insurance institute for highway safety

the highway loss reduction

# Status Report

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## Delay On Restraints Attacked In Court

The National Highway Traffic Safety Administration (NHTSA) is proposing unacceptable delaying tactics in response to a federal court order for automatic restraint action, several organizations have told the court.

Their comments were made about a plan NHTSA filed with the U.S. Court of Appeals for the District of Columbia, proposing to reopen automatic restraint rulemaking, solicit public comments, and engage in protracted research. The court had been sharply critical of NHTSA policy in an opinion rejecting the agency's rescission of

## IIHS Finds Flaws In Bumper Analysis

False assumptions about the consumer benefits of weaker bumpers underlie the National Highway Traffic Safety Administration's (NHTSA) decision to roll back the bumper standard, the Insurance Institute for Highway Safety has said in filing additional material to its petition for NHTSA reconsideration of the decision.

"The NHTSA analysis with respect to bumper weight savings is fatally flawed," the Institute pointed out, "and when these flaws are examined, it becomes apparent that the analysis indicates that the newer 5 mph bumpers produce significantly more benefits for consumers than would be expected from bumpers designed for only 2.5 mph performance."

Citing NHTSA's "hypothetical savings" of \$18 to the consumer over the 10-year life of a car with 2.5 mph bumpers, the Institute said that more than half of the decreased costs projected for 2.5 mph bumpers was derived from anticipated weight savings of the weaker bumpers. These savings, both in primary and secondary weight, "in fact are largely illusory," the Institute explained. (Primary weight is the weight of the actual bumper system. Secondary weight is what is theoretically added to the rest of the vehicle to accommodate increased bumper weight.)

(Cont'd on page 5)

Federal Motor Vehicle Safety Standard No. 208 requirements for automatic restraints, starting with 1983 models. (See *Status Report*, Vol. 17, No. 8, June 9, 1982.)

The State Farm Mutual Automobile Insurance Co., which together with the National Association of Independent Insurers (NAII) had petitioned the court to review NHTSA's abandonment of automatic restraint requirements, said the agency's new proposal "is part and parcel of NHTSA's campaign to postpone the day when automobiles are required to provide a safe and effective passive restraint device. Twelve years of delay is enough." (Cont'd on next page)

# Court Review Asked For Bumper Decision

The controversial order of the National Highway Traffic Safety Administration (NHTSA) rolling back the bumper standard to 2.5 mph from 5 mph has been challenged in federal court.

Both the State Farm Mutual Insurance Co. and the Center for Auto Safety, a consumer group, have filed petitions with the U.S. Court of Appeals for the District of Columbia asking judicial review of the NHTSA decision. The court tests are in addition to the earlier action of the Insurance Institute for Highway Safety in filing a petition for reconsideration of the NHTSA rulemaking. (See *Status Report*, Vol. 17, No. 9, July 1, 1982, and accompanying story.)

#### Delay On Restraints Attacked In Court (Cont'd from page 1)

The NAII was equally blunt in its comments, charging that NHTSA is seeking "an indefinite period to address the wrong question." Specifically, the NAII said, "NHTSA proposes to comply by spending a year or more — apparently as long as it takes — in a desperate and concededly pointless attempt to dredge up evidence to support rescission, with the passive restraint program effectively rescinded for all of that period."

NHTSA was directed by the federal court in its June 1 decision to offer in 30 days a "feasible schedule for completing analysis" of the questions raised by the court. These included questions of why, without "one iota of evidence," the agency had concluded that little increased usage would be offered by detachable automatic belts and why other automatic restraints such as non-detachable belts and air bags had not been seriously considered when FMVSS 208 was rescinded. In remanding the questions to NHTSA for answer, the court pointedly observed that it had no desire to permit so much delay "that recalcitrance might succeed where rational decisionmaking might not."

#### Supplemental Rulemaking Proposed

NHTSA's response to the court decision was to offer to publish a notice of proposed supplemental rulemaking in the *Federal Register* that would solicit public comment on ways to predict usage of automatic belts and on alternative standards requiring only non-detachable automatic belts or only air bags. Such comments would not necessarily settle the questions, NHTSA told the court, explaining: "Alternatively, the agency may decide that further fact gathering is appropriate. In this event, NHTSA will publicly announce an extension of the time for a supplemental decision. Such fact gathering may include one or more studies of automatic belt usage which would take one or more years to complete."

