



THE SAFETY RECORD

INSIDE THIS ISSUE

Alternative Vehicles Gain Popularity, But Skirt Regulations	1
Federal Appeals Court Upholds Lower Court Ruling on EWR Data	1
NHTSA Delays Federalizing Hybrid III Dummy Another Two Years	3
New Study Shows Indirect TPMS Systems Ineffective	4
Complaints to NHTSA Matter	5
Latest NTSB Report Raps NHTSA for Failing to Regulate Motorcoach Safety	6
NHTSA Withdraws Rear-view Mirror Rulemaking	7

Alternative Vehicles Gain Popularity, But Skirt Regulations

STUEBENVILLE, OHIO –Don't bother trying to buy a three-wheeled, two-passenger vehicle off the dealer's lot. Motorists who want to get their hands on Wildfire Motors' WF650-C will have to plunk down the full \$7,064 purchase price in advance, and wait three months for delivery. As gas prices rise, consumers are turning to high-mileage alternative vehicles, such as three-wheeled motorcycles or mini trucks or small electric passenger vehicles in increasing numbers. They are marketed as "cars" or "trucks" with most of the capabilities of a passenger vehicle, but they are built to safety standards far below those required of traditional passenger cars and light trucks.

The National Highway Traffic Safety Administration says that it is watching the trend closely, but it has yet to promulgate regulations, conduct crash testing or enforce existing regulations on importers who certify a vehicle in one class, but market it to consumers as a different class of vehicle.

"We are certainly aware of the phenomenon," says NHTSA spokesman Rae Tyson. But he declined to elaborate on the agency's plans to initiate rule-

making. The agency has begun to collect some state crash data involving these vehicles. NHTSA has also looked at crash tests performed by Transport Canada and has plans to conduct some vehicle testing of its own, Tyson said.

States have actually permitted this expansion by passing laws allowing some of these vehicles on public roads and at higher speeds than the FMVSS allows. An article in the Insurance Institute for Highway Safety *Status Report* noted that gasoline-powered mini-trucks, with bench seating, a steering wheel, flat beds and a fully enclosed passenger compartment, had escaped NHTSA regulations because they were billed as off-road vehicles. They are confined to top speeds of up to 25 miles per hour, but can be easily modified to reach much higher speeds. In the last two years, as many as 10 states have passed laws allowing mini-trucks to traverse portions of the public roads – usually interstate highways are exempted. Four states have required that these vehicles comply with NHTSA's safety standards for low-speed vehicles – but one such state, Kansas, places no speed restrictions on the vehicles.

Yet, as Tyson concedes, the states play no role in setting motor vehicle safety standards – they are

solely within the federal government's purview. And he refused to disclose any plans the agency might have to crack down on the importers who are clearly selling these vehicles as having on-road capabilities, or on states which have passed laws in direct contradiction to federal regulations.

Consumers may be unaware that they are built to minimal safety standards or to regulations that don't apply to the new dynamics and architecture of these hybrids. In the meantime, advocates have identified this clash between these alternative vehicles, their marketing, the federal regulations and state laws as a looming safety issue.

Wildfire's top-of-the-line three-wheeled vehicle is a case in point. Wildfire Motors, based in Steubenville, Ohio, boasts the U.S.'s largest inventory of alternative vehicles. According to a sales representative, three-wheelers "got real popular, real fast." Demand for the three wheeled vehicles had risen so far, so fast – by 400 percent – he said, that the distributor changed its policy of selling individual vehicles to dealers, and now requires them to buy whole containers of the product.

(Cont. on p. 2)

Federal Appeals Court Upholds Lower Court Ruling on EWR Data

WASHINGTON, D.C –The U.S. Court of Appeals has ruled against the Rubber Manufacturers Association, determining that The Recall Enhancement, Accountability and Documentation Act does not automatically exempt all Early Warning Reports from public disclosure.

The appeals decision, issued on July 22, affirms a lower court ruling, but does not end the seven-year legal battle over the confidentiality of EWR data. Nonetheless, Some components of the EWR data are expected to be released by

NHTSA before the end of September, under a final rule published last year which determined that property damage, death and injury data would be public categories of information. The federal court specifically found that the EWR data are not exempt from disclosure under the Freedom of Information Act's Exemption 3, which states that information is not public under FOIA if Congress specifically passes a law preventing its release.

