the highway loss reduction

STATUS REPORT

INSURANCE INSTITUTE for Highway Safety

Vol. 9, No. 21 November 20, 1974

Brinegar Sued To Enforce Highway Standards

Two consumer groups have filed suit against U. S. Transportation Secretary Claude S. Brinegar, charging that he has "thwarted the intention of Congress" by funding substandard state highway safety programs.

The two groups, Public Citizen and the Center for Auto Safety, said in their suit that Brinegar acted "in excess of his statutory authority" by approving and apportioning funds for programs that did not contain "specific plans" for implementing all of DOT's 18 highway safety program standards.

If the suit is successful, Brinegar would be obliged to impose the penalties called for in the Highway Safety Act of 1966 against all noncomplying states. All federal highway safety funds for such states would be discontinued. In addition, 10 per cent of their federal highway construction funds would be forfeited unless Brinegar determined that such a forfeiture would not be in the public interest.

The suit specifically cited Brinegar's approval of highway programs in the District of Columbia, Maryland and Virginia, which the organizations claimed did not meet the national highway safety program standards.

According to the suit, current DOT-approved programs in the three jurisdictions include no plans for implementation of the following standards:

- Driver's license classification system in the District of Columbia;
- A blood alcohol concentration of 0.10 per cent as a measurement of intoxication while driving in Maryland;

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- Periodic reexamination of all drivers and uniform training of school bus drivers in Virginia.

A spokesman for Public Citizen stressed, however, that the suit is national in scope and not confined to Brinegar's actions in approving highway programs for these three jurisdictions. The organizations have asked in their suit that Brinegar be obliged to identify any other states that do not currently meet, or have no plans for meeting, the national standards.

A highly placed National Highway Traffic Safety Administration official told *Status Report* that not one state meets all of the required standards. "It's almost an impossible task" with the limited amount of federal funds available to the states, he said. "We're not going to get the states to implement these standards overnight," he continued, but "there's no sense in having standards and having them ignored . . . . A suit like this tends to clear the air," he said.

The government has 60 days to answer the charges.

During that time, funds for fiscal 1976 will be apportioned to the states. In theory, states can obligate – contract to be spent – funds as soon as they are apportioned. The Public Citizen spokesman said the timing of the suit was "unfortunate" and, should the need arise, the plaintiffs "would ask the court to intervene" to prevent states that do not meet national standards from obligating funds.

The Public Citizen/Center for Auto Safety suit was filed while DOT was planning hearings at which Maryland and Puerto Rico must defend their noncompliance with the federal standard defining drivers with blood alcohol levels of 0.10 per cent and above as "intoxicated." (See *Status Report,* Vol. 9, No. 19, Oct. 29, 1974.) Both NHTSA and the Federal Highway Administration have recommended that Brinegar invoke the sanctions open to him in these cases.

Maryland's hearing, originally scheduled for November 11, was postponed at the state's request, and rescheduled for November 25. Puerto Rico's hearing is scheduled for November 26.

Congressional Leaders Urge NHTSA Resist Moratorium

Five congressional leaders who have been in the forefront of auto safety legislation have urged National Highway Traffic Safety Administration head James Gregory to resist recent "appeals from Detroit for a moratorium on federal safety, damageability and emission standards as a means of combating inflation."

They said that such auto maker appeals are "misguided and are a great disservice to the American public" since "most of these federal standards have an anti-inflationary impact."

The congressmen warned Gregory, "Please be assured that we will resist efforts to undermine the purpose and intent of the Motor Vehicle Safety Act by this current assault on federal regulatory activity." They urged that "regulatory action to move towards passive restraints should be the Department's highest priority."

Senators who signed the joint letter were Warren Magnuson (D-Wash.), chairman of the Senate Commerce Committee, Vance Hartke (D-Ind.), chairman of the Surface Transportation Subcommittee and Frank Moss (D-Utah), Consumer Subcommittee Chairman. The letter was also signed by Rep. Harley

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Belt Law Passed In Sweden, Pushed In U.K.

As 1975 begins, Sweden will join the growing number of nations that require the use of safety belts. Also, renewed efforts in Great Britain may soon result in mandatory belt use there.