In an appendix to the court filing, NHTSA offered a staff analysis of possible research studies. The alternatives discussed were a study of automatic belt use in private owner cars, a study of use in corporate fleet cars equipped with automatic belts, or a similar study of cars in rental fleets.

NHTSA insisted its filing was solely to comply with the court order and that the rescission of the automatic restraint standard was "in all respects proper and lawful."

## Comments Filed On The NHTSA Proposal

These comments were among those filed with the court:

Allstate Insurance Co. — "... as product liability insurers of automobile manufacturers, and familiar as we are with the current state of product liability law, we find it beyond the realm of the reasonably possible, that a manufacturer would, in response to a Federal safety standard, equip its cars with an alleged passive restraint safety system which it had admitted on the public record would not, in fact, work to reduce death and injury. In our view, the design of an easily-detachable passive belt system was intended not for use in cars, but for use in the regulatory proceedings which gave rise to the decision in question."

Automotive Occupant Protection Association — "If there is a goal set as to the number of air bag equipped cars to be offered to the public, AOPA urges that the goal be 2,000,000 air bag equipped cars. With that volume of air bag production, AOPA continues to believe that the price increase per car to the consumer would be \$185 in 1981 dollars."

Albert B. Lewis, New York State Superintendent of Insurance — "A reasonable time table would require that the passive restraint requirements in modified Standard 208 be made applicable to large and mid-sized passenger cars of model years 1984 and after, namely September 1, 1983. The compliance date for smaller vehicles would reasonably be set for model year 1985, September 1, 1984."

"NHTSA's proposed 'schedule' is no schedule at all," State Farm said of the NHTSA filing. "It sets no time limit as to when the agency must make its final determination. Rather, the proposal is a blueprint for a leisurely, open-ended new rulemaking proceeding, while the rule is in a state of suspended animation."

#### Urge Standard Be Reinstated

The NAII urged the court to order (1) that the NHTSA rescission of FMVSS 208 be reversed and the standard reinstated; (2) that compliance for large and mid-size cars be delayed until Sept. 1, 1983; and (3) that NHTSA have until August 31 to demonstrate whether a longer delay is necessary.

State Farm also urged three points upon the court. Its response said that if NHTSA cannot justify rescission on the present record, the standard must be implemented; if the agency concluded that detachable belts will be ineffective, it must justify failure to amend the standard to bar their use; and if long-range research is to be undertaken, NHTSA should be ordered to conduct the studies after implementing the standard.

NHTSA will have until August 1 to file comments with the court rebutting the criticism raised in the various responses. Then the court is expected to rule on the NHTSA proposal.

## Quoted Without Comment

# Passive Restraint Standard: A Missed Opportunity (From the Congressional Record)

Mr. HATCH (Sen. Orrin Hatch, R.-Utah). Mr. President, the recent appeals court decision reversing the National Highway Traffic Safety Administration's rescission of the passive restraint standard, is generating a great deal of misguided comment concerning liberal versus conservative judicial decisionmaking, when the real issue is whether or not a Federal agency can overrule Congress.

The court rightly held that it could not. The court noted that "Despite the legislative battles over whether to specify an airbag requirement or when the standard should take effect, each time Congress reviewed the passive restraint standard it was essentially confirmed." I concur with the court's decision. We cannot allow a Federal agency to accomplish through rulemaking what Congress refuses to approve legislatively. Such actions would undermine the foundations of our democratic system of government and rule of law would be rendered meaningless.

As a concerned parent and a longtime advocate of improved safety in automobiles, I support this new technology which has the capacity of saving 10,000 motorists from needless death yearly.

I also believe in the freedom to choose the best safety equipment our technology can provide. The technology, particularly airbags, which are clearly superior over the active belts in use today, has been available for years. Highway deaths and injuries have reached epidemic proportions. But America's motorists are still being denied the choice because no new airbag-equipped cars are in production in America today.

The passive restraint standard will give everyone concerned a choice. Because it is a performance standard, automakers can choose passive seat belts, airbags or some other system to meet the standard's criteria. The criteria, essentially, are that domestic and foreign auto manufacturers produce crashworthy cars which prevent serious injuries to front seat occupants in frontal and front-angle crashes at 30 miles per hour crashes into stationary barriers.