The RMA had argued that the TREAD Act

barred the release of all EWR data. But the federal appeals court concluded "that the plain language of the TREAD Act means what it says." Under the disclosure provision of the act, EWR information could be withheld from public release under certain FOIA exemptions, unless the Secretary of Transportation determined that a disclosure would assist the department in one of its fundamental duties: alerting the public to an automotive defect or non-compliance.

(Cont. on p. 3)

Alternative Vehicles Gain Popularity, But Skirt Regulations

(Cont. from p. 1)

The WF650-C boasts a 650cc Hi-Po liquid cooled engine, with a four speed manual transmission with

cal treatment. **DO NOT** ride this product without protective equipment, such as helmets, gloves, long pants, long sleeve shirt and any other protection that local regula-

were first promulgated in the early 1970s. They mostly concern themselves with the safety of the brake system, headlights and rear lights, tires, windshields and turn signals.

“The WF-120V Total Electric Car has a 8.5 kilowatt, 120 volt, AC motor which runs on 10 105Amp Power Deep Cycle batteries. The



WF650-C three-wheeled “motorcycle” manufactured by Taixing Sandi Motorcycle Co Ltd, sold by Wildfire Motors

reverse. “With up to 60 miles per gallon fuel efficiency and a cruising speed of 65, this is a great vehicle to beat high gas prices. Also comes with a CDI ignition, and a 2 year or 24,000 mile warranty on the engine and transmission,” Wildfire’s website maintains.

The WF650-C also has a radio, a rear convertible seat and a sun-roof. Sounds just like a car – except that it’s a motorcycle. According to the vehicle’s owner’s manual it is certified as a three-wheeled motorcycle and drivers must obtain a motorcycle license to drive it. The WF650-C is manufactured in China by the Taixing Sandi Motorcycle Co Ltd to Wildfire’s engineering standards, the sales representative said.

But the manual also carries these unusual caveats for a motorcycle:

“Riders must comply with local allowable age rules, all local laws and regulations. Minors should never operate this product without the supervision of an adult. **DO NOT** operate under the influence of alcohol or while receiving medi-

tions or laws require. Read the instructions carefully and always inspect this product until you can safely start, stop, turn, and yield to all obstacles in the environment. This product is not intended for use on public roads or highways, during nighttime or inclement weather conditions. Never ride on any street or sidewalk.”

The manufacturer’s disclaimers aside, NHTSA defines the term “motorcycle,” for the purpose of the statute and regulations it administers, as “a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with ground. If a motorcycle or motor driven cycle is capable of a top speed above 20 miles per hour and is equipped with components (such as lights, mirrors, and turn signals) that are needed for on-road use, NHTSA will regard it as having been primarily manufactured for such purposes.”

The federal motor vehicle safety standards governing motorcycles

In March 1971, NHTSA began establishing a brake standard for motorcycles, separate from the safety standard for passenger vehicles, FMVSS 105, and published a final rule, which specifically addressed three-wheeled motorcycles in 1972. Since then, there have been minor adjustments to the motorcycle brake regulations. These regulations never considered a “motorcycle” with an upper vehicle architecture - pillars and a roof - a cab in the back, as the pick-up models feature, or side-by-side seating for two. The agency has never examined the crashworthiness, the radically changed vehicle dynamics, or the rollover propensity of these vehicles.

Wildfire’s Total Electric Vehicles are another example of a vehicle marketed in direct contradiction to its stated use. The fully equipped WF-120V Total Electric NEV (Neighborhood Electric Vehicle) retails at \$15,325. (A base-model 2009 Honda Civic retails for \$15,400.) This vehicle is also manufactured in China by a motorcycle manufacturer, the Chongqing Hi-Bird Motorcycle Industry Co. According to the Wildfire website:

120 volt AC motor uses very little electricity and is completely computer controlled. The WF-120V is a NEV or Neighborhood Electric Vehicle and the top speed is set at 25 mph, but can be adjusted for higher speed [up to 50 mph] if that is legal for NEV vehicles in your state or country. Check with your local DMV. The WF-120V also comes with two tone leather seats, inside adjustable mirrors, AM/FM CD player, power windows and mag wheels.”

NEVs are regulated by FMVSS 500 under a 1998 final rule, which was promulgated to address electric golf carts. FMVSS 500 requires that NEVs be equipped with headlights, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rear view mirrors, windshields, seat belts, and vehicle identification numbers. NEVs are defined as “Low Speed Vehicles” and, according to FMVSS 500, NEVs have four wheels, have less than a 2,500 GVWR and can attain top speeds between 20 and 25 miles per hour. No crash testing is required for these vehicles.