The Swedish law, enacted in June, will apply to front seat occupants of most vehicles equipped with safety belts, except those persons under 15 years of age, those shorter than 58.5 inches and those with appropriate medical certificates. Occupants of delivery vehicles and taxis are also exempt. Failure to heed the law will be punishable by fine.

Meanwhile, the British press reports new efforts in Great Britain to legislate belt use there before the end of 1975 for drivers and front seat passengers. Last year, the House of Lords defeated a similar bill. The bill is being supported by insurers, auto makers, the British Medical Association and Britain's five million-member Automobile Association.

Belt use is currently required in Australia, Czechoslovakia, France, New Zealand and Puerto Rico. (See *Status Report*, Vol. 8, No. 19, Oct. 17, 1973.)

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Staggers (D-W.Va.), chairman of the House Commerce Committee and Rep. John Moss, chairman of the Commerce and Finance Subcommittee.

The five congressmen also commented upon the Department of Transportation's new proposal for a safety belt buzzer-light warning system. They told Gregory, "While Congress mandated the removal of the interlock system and the continuous buzzer, it did not order the Department to 'roll over and play dead.'"

They wrote, "The Department should not interpret S.355 [the recently passed Motor Vehicle and School Bus Safety Amendments of 1974] as indicating Congressional policy to abandon the auto safety program. In fact, the need for a vigorous program is greater now than it ever has been before."

The congressmen warned that "with the removal of the interlock and the continuous buzzer, seat belt usage is bound to decrease substantially. An effective reminder system is vitally necessary to prevent a catastrophic reduction."

They said they had "noted with great consternation" NHTSA's proposed amendment to FMVSS 208 that would establish a buzzer-light warning system to replace the current ignition interlock system. (See *Status Report*, Vol. 9, No. 20, Nov. 11, 1974.)

They told Gregory "this proposal reflects a step backward much greater than that required by S.355." In particular, they saw "no reason why the audible system or the visual system [should] be designed to operate only at the driver's position. At a minimum, both should be wired to include the front, right outboard position." They also suggest that the visual signal should not be limited to four to eight seconds but should be a continuous signal when "the front seat positions are occupied but no belt is fastened."

(Research by the Insurance Institute for Highway Safety showed that the buzzer-light systems in 1973 and some 1972 cars did not increase belt use. See *Status Report*, Vol. 9, No. 13, July 8, 1974.)

Data Not Available

New Consumer Information Rule Proposed

The National Highway Traffic Safety Administration has proposed a rule to provide consumers with information on vehicle damageability and crashworthiness, as reflected by auto insurance rates, although the agency says such information won't be available until at least late 1975.

NHTSA had previously announced that even when the consumer information on "comparative automobile ratings" becomes available, it will be "limited to high volume models of one car class." (See *Status Report*, Vol. 9, No. 14, July 26, 1974.)

The Motor Vehicle Information and Cost Savings Act of 1972 directed the Department of Transportation to issue the new consumer information rule by Feb. 1, 1975. The act requires the comparison information to be based on insurance costs for different makes and models.

NHTSA proposed that the consumer information show differences in the cost of auto insurance collision coverage in order to reflect damageability; and medical payment coverage in order to reflect crashworthiness. Auto dealers would be required to distribute the NHTSA-prepared information to their customers.

The agency requested comments on the "best means of presenting the comparative costs" to the public.

The agency said that "current insurance premium rates do not reflect differences in damage susceptibility and crashworthiness to a significant degree" NHTSA claimed, "Despite the beginnings of vehicle-related rates in the case of one or two models, a general reflection of vehicle characteristics is not expected until damage susceptibility and crashworthiness studies being conducted by NHTSA under . . . the Cost Savings Act are completed and the results of such studies disseminated to the insurance industry."

Comments on the NHTSA proposal should be sent, by Dec. 16, 1974, to Docket 74-40, Notice 1, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

Public Denied Access To Defect Information

Public access to information in the National Highway Traffic Safety Administration's ongoing defect investigation files has been severely curtailed by recent court and presidential action.

The U.S. Supreme Court has refused to review a lower court decision denying Ralph Nader and the Public Interest Research Group (PIRG) access to NHTSA-manufacturer correspondence in the agency's ongoing investigatory files. Meanwhile, President Ford recently vetoed congressional legislation (HR 12471) that would have expanded the Freedom of Information Act to make investigatory files more accessible to the public.