The motorists will have the choice of having improved safety technology in his car. Several recent polls have indicated that a substantial number of America's motorists want the choice and are willing to pay for it—a factor which I hope domestic automakers will acknowledge and take advantage of.

(Cont'd on next page)

#### Quoted Without Comment (Cont'd from page 3)

The history of airbags is a saga of missed opportunity. The technology was pioneered by the American private auto industry as a safety breakthrough. Its lifesaving potential was recognized and supported by virtually the entire insurance sector and by numerous health groups, including the American Academy of Pediatrics, the Epilepsy Foundation, and the American College of Preventive Medicine. The members of these organizations face the tragic consequences of auto crashes on a daily basis.

Nevertheless, domestic manufacturers to date have not given airbags a fair market test. I hope they will recognize the tremendous competitive advantages they are passing up by keeping airbags on the shelf. Saved lives translate into saved dollars and lower insurance premiums. A more crashworthy car is a more competitive product, a factor foreign automakers are beginning to take into account. (Mercedes-Benz is equipping cars with airbags for the driver, but only in models not bound for the U.S. markets.) How long before other foreign automakers follow suit?

Another opportunity missed, and this time it's an opportunity to save lives and increase profits.

(From the Congressional Record, July 12, 1982, Page S 8062.)

## Average Collision Loss Payments Up For 1982 Models

Collision coverage claim frequency for 1982 model automobiles has risen 3 percent over 1981 models, and the average loss payment is up by 6 percent, resulting in a 10 percent increase in the average loss payment per insured vehicle year, the Highway Loss Data Institute (HLDI) has reported.

Sports and specialty models continued to have the worst collision losses and station wagons the best, with 4-door models outperforming 2-door models, and large cars having better results than small ones, HLDI said in its first report on collision insurance coverage loss experience for 1982 models.

Comparisons of the results for 1981 and 1982 models should be viewed with caution, HLDI warned, since almost one-quarter of the exposure represented by the 1982 models was contributed by models introduced for the first time. In addition, 1982 model introductions were staggered, with some like the Ford EXP and the GM J-cars introduced in May 1981 while other models like the Chevrolet Camaro and the Pontiac Firebird were not available until January 1982. Only 33 vehicle series, out of more than 200 contained in HLDI's data base, had accumulated enough exposure to meet the research group's reporting threshhold.

Of the 1982 models, the car with the lowest average loss payment was the 4-door Honda Accord, which was less than \$750 per claim, while the 4-door Buick Electra had the highest, averaging over \$2,000 per claim.

The cars with the lowest relative average loss payments per insured vehicle year were the 4-door Honda Accord and the 4-door Oldsmobile Delta 88, both 49 percent below the average. The cars with the highest relative average loss payments per insured vehicle year were the Datsun 200 SX, with a rating 101 percent above the average score of 100, and the Mazda RX-7, with a rating of 189, or 89 percent above the average.

Once again, HLDI reported large variations in collision coverage loss experience of individual vehicle series, even among cars of the same body style group and size class.

Copies of the HLDI report are available from the Highway Loss Data Institute, Watergate 600, Washington, D.C. 20037. Ask for HLDI Research Report R82-1, "Automobile Insurance Losses, Collision Coverages, Initial Results for 1982 Models."

#### IIHS Finds Flaws In Bumper Analysis (Cont'd from page 1)

Secondary weight reductions, which NHTSA predicted would bring \$22 in fuel cost savings over the life of a car, are not likely soon and could happen only when cars are completely redesigned, the Institute said. "Thus, secondary weight savings would not be realized on any cars until the mid-1980's at the earliest, since the 1983 and 1984 models are already designed," the filing stressed. "This means that \$34 of NHTSA's hypothetical benefits — \$22 of the fuel savings and all \$12 of the secondary weight costs — could not possibly be realized by consumers for many years to come, and even then may not occur."

Because of this fact alone, the Institute said, any existing model whose bumper system is reduced from 5 mph to 2.5 mph performance in the next few model years would "according to NHTSA's own analysis, generate consumer losses of \$16 over the car's lifetime, a complete reversal of NHTSA's conclusion."