(Cont. on p. 8)

Federal Appeals Court Upholds Lower Court Ruling on EWR Data

(Cont. from p. 1)

The RMA interpreted this to mean that all EWR data was exempt from disclosure under Exemption 3. But NHTSA and the courts have read the statute differently. In parsing the language of the statute, the agency and the judiciary concluded that just because the law says that the Secretary shall disclose information if she determines that a defect exists, does not “necessarily compel the inverse proposition: that the Secretary (again, acting on her own and without a FOIA request) *shall not* disclose information *unless* she makes such a determination,” the court said in its decision.

The RMA decried the decision, calling it “unfortunate and may lead to the release of inaccurate, unsubstantiated information about tires and automotive equipment.”

The RMA fought hard to prevent any EWR data from seeing the light of day, arguing that “much of the information filed under the early warning reporting system often consists of raw and often unverified allegations. As a consequence, it is extremely likely that some consumers’ claims will in fact turn out to have been mistaken,” the trade group said in a statement about the appeals ruling. “Additionally, the system does not allow tire manufacturers to correct data even if it is discovered that a particular consumer claim was unjustified or was made against the

wrong tire company.”

And the RMA warned consumers against using EWR data as “an accurate gauge of performance or reliability for any tire.” Nonetheless, the battle over EWR information continues, as the Appeals Court justices noted: “This does not, of course, end the FOIA analysis, as the question of whether certain categories of EWR information are protected from disclosure under FOIA Exemption 4 remains pending...”

For seven years, EWR data has remained closed to the public because of pending litigation over its release. Safety and consumer advocates and manufacturers have fought over what – if any – of the information collected under the TREAD Act is public. Manufacturers have insisted that the TREAD Act specifically exempted EWR data under Exemption 3 and Exemption 4, which relates to disclosures that might cause competitive harm. Under industry pressure, NHTSA began to reverse its first position – in which it envisioned that most EWR data would be public – in favor of designating most EWR data as confidential.

In March 2004, Public Citizen sued Secretary of Transportation Norman Mineta over the confidentiality of EWR data. The suit claimed that NHTSA had deviated substantially from its initial proposal when it passed a final rule that broadly determined that whole classes of tire data are confidential. The RMA filed counter claims. In March 2006, U.S.

District Judge Robert Leon ruled in favor of Public Citizen and directed NHTSA to revisit the rule. Judge Leon ruled a week later that EWR data was not subject to a FOIA Exemption 3. The RMA appealed that decision.

In March 2007, Randy Whitfield of Quality Control Systems Corp. filed a Freedom of Information Act lawsuit against the Department of Transportation to obtain the release of Early Warning Reporting data. The QCS lawsuit focused on release of the tire-related deaths and injuries in Ford Explorer and Mercury Mountaineer crashes. The lawsuit was filed to support a Safety Research & Strategies commissioned study to examine the Early Warning Reporting data on the growth in Ford Explorer, tire-related, fatal crashes long after the well-known Firestone tire recalls. The planned study is a follow-up to a QCS January 2006 report “NHTSA’s Secret Data and Ford Explorers in Fatal, Post-recall, Tire-related Crashes,” which found that since the tire recalls were completed, there have been more reported fatalities related to tire failures than there had been up to the time the scandal was first given wide publicity.

This new study would examine tire-related death and injury claims involving Ford Explorers and Mercury Mountaineers submitted by Ford Motor Company

in its EWR submission compared with other fatality data. While NHTSA publicly held that these claims data were not confidential, the agency still refused to release the information, which it has had since December 2003. NHTSA later officially granted itself an “administrative stay” on the release of the data in October 2004.

A ruling in that case made disclosure of the data dependent on the final outcome of the RMA appeal. The RMA has lost its appeal but may still petition for a rehearing by the D.C. Circuit Court, or it may appeal directly to the U. S. Supreme Court.

In October 2007, NHTSA published new regulations addressing the confidentiality of EWR data. The consumer complaints and warranty claims, field reports and common green tire identifier information would be confidential under FOIA Exemption 4. The last six characters of the vehicle identification number (VIN) in an EWR report on deaths or injuries would be confidential under FOIA’s Exemption 6, which protects privacy concerns. Only EWR property damage, death and injury data would be public categories of information.