The Freedom of Information Act of 1967 (PL 89-487) directs that, with limited exceptions, citizens are to have access to all information held by government agencies. As now written, the act places the burden on the federal agency to prove that the information sought by a citizen is within one of the narrow exemptions of the act.

In October, the Congress passed several amendments to the act that would make it easier for the public to obtain information from federal agencies. The legislation included a provision, sponsored by Sen.

Philip Hart (D-Mich.), to increase access to agency investigatory files. During Senate debate on the bill, Hart said his provision was meant to overrule the Court of Appeals decision that denied Nader and PIRG access to NHTSA files.

In vetoing the Freedom of Information Act amendments, President Ford stressed his concern that the confidentiality of "FBI and other investigatory law enforcement files" could not be maintained because of the new amendments. Ford said that if the Congress would make some changes in the legislation, he would sign it.

A House staff member told *Status Report* that when the Congress returns from its election recess, an attempt will be made to override the President's veto.

COURT ACTION

Nader and PIRG had sued the National Highway Traffic Safety Administration to obtain, under the Freedom of Information Act, access to all correspondence between NHTSA and manufacturers in pending defect investigations. Judge Aubrey E. Robinson, Jr. of the U.S. District Court for the District of Columbia ruled that they should have access to the correspondence because, among other things, the agency had failed to show that disclosure of the correspondence would create "serious harm to its law enforcement efficiency." Judge Robinson noted that the manufacturer – the only party against whom any NHTSA civil enforcement action might be brought – already had the material PIRG sought. "Disclosure of materials already in the hands of potential parties to law enforcement proceedings can in no way be said to interfere with an agency's legitimate law enforcement functions . . . ," Judge Robinson said. (Ditlow *v.* Volpe, 362 F. Supp. 1321.)

The U.S. Court of Appeals for the District of Columbia reversed the lower court and held that as long as the NHTSA-manufacturer correspondence was gathered for "law enforcement purposes" it was exempt from disclosure. (Ditlow *v.* Brinegar, 494 F.2d 1073.)

PIRG asked the U.S. Supreme Court to review the decision, but the court refused, thus upholding the Court of Appeals decision. (Ditlow *v.* Brinegar, 43 U.S. Law Week 3249, Oct. 29, 1974.)

NHTSA Halts Some Defect Data Destruction

The National Highway Traffic Safety Administration has acted to prevent auto makers from destroying some of the information they might have on possible safety related defects in their cars.

The agency has issued an interim rule that requires motor vehicle manufacturers to retain – but only for five years – information in their possession on safety related malfunctions in their products. NHTSA has proposed adopting the record retention requirement as a permanent rule. Both the interim rule and the proposed measures require that:

- Vehicle manufacturers retain, for five years, any record, including consumer complaints, warranty or service documents and intra-company reports, that they acquire or generate on safety related malfunctions in their cars;

- Information be retained if it involves malfunctions "beyond normal deterioration in use" or a failure in performance or a "flaw or unintended deviation from design specifications" that may cause a crash or produce injuries.

PROPOSAL'S SHORTCOMINGS

In comments submitted to the agency, the Insurance Institute for Highway Safety has noted that, among its shortcomings, the proposal:

- Applies only to motor vehicle manufacturers, even though equipment manufacturers are also legally required to remedy defects in their products;

- Does not clearly define the term "malfunction" to cover a situation where a manufacturer's design specifications are met, but the design itself is defective;

- Needs to expand the definition of "malfunction" in order to require retention of records whenever any of the following occur, regardless of whether the reason for their occurrence is known or anticipated: *Crashes* – a high frequency or unusual pattern or type; *Injuries* – a high severity or unusual pattern or type; *Parts or Components* – a high incidence of failure or replacement, or an unusual pattern or type of failure;

- Sets too short a period of record retention.

As evidence of the need for a longer period of record retention, IIHS noted, among other things, that:

- Records generated during the design, product development, testing and production states of a vehicle's manufacture can be several years old before the vehicle to which they pertain is even offered for public sale;

- A review of NHTSA's listing of its current defect investigations shows that 50 of the 68 investigations, for which the model year of the affected vehicle is identified, include vehicles that are more than five years old;

- Approximately 95 per cent of 1952-1967 models are registered with state departments of motor vehicles for six or more years and 50 per cent of 1952-1961 models are registered for ten or more consecutive years, twice as long as NHTSA's proposed period of record retention;

- The Congress, in the recently enacted Motor Vehicle and School Bus Safety Amendments of 1974, required manufacturers to remedy defects in their products regardless of their age. If a vehicle is eight years old or less, the defect must be remedied at no charge to the consumer.

