

**NHTSA Launches Quiet Campaign to
Protect Industry**
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WASHINGTON, D.C. – If you didn't already know it was there, you might have missed it entirely in the 45-page proposal to upgrade the roof crush resistance standard: a one-sentence clause tucked in Part 13 amid federal boilerplate, indemnifying manufacturers who met the proposed standard from lawsuits alleging a defect.

Known as a preemption clause, NHTSA's August 19 proposal was the second time in as many months the federal agency has wrapped civil justice reform and auto safety standards into one package that is rousing the ire of consumer advocates, plaintiffs' attorneys, and those concerned about Federalism and cost of care transfer from the industry to the public sector.

The federal agency maintains that liability lawsuits against automakers—or the threat of lawsuits could prompt them to design cars that are actually less safe and frustrate NHTSA's long-term goal of saving lives and reducing injuries from auto accidents. For example, in fortifying the roof, manufacturers could make a vehicle that is top-heavy and more prone to rollovers, an agency spokesman has said.

So far, the issue has received scant attention from the mainstream press. August stories in the *Detroit News* and *Wall Street Journal* story pointed out that the roof rule would preempt lawsuits. In September, the *Washington Post's* Cindy Skrzycki wrote about the Bush administration's attempts to use the regulatory system to advance its tort reform goals.

But safety experts and victims' advocates maintain that NHTSA has no business mixing rulemaking with legal reform and preemption represents a troubling trend in rulemakings. NHTSA's rules do not represent the state of the art, are often inadequate and are revisited too infrequently to declare that they represent the gold standard in auto safety and immune from scrutiny in the civil courts, where the victims of weak or outdated standards seek compensation, they say.

Preemption and the Current Rulemakings

On June 22, NHTSA made its first detour into tort reform in a notice of proposed rulemaking to amend the definition of the designated seating position (see *The Safety Record* V2 I3). In its first significant upgrade to the rule in a quarter century, the agency hopes to close loopholes in the current regulations that have resulted in too few seatbelts for the likely number of passengers, injuries and fatalities. Under the proposed changes, any seat position with 13 inches of hip room must have a seat belt—including temporary and jump seats, which are currently exempt. Manufacturers could meet the new standard by either adding seat belts or an impediment or gap to clearly discourage passengers from occupying that position.

NHTSA predicted that most manufacturers would choose the cheaper alternative—an impediment or gap—over more seatbelts, making this piece of the standard critical in ensuring that vehicle design strictly adheres to the rule’s intent. But a review by Safety Research & Strategies, with the help of statisticians at Quality Control Systems, found significant flaws in the data analysis that formed the basis of the proposal. The review, along with an analysis of the long-standing abuse of the DSP requirement by vehicle manufacturers was submitted to NHTSA docket by SRS (Docket 21600).

While relatively few injuries and deaths are related to DSP, preemption in the roof crush resistance rulemaking, however, has the potential to significantly setback safe auto design while protecting manufacturers from legitimate claims that their vehicles are defective. Currently, automakers face hundreds of roof crush-related lawsuits.

The new proposal, published in the *Federal Register* on August 19, is the agency’s first attempt to tackle roof strength in more than 30 years. The upgrade is so minor, that 70 percent of current vehicles already meet it. NHTSA’s own safety benefit analysis shows that it has the potential to save 11 to 44 lives of the 10,000 lost in rollovers each year—less than a half a percent—and to reduce the number of serious injuries by 500 to 800 out of the 24,000 that occur annually.

NHTSA argues that raising the roof-strength standard would result in heavier roofs that might make vehicles more prone to rollovers. However, increasing roof strength does not necessarily equal a heavier roof. Advanced steels and other lightweight materials can strengthen roofs without a weight increase. NHTSA’s own analysis shows that the impact from a heavier roof on a vehicle’s center of gravity is immeasurably small. Further, rollover and electronic stability control systems can more than compensate for any minor increase in weight. Current vehicle design suggests that a vehicle with roof crush resistance that far exceeds the proposed standard has a better safety record. For example, the Volvo XC-90 exceeds NHTSA’s standard and is considered one of the safest SUVs on the road.

NHTSA also maintains that a higher standard would interfere with its comprehensive package of rollover safety measures. But research shows that roof strength is a key factor in preventing injuries during a rollover sequence. Weak roofs undermine the efficacy of seatbelts. A collapsed roof allows windows to shatter. Open windows allow side airbags to push out of the vehicle. The combination increases the possibility that the occupants will be partially or fully ejected in a rollover crash.

Preemption and the Big Picture

Safety advocates say that the preemption clause further weakens a bad standard, because manufacturers have no incentive to improve the safety of their vehicles, essentially capping the standard at a level that will not provide adequate protection. The motoring public pays the price with no avenue for redress and the preemption clauses violate the agency’s core mission and counter Congress’ original intent in establishing safety standards. More than 25 years ago, Congress defined these standards as minimum

regulations that did not excuse manufacturers from their common law responsibility to exercise due care in making and selling safe products.

NHTSA's marriage of preemption clauses and vehicle safety standards signals a federal government-sanctioned shift in the consequences of poorly designed and manufactured cars from automakers to accident victims and to insurance companies and states, who will assume the costs of caring for victims of rollover crashes.

The nationwide cost of motor vehicles fatalities are staggering: \$230.5 billion annually. For Texas and California, for example, that translates into \$19.7 billion in Texas and \$20 billion respectively. The estimated national cost of lifetime care is for injured motorists with head and spinal cord injuries sustained in rollovers is more than \$20 billion. Without the right to hold manufacturers liable, others will pick up victims' medical and other expenses