NHTSA Delays Federalizing Hybrid III Dummy Another Two Years

WASHINGTON, D.C. – The National Highway Traffic Safety Administration has delayed advancements in developing effective child safety regulations by postponing the adoption of the 6-year-old Hybrid III dummy for the third time.

Now, manufacturers will have until August 1, 2010 before they will have to use the Hybrid III in compliance tests. In the meantime, child restraint manufacturers can use either the Hybrid II or III. The hang-up has been over the seating procedures in the booster compli-

ance tests and the bio-fidelity of the new 6-year-old dummy. Some child restraint-makers complained that the new dummies produced unusually high Head Injury Criterion values in compliance tests. The agency sought this latest delay to consider comments on the seating procedures and to complete its evaluation of the technical issues related to the Hybrid III dummy. It also wanted to give child carseat-makers another two years to become familiar with testing the new dummy.

The use of the Hybrid III in compli-

ance tests was first required in a 2003 Final Rule. The agency had incorporated the new test dummy to replace its Hybrid II counterpart, “believing that the Hybrid III test dummy’s enhanced biofidelity and extensive instrumentation would lead to a more thorough and precise assessment of child restraint performance.” The rule was scheduled to go into effect in August 2005, but manufacturers argued that two years did not give them sufficient time to improve their

product designs to meet the new standard. So, the agency gave manufacturers three more years to make the transition to the new dummy.

But at least one child seat manufacturer – Dorel – complained that its boosters couldn’t pass the test with the Hybrid III, because it “exhibits severe, non-biofidelic neck elongation and head rotation... This results in the chin/face of the dummy striking the chest, causing artificially high HIC measurements.” Dorel asked NHTSA to allow continued use of the

(Cont. on p. 5)

New Study Shows Indirect TPMS Systems Ineffective

BRUSSELS, BELGIUM – Memo to the Office of Budget and Management: the National Highway Traffic Safety Administration knows more about tire safety than you. A new study commissioned by a United Nations/Economic Commission for Europe task force shows that indirect tire monitoring pressure systems are ineffective – and in some cases, worse than having no system at all. The conclusions of the Working Party on Brakes and Running Gear validate what NHTSA and safety advocates had argued since the agency attempted to promulgate a TPMS rule in 2001: direct monitoring systems work; indirect systems are fairly worthless.

Direct TPMS systems use pressure sensors to measure pressure in each of the four tires and transmit that data using a wireless RF transmitter to a central receiver. The receiver then communicates the information to a display in the vehicle that informs the driver which tire is underinflated. The tag in each wheel is designed to send a warning signal when a tire's pressure drops below its specified safety level. Indirect systems use wheel speed sensors on a vehicle's antilock brake system to measure tire rotation, under the premise that underinflated tires have a smaller radius, resulting in a higher rotational speed compared with a fully inflated tire. The sensor detects the faster rotation, and then alerts the driver. But in practice, this change in radius is small, making indirect measurement less reliable than direct pressure measurement.

The group, which represents auto and tire makers and component suppliers, presented in June the results of a study performed by the Dutch Ministry of Transport. The ministry surveyed more than 9,000 vehicles, of which 6,000 could be identified by their VINs. The vast majority (about 5,000) had no system; 486 had a direct TPMS and 174 had an indirect system. The survey of tire pressure showed that in many circumstances, tires equipped with indirect systems fared worse than tires with no system at all – particularly the more severely the tire is underinflated.

The differences were less pronounced when the underinflation was less. For example, 49.3 percent of vehicles without TPMS had at least one tire underinflated by 0.3 bar, compared to 35 percent of vehicles equipped with a direct TPMS, and 44 percent of vehicles with indirect systems. When the underinflation for at least one tire reached 0.5 bar of the recommended psi, the gap between the effectiveness of direct and indirect systems was wider: 19.5 percent for vehicles with no TPMS; 5.3 percent for vehicles with a direct system and 21.2 percent for vehicles with indirect systems. In addition, the population of tires at a pressure at least 0.5 bar under recommended value was around 8 percent in vehicles with no TPMS, 9 percent on vehicles fitted with indirect TPMS systems, and 2 percent for vehicles equipped with direct TPMS.