Comments on the proposal should be sent to Docket 74-31, Notice 1, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

Hartke Hits Foot Dragging On Child Restraints

The chairman of the Senate Surface Transportation Subcommittee has accused the National Highway Traffic Safety Administration of dragging its feet on standards to improve child restraints. He threatened to legislatively mandate stronger child restraint standards "unless I determine that the NHTSA will move expeditiously" to improve them on its own.

Sen Vance Hartke (D-Ind.), in a letter to NHTSA Administrator Dr. James B. Gregory, said that "the deficiency of the existing standard [FMVSS 213], which became effective in 1971, is that it does not require a dynamic test procedure" to simulate actual crash conditions.

Hartke said he has prodded the agency "for over two years" to upgrade its standard. "On March 1, 1974, the administration responded with a new proposed child restraint seating system standard. [See *Status Report*, Vol. 9, No. 5, March 5, 1974.] The comment period for that amended standard, May 28, 1974, has come and gone and there has been no action by the NHTSA. Over five months have passed since the end of the comment period. That period of time seems adequate to me for the agency to carefully consider all of the comments and to make whatever modifications may be necessary to the proposal," Hartke said in his letter.

He said that although "as a general rule" he is opposed to "the establishment of safety standards by legislation," such action "may be warranted" when "an administrative agency drags its feet on a matter which is crucial to the health and safety of a vast number of people."

NHTSA Proposes Bicycle Use Standards

Citing "increasingly serious" crash damage to bicyclists – in 1973 there were more than "400,000 [bicycle related] injuries requiring hospital emergency room attention" – the National Highway Traffic Safety Administration is proposing to issue a set of standards for states governing safety performance of bikers.

NHTSA has solicited public reaction to proposals for:

- Bicyclist standards as they relate to other standards, such as those for pedestrians;

- Legislative measures by which "greater uniformity" in the rules of the road for bicycles might be established, as well as requirements for the use of safety equipment such as helmets;

- Increased enforcement of existing bicyclist laws;

- Bicycle use education, for adults as well as children;

- The inclusion of bicycle and bicyclist data on police accident forms and in computerized traffic data systems;

- Distinguishing between "national requirements and local requirements," which could produce standards that are "significant in one state" but "may be of less value in another."

The Federal Highway Administration is developing a separate proposal on "issues relating to bike lanes, bike paths . . . [and] traffic controls," NHTSA said.

NHTSA also said that it may not set standards for bicycle design or performance. noting that safety, "in terms of the mechanics of the bicycle itself, falls within the jurisdiction of the Consumer Product Safety Commission . . . which issued a final bicycle standard on June 18, 1974."

The proposed bicyclist safety standards were published in the Oct. 15 *Federal Register*. Comments should refer to Docket No. 74-35 and may be submitted to the Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh St., S.W., Washington, D.C. 20590. The closing date for comments is Dec. 16, 1974.

New Federal Fire Program Established

President Ford has signed a new law expanding federal fire loss reduction efforts. The new law, the Federal Fire Prevention and Control Act of 1974 (PL 93-498), creates a National Fire Prevention and Control Administration within the Department of Commerce, to direct federal assistance to state and local government fire loss reduction programs.

Among the duties of the new agency is the development of a National Fire Data Center to gather information on the frequency of fires, including motor vehicle fires, and on deaths and injuries associated with fires.

The new law also establishes a new federally funded program for burn research and treatment of burn victims. However, President Ford has announced that he will not seek funds for that program since, he says, it duplicates existing federal programs.

The Congress, in the preamble to the new law, said that the increased federal fire loss reduction effort was needed because fire "constitutes a public health and safety problem of great dimensions." Insurance Institute for Highway Safety crash tests have demonstrated the inadequate crashworthiness of current vehicle fuel systems and IIHS commissioned research has found that the American public's annual expenditure for fire department services associated with motor vehicle fires is almost $350 million. (See *Status Report,* Vol. 8, No. 11, May 29, 1973 and Vol. 9, No. 13, July 8, 1974.)

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