Primary weight savings predictions were also flawed, the Institute explained. Weight savings of 15 to 33 pounds were arrived at by considering only a "very unrepresentative sample" of vehicles. The figures were biased, with few exceptions, by use of data from outdated bumpers on rear-wheel-drive cars and designs that have been or are about to be supplanted by newer designs. "By neglecting the large number of newer front-wheel-drive cars such as the Chrysler Omni/Horizon and 'K' cars, the Ford Escort/Lynx and EXP/LN7, and the GM 'J' and 'A' cars, the teardown analysis of 1980 model year cars was biased in a way that would be expected to produce high bumper weights and could not in any way be expected to produce an independent check of manufacturer estimates of weight savings for mid-1980's models," the Institute said.

#### Little Interest Shown In Cutting Weight

Environmental Protection Agency (EPA) mileage testing procedures are a major influence on auto maker choice of bumper designs of particular weights, the Institute explained, and these procedures offer little incentive for weight reduction. The Institute filing pointed out an illustration of such manufacturer indifference in the GM "X"-body cars. The 1980 Chevrolet Citation is equipped with steel bumpers that weigh 90 pounds and cost \$599 to buy as replacement parts. The almost-identical Buick Skylark has an aluminum bumper system that weighs 57 pounds and costs \$5 less to buy as replacement parts. The two bumper systems can be interchanged with no obvious change in appearance.

"But even though Chevrolet Citations could be equipped with Buick Skylark bumper systems which weigh 33 pounds less than the original equipment bumper systems, GM does not put the lighter systems on the Citation," the Institute pointed out.

Earlier, the Institute had filed its petition for reconsideration with NHTSA and had included results of a new public opinion survey which showed overwhelming support for retaining the 5 mph bumper standard. (See *Status Report*, Vol. 17, No. 9, July 1, 1982.) In a May 18 action, NHTSA announced its decision to roll back the bumper test requirement to 2.5 mph, which would mean that bumpers could be 75 percent weaker than current models. (See *Status Report*, Vol. 17, No. 7, May 24, 1982.)

## AIA Endorses Institute Bumper Petition

The American Insurance Association (AIA) has filed a statement with the National Highway Traffic Safety Administration in support of the Insurance Institute for Highway Safety's petition to reconsider the decision to weaken the bumper standard.

The AIA, a trade association of 168 property-casualty insurers, said the decision to roll back the bumper standard ignores the views of vehicle owners as well as Congressional intent. The statement also points out, "NHTSA's consideration of alternatives to the federal bumper standard clearly appears to have contemplated only weaker alternatives. This adds force to the view that the conclusion lacks the reasoned decisionmaking that is the essence of lawful administrative action."

### States To Set Own Criteria For Federal-Aid Road Work

After six years of controversy, the Federal Highway Administration (FHWA) has adopted a final rule on federally-subsidized resurfacing, restoration, and rehabilitation (RRR) highway projects. Scheduled to become effective July 12, the rule effectively relinquishes to the states the control over the design and procedural criteria for such road work off the interstate system. (See *Status Report*, Vol. 16, No. 2, Feb. 9, 1981.)

Now that interstate construction is practically completed, RRR projects are expected to account for a growing share of all federal-aid road work.

The new rule was adopted despite criticism from the National Transportation Safety Board (NTSB), the Center for Auto Safety, and the Insurance Institute for Highway Safety, all of whom expressed concern about the safety implications of the policy change.

The Institute has warned the change could allow sharply-reduced lane and shoulder widths, less banking on curves, and shortened stopping and passing sight distances, among other unsafe design features. Increasingly, the debate has focused on fears that RRR funds will be used primarily for repaving substandard highways without improving them. Such repaving could have the effect of raising traffic speeds at hazardous locations in addition to creating other design hazards, the safety board and Institute have warned.

#### 'Flexibility' Cited

Prior to the rule's adoption, all federally-funded highway improvements were required to meet specific geometric design criteria used for new construction, unless a specific exception was granted by FHWA's regional or division administrators. FHWA said the new rule was adopted to provide more flexibility for state and local needs. Jurisdictions that have not had time to formulate new guidelines prior to the implementation date will be permitted to continue under current operating procedures, FHWA had indicated in a technical advisory bulletin to be issued to regional administrators and state highway officials.

According to the rule, states may set their own criteria for such things as lane and shoulder widths, horizontal clearances; all these would be subject to federal approval.