The results are particularly ironic in light of the TPMS rule (FMVSS 138), which was roundly criticized at every juncture. It emanated from Section 13 of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, which required the agency to mandate a warning system in new vehicles to alert operators when their tires are under inflated. In 2001, NHTSA proposed a TPMS rule that would have required manufacturers to install direct systems, with a four-tire, 25-percent underinflation detection capability. But the Office of Budget and Management, which under the Bush administration set new records for forcing federal agencies to write more lenient rules, overruled the agency.

In testimony before the House Subcommittee on Consumer Affairs, John D. Graham, Administrator of OMB's Office of Information and Regulatory Affairs, said that his office required NHTSA to re-write the

rule because: "Given current technology, it appears that both systems could meet a "1-tire" performance standard (i.e., the ability to detect 30% underinflation in one tire) while only the direct system could satisfy a performance standard that requires information on all four tires simultaneously."

In June 2002, the agency published a Final Rule which offered two compliance options: direct and indirect systems. That prompted Public Citizen to sue the Secretary of Transportation for allowing automakers to install indirect systems. In August 2003, the U.S. Court of Appeals for the Second Circuit ruled that the TREAD Act required a TPMS capable of detecting when any combination of tires, up to all four tires, is significantly underinflated. It vacated FMVSS No. 138 and directed the agency to conduct further rule-making. A year later, Public Citizen petitioned the Court to force the agency to act on the court's order. In April 2005, NHTSA issued a rule requiring automakers to install direct systems in all new passenger cars and trucks by the 2008 model year, beginning a phase-in with 2006 model year vehicles.

Public Citizen, along with four tire manufacturers and the Tire Industry Association, sued again, claiming that the rule was not strict enough, permitting systems that took too long to measure tire pressure and still allowed motorists to ride on tires that could be underinflated by as much as 30 percent.

The U.S. District Court of Appeals for the District of Columbia eventually threw out the claims, saying none had standing to challenge the rule.

And Republicans continue to have problems understanding the importance of proper tire pressure. This summer, the GOP mocked Democratic Presidential nominee Barack Obama's promotion of better fuel economy through proper tire inflation, by handing out tire gauges. In fact, the agency noted in its April 2005 final TPMS rule that instead of the safety benefits of 120 fewer fatalities and some 8,500 injuries prevented or lessened, Tire Pressure Monitoring Systems would also provide motorists with better mileage and tires with a longer tread-life. While there's a lively debate over how much oil could be produced through off-shore drilling and when it might be available to consumers, an economist with the Government Accounting Office estimated that improper tire inflation cost motorists 1.2 billion gallons of fuel annually. So the next time a Republican tries to hand you a tire gauge – grab it and say "Thanks!"



Complaints to NHTSA Matter

On August 12, 2006, Rafael B. Melo, Claudeir Jose Figueiredo and Carlos Souza were ejected from a 2000 Chevrolet Express 2500 Cargo Van, when its 2004 Compass Telluride steel belted radial tire failed, causing the van to roll-over. Melo and Figueiredo died in the crash. Souza suffered a permanent brain injury. In May 2007, the families of the victims filed a civil lawsuit against the Chinese manufacturer, Hangzhou Zhongce Rubber Company, and the American importer, Foreign Tire Sales of Union, New Jersey. A year would elapse between the crash and a recall of the defective tires. But it only took two months from the time that FTS -- spurred by litigation -- reported the deaths to the National Highway Traffic Safety Administration to the launch of a campaign to remove the defective tires from the road.

On November 11, Robert Monk of Orlando, Florida died when the right rear tire of his 1998 Ford Explorer failed, triggering a roll-over crash. The tire was linked to a cracked Dill TR413 valve stem manufactured by Topseal, a sub-

siary of Shanghai Baolong Industries Co., Ltd, for Dill Air Control Products. In March, the Monk family filed suit against Dill. As a result of the lawsuit, company officials met with NHTSA in April to discuss the problem. By the end of May, Dill had sent a Technical Bulletin to retailers advising that the company had received complaints of surface cracks appearing on the outside of the rubber near the rim hole in several models, and the Office of Defects Investigation opened a defect investigation.

Three deaths; two different components; one thing in common: lawsuits were the motivating factors in moving toward solutions to safety defects.

“Even a single case can make a significant impact on public safety,” says Richard Newsome, of the Newsome Law Firm in Orlando, Florida, who represents the Monk family. “The death of Mr. Monk is a case in point – one case prompted NHTSA to open a defect investigation that is ongoing and continues to widen. Cracked tire valve stems can cause catastrophic crashes, but before the lawsuit forced Dill to report it to the agency, this was a problem that

remained under the radar.”

Since the passage of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act in 2000, manufacturers are required to report deaths and injuries on a quarterly basis as part of their Early Warning Reporting responsibilities. While manufacturers’ data are evaluated for potential defect trends, NHTSA relies heavily on consumer complaints it receives through its hotline or website. Called Vehicle Owner Questionnaires or VOQs, these reports can often make or break an issue – and are used to do both.

The VOQs continue to be the nation’s only publicly available, central clearinghouse for vehicle-related complaints. They range from minor annoyances to major defects, and they are used by the agency, consumers, safety groups and the legal community to learn about known vehicle problems and to identify potential trends.

The agency has been collecting VOQs since the 1970s. In 2000,

media coverage of the Firestone/Ford Explorer rollover problems drove complaint traffic to a peak of 50,000. But the annual complaint rate has since dropped. In 2002, NHTSA logged 42,000 VOQs, later rebounding in 2004 to nearly 50,000. Complaints began to decrease from 40,000 in 2005, to 30,000 complaints in 2006. In 2007, the agency fielded 33,129 VOQs.

Despite the importance of the VOQs, the public is largely unaware of the existence of the database, its reporting mechanisms and how NHTSA uses them to detect larger problems.

Some of the most important complaints don’t get reported to the agency by consumers. Complaints involving crashes and death and injury receive greater scrutiny by NHTSA but only represent a small percentage of the total complaints. Less than 10 percent of the complaints are crash-related and less than 6 percent relate to death and injury.

(Cont. on p. 8)

NHTSA Delays Federalizing Hybrid III Dummy Another Two Years

(Cont. from p. 3)

6-year-old Hybrid II dummy. The agency acquiesced and issued an interim Final Rule, again delaying the compliance date to August 2008, to give manufacturers more experience using the new test dummy.

In July 2007, the agency conducted a series of sled tests to see if the seating procedures developed from the 10-year-old Hybrid III could be applied to the 6-year-old model. NHTSA researchers found that the tests were highly repeatable, and that, as with the 10-year-old dummy, the more reclined torso of the dummy, the higher the HIC values, compared to seating the dummy in an upright position.

In January, the agency issued a Supplemental Notice of Proposed Rulemaking to introduce the results of its testing and new seating pro-

cedures. The proposal would position the 6-year-old dummy in the same way as for the 10-year-old dummy, except for the computational values used to determine the H-point and torso angle to account for the difference in size.

“The agency believes that the introduction of this repeatable positioning procedure will address the HIII 6-year-old issues raised by Dorel. We have tentatively concluded that the procedure eliminates the variability of the test environment that is caused by different seating positions, and that implementation of the seating procedure will lead to more consistent results in the transition from the Hybrid II dummies to the Hybrid III dummies,” the agency said in the SPRM notice.

Stephanie Tombrello, director of the child passenger advocacy group SafetyBeltSafe USA, says that

manufacturers in the past have found ways around compliance tests.

“We wrote an article for our newsletter on injury tolerances, and one of the big things we discovered is that the car companies were allowing the dummies to submarine to get good HIC values. That’s why we have knee excursion requirements – to prevent the testers from allowing the dummy to submarine.”

Tombrello said that this delay is typical of the agency’s pace of improving child safety seat regulations.

“It’s like it moves in glue,” she said.

The move to dummies that better reflect real-world injuries

was to fulfill the requirements of the Transportation Recall Enhancement, Accountability and Documentation Act of 2000 (TREAD Act). Section 14 of the Act directed NHTSA to initiate rulemaking that would improve the safety of child restraints. NHTSA’s first step was to update the test devices and procedures used in dynamically evaluating child restraints for compliance with the standard. The final rule updated the seat assembly on which child restraints are tested to make the seat assembly more representative of those in today’s vehicles. The final rule changed the seat bottom and the seat back cushion angles, the spacing between the anchors of the lap belt, and, to replicate a rear seating position, changed the seat back from a flexible seat back to a fixed one. The agency also adjusted the severity of the sled pulse.

Latest NTSB Report Raps NHTSA for Failing to Regulate Motorcoach Safety

WASHINGTON, D.C. – For the second time in nine years, the National Transportation Safety Board has criticized the National Highway Traffic Safety Administration for failing to promulgate rules on motor coach safety that might have saved lives in a 2007 Atlanta bus crash that killed seven.

