of the warning sticker and a letter advising them to affix the sticker to their Jeep.

Public Has 60 Days to Comment

The proposed consent order was published in the Federal Register December 4 and will be subject to a 60-day public comment period. At the end of that time (Feb. 2) the FTC will review the docket and may issue a consent order on a final basis.

Although FTC policies bar disclosure of the specific origins of an agency investigation, staff members pointed out that, as a matter of routine, the FTC monitors advertising. The agency's initial concerns were not with the Jeep CJ vehicles but with advertising of the vehicles, FTC sources explained. The investigation was reported to have begun approximately 16 months ago after the 1980 Jeep CJ advertising campaign came to FTC attention. Two television commercials prepared for the 1981 model Jeep and dated Sept. 22, 1980, were cited by the FTC as examples of advertising which stressed highway use of the vehicles without warning of the potential hazards.

First indication of the FTC interest in the Jeep problem came a year ago with publication of an article in the *San Francisco Chronicle*, Dec. 11, 1980. The copyrighted report said at that time: "The Federal Trade Commission, concerned that Jeep advertising may induce owners to drive Jeeps beyond the vehicles' capabilities, has been gathering information for nearly a year from attorneys who have sued Jeep and from the Washington-based Center for Auto Safety, a consumer group that gathers safety-related data."

The agreement was negotiated by the FTC and the Jeep makers as a settlement of charges raised in a draft complaint prepared by the FTC. The agency alleged that Jeep advertising presented the vehicles in use as an ordinary passenger car but failed to disclose that, in fact, the Jeep CJs handle differently from passenger cars in certain circumstances. "The Jeep CJ handles and maneuvers differently from an ordinary passenger car under certain reasonably expected driving conditions; sharp turns or abrupt maneuvers on-pavement may result in loss of control or an accident," the FTC said in its draft complaint.

The validity of that statement has been shown in research studies at both the University of North Carolina Highway Safety Research Center and the University of Michigan Highway Safety Research Institute, as well as in a series of handling tests sponsored by the Insurance Institute for Highway Safety at the Dynamic Science, Inc., test facility at Phoenix, Ariz. (See *Status Report*, Vol. 16, No. 16, Oct. 20, 1981, and Vol. 15, No. 19, Dec. 22, 1980.)

Jeeps Have High Rollover Rate

The research studies established that utility vehicles have the highest rate of involvement in single-vehicle rollover crashes, when compared with passenger cars and pickup trucks, and that the Jeep CJ-5 is by far the worst performer. The IIHS tests showed that the CJ-5 has a tendency to roll over in highway handling situations that cause no problem for passenger cars.

While the FTC explained that consent agreements are for "settlement purposes only and do not constitute an admission by the company that it violated the law," once issued in its final form it will carry the force of law and violations could result in civil penalties up to \$10,000.

This is the first time that an American auto maker has agreed to place warning stickers on its vehicles as the result of a FTC action.

Comments on the consent order should be addressed to the Office of the Secretary, FTC, 6th St and Pennsylvania Ave. NW, Washington, D.C. 20580. The action bears File No. 802 3010.

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