"The basic requirement is that the criteria selected be appropriate to the circumstances ... and that they be conducive to safety, durability, and economy of maintenance," the agency said in its Federal Register notice.

FHWA indicated, however, it would have no objection to state adoption of criteria based on the so-called "Purple Book," guidelines proposed in 1977 by the American Association of State Highway and Transportation Officials (AASHTO) and rejected in 1978 by FHWA as being unsafe.

While the technical guidelines set to be distributed by the agency deal with the question of safety, they are general in nature and leave the setting of specific criteria to state administrators. Those criteria will be evaluated by regional FHWA administrators.

#### **House Committee Raises Questions**

Rep. Elliott H. Levitas (D.-Ga.), chairman of the House Public Works subcommittee on Investigations and Oversight, voiced his disappointment with the rule. He noted the committee has reported a 1983 spending bill (HR 6211) containing a provision that would require RRR work be continued under the current exception procedure until safety questions are resolved.

Levitas noted FHWA had not responded to a safety effectiveness evaluation performed by the NTSB which had severely criticized the highway administration's technical evaluation of the proposed rule. The safety board concluded FHWA had failed to substantiate its contention that lowered safety standards would provide an overall safety benefit for users of the nation's highways. The safety board also questioned the cost-effectiveness of merely repaving highways without making other improvements and noted that the life of a resurfacing project is closer to

five years, rather than the 16 years FHWA projected in its analysis. Although the rule is considered "major," the Office of Management and Budget waived its normal requirement for a cost-benefit analysis.

#### Roads Not Constructed To Handle Traffic Mix Safely

The safety board also noted in its report that few, if any, primary and secondary roads are designed to handle the growing numbers of heavier trucks and smaller cars. The Department of Transportation predicted recently the death toll may rise to 70,000 by 1990.

Since resurfacing projects cost a great deal less than projects involving more substantial improvements, the board noted, "there is a strong incentive for states to use RRR funds primarily for resurfacing-only projects." Additionally, since there is no limit on the proportion of federal-aid funds that can be used for RRR projects, the entire federal-aid program may gradually become a federal-aid resurfacing program, the board warned.

Since resurfacing projects do not eliminate hazards and possibly may increase driving speeds, the death rate on such highways could increase, the board warned. Ninety percent of all fatal crashes are reported to occur on highways off the interstate system, which meets strict design standards.

FHWA recently dropped rulemaking that would have set a minimum standard for skid resistance on repaving projects aided by federal funds. A 1978 study by the Midwest Research Institute found about half the resurfacing projects studied resulted in lowered skid resistance.

According to the published rule, states may bypass their own standards "under appropriate circumstances." While FHWA noted states could elect to improve their highways using available safety funds or converting regular federal-aid funds for that purpose, FHWA went on to make its own viewpoint clear: RRR funds are "primarily intended to preserve and prolong the service life of existing facilities," FHWA said in its notice. "Improvements for safety, capacity, or any other purpose are a secondary and often optional objective of RRR."

### Recreational Vehicle Problems Reviewed

Owning a recreational vehicle could be hazardous to your health and pocketbook, the Center for Auto Safety has concluded following a two-year study of the vehicles' safety and warranty records.

The Center has released a 113-page compendium of the vehicles' worst design hazards and construction characteristics compiled from crash and litigation records, government research, consumer complaints, and information from industry whistleblowers.

The report notes fires are eight times more common in recreational vehicles (RVs) than in automobiles. University of Kentucky researchers have pointed out the fire hazards associated with the use of flammable materials in RV interiors, including plastics, plywood paneling, and flammable insulation. RVs are not required to meet the relatively weak flammability standard set by the National Highway Traffic Safety Administration (NHTSA) for auto interiors and, if they weigh over 10,000 lbs., are not required to meet NHTSA's fuel system integrity standard (FMVSS 302), the report said.

RVs are often equipped with liquid propane gas tanks for cooking and refrigeration purposes. Such tanks, if strapped on the outside of the vehicle, are particularly vulnerable to penetration and fuel leakage in crashes, the study said. In addition, appliances such as refrigerators can break loose during crashes, often blocking escape routes.

Additional problems highlighted by the study include inadequate protection for occupants in crashes, handling and stability problems, and poorly-designed brake systems. Warranty abuses also abound, the Center reported, with many customers complaining about unsatisfactory repairs.

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