The NTSB issued its findings in an investigation of the March 2 crash, in which the driver became confused on a High Occupancy Vehicle-Only exit ramp and approached a stop sign at a T-intersection at highway speed. The motor coach, which was transporting the driver's wife and 33 members of the Bluffton University baseball team to a competition in Florida, jumped a concrete bridge abutment and fell 19 feet onto the southbound lanes, killing seven. The driver and his wife, both of whom were wearing lap belts, died; the five occupants who died were ejected. Five additional occupants were ejected; two more occupants were partially ejected. Seven of the occupants sustained serious injuries.

In its report analyzing the causes of the crash, the NTSB again commented on the lack of motor coach safety regulations, which may have contributed to the high number of fatalities and serious injuries. The board pointed out that motor coaches must only comply with Federal Motor Vehicle Safety Standard (FMVSS) 217, which establishes minimum requirements for motor-coach window retention and release, and FMVSS 302, which establishes standards for the flammability of interior materials. They are exempt from a host of other occupant protection standards that apply to school buses and passenger cars.

And while NHTSA has made some moves toward regulating occupant safety in motorcoach crashes, the NTSB concluded, the agency has moved too slowly:

“Since NHTSA’s 2007 *Approach to Motorcoach Safety* from the Office of Crashworthiness Standards states, ‘Installing seat belts [on motorcoaches] would be the most direct method of retaining passengers within a seating compartment.’ Yet, NHTSA also states that the fundamental information necessary to es-

tablish adequate performance requirements for seat belts on motorcoaches does not exist. Had NHTSA promptly set about defining the FMVSS requirements for motorcoach occupant protection following the Safety Board’s 1999 bus crashworthiness special investigation, as has been accomplished by the EU and Australia, these standards could now be identified for U.S. motorcoaches. NHTSA has only recently reinstated a program to characterize restraint response in rollovers. Consequently, the Safety Board concludes that because of NHTSA’s delay in defining motorcoach occupant protection performance standards, U.S. motorcoaches have not been equipped with such systems, leaving the traveling public inadequately protected during motorcoach collisions, particularly during rollovers.”

This year has been particularly perilous for motorcoach passengers. So far, 2008 has seen four high-profile bus crashes (three in August alone) that have killed 21 occupants and injured at least 80. In January, a bus shuttling casino workers 40 miles between Las Vegas and Pimm, a freeway casino town on the Nevada-California state line, crashed, injuring 25 people. In August, two more casino-related crashes killed four and injured about 30 passengers in Mississippi, and another 29 occupants in a second crash on Nevada Interstate 15, near Pimm. A third crash last month involved a bus chartered by a church group in Texas, killed 17.

To date, 2008 has already exceeded the average number of motor-coach fatalities per year. The NTSB reported that from 2000-2006, 43 motor-coach accidents resulted in 122 total fatalities, about 17 per year. In total, 41 – slightly more than a third – occupants were partially or fully ejected. But in rollover crashes, which accounted for 15 of the total, some 90 percent of the fatalities occurred when occupants were ejected.

Rob Ammons of the Ammons Law Firm, based in Houston, Texas, who is representing the families of those fatally injured in the Texas

crash, says that ejection is a major factor in that case.

“Our investigation has revealed that if the occupants had been restrained in their seats and contained within the vehicle, then loss of lives and injuries would have been significantly reduced,” Ammons said.

The NTSB has been calling for regulations requiring bus passenger restraints since 1968. In 1988, the safety board said that it would continue to monitor motorcoach crashes to determine if seat belts would mitigate injuries. In analyzing 168 occupant fatalities in 36 motorcoach crashes from 1968-1997, the NTSB found that 106 died in rollovers, 64 of whom were ejected. In 1999, the Safety Board published two special investigation reports on motorcoach occupant protection; and by May 2000, the issue made it to the board’s “Most Wanted List.” Specifically, the NTSB recommended that the agency develop standards for motorcoach occupant protection systems, and that it require them on newly manufactured buses.

“These accidents, the majority of which involve rollover crashes, clearly show that passengers who remain in their seating compartments sustain fewer injuries and that ejected passengers are the most likely to be killed,” the NTSB reported. “Today, 9 years after the Safety Board concluded in its bus crashworthiness special investigation that one of the primary causes of preventable injury in motorcoach accidents involving rollover and/or ejection is occupant motion out of the seating compartment, no Federal regulations or standards require that motorcoaches operated in the United States be equipped with occupant protection systems.”

In the last six years, NHTSA has convened a forum on motorcoach safety and conducted some research into motorcoach crashworthiness, but the agency has focused its attention on roof crush and window retention. The motorcoach industry continues to be successful in staving off regu-

lations to require seatbelts.

The industry’s grip on NHTSA may soon be lessened by Congress. Senators Sherrod Brown (D-OH) and Kay Bailey Hutchison (R-TX) have introduced a motorcoach safety bill for Senate consideration when Congress reconvenes in September. The Brown-Hutchison legislation, The Motorcoach Enhanced Safety Act of 2007, would require the U.S. Department of Transportation to upgrade the motorcoach federal safety standards and to improve the operational requirements of drivers and companies. The legislation would lead to the adoption of available safety technologies, result in stronger oversight and compliance with federal safety rules, and encourage better training of motorcoach operators.

Ammons says that the lack of seatbelt legislation is a puzzling omission and the need for seatbelts in motorcoaches is more urgent than ever.

“With gas prices rising, we will see more and more people opting for this form of transportation and this is a concern,” he says. “Look, this is a bus travelling 70 mph with 55 people on board. It’s not a golf cart. Let’s give people seatbelts. Any death that is preventable by the use of seatbelt technology is a death too many.”

NHTSA Withdraws Rearview Mirror Rulemaking

WASHINGTON, D.C. – Thirteen years after a grieving grandfather petitioned the National Highway Safety Administration to require convex, cross-view mirrors on delivery and service trucks, the agency has withdrawn its rulemaking, saying that a 2007 federal law compels it to take a broader approach to rear view safety – even though the law only applies to passenger vehicles.

On February 28, 2008, President Bush signed the Cameron Gulbransen Kids Transportation Safety Act of 2007 (also known as the K.T. Safety Act). The Act requires NHTSA, by February 2009, to initiate rulemaking to expand the required driver's field of view behind vehicles to reduce deaths and injuries from backing crashes, especially crashes involving small children and disabled people, with a final rule within three years. The law also requires the agency to phase in expanded rear visibility requirements and to consider which types of vehicles should be phased-in first, based on those most frequently involved in backing crashes.

“However, the agency believes that additional data on back-overs collected by the agency, with regard to all vehicles, will allow us to address this problem in a more comprehensive manner,” the agency said in its Federal Register notice. “We believe the results of NHTSA’s current study that will be completed in 2008 will substantially improve our understanding of how video systems are used by drivers and therefore their potential to reduce the backover risk. Given this, the agency believes that efforts to address medium truck backing safety by itself should be held in abeyance pending the research and data gathering, and that this problem should be addressed as a part of the agency’s comprehensive approach to backing safety.”

This decision to drop the rulemaking follows more than a decade of rulemaking and research into the problem of rearward vision in step-vans and delivery trucks. In March 1995, Dee Norton petitioned the

agency after his grandson was backed over by a delivery truck in his apartment complex. The agency granted his petition, and in June 1996 published a request for costs and performance specifications for cross-view mirrors and any other alternatives. The six commenters who responded urged the agency to consider visual systems such as cameras and mirrors and non-visual systems such as sonar or radar. Truck manufacturers suggested that mirrors would not address the safety problem and that there were several types of straight trucks for which cameras would not be an effective solution.

For example, the Trailer Truck Manufacturers’ Association argued that the proposed mirror system would not work for tractor trailers because “the distances between a tractor driver’s rear view mirror and a cross-view mirror at the rear of the trailer would be too great to provide a meaningful image to the driver of what is behind the trailer. The standard trailer length for combination truck trailer operations today is 53 feet, which is much further than the five meters determined by NHTSA as the distance beyond which a rear video system would be required for straight trucks. In addition, combination truck trailers articulate at the king-pin connection between the tractor and trailer, thereby altering the alignment between a tractor driver’s mirror and any contemplated mirror on the rear of the trailer. For these reasons, cross-view mirror systems are not a practical or even a possible option for truck trailers.”

Further, the TTMA argued that camera systems wouldn’t be practical for commercial trailers, because trailers are towed by separate power units, and those tractors almost never tow the same trailer in extended operations: “Through ‘drop and hook’ operations, the typical trailer will be interchanged among many different tractors during the course of its operating life. As a consequence, any rear video camera on the trailer would have to connect with numerous different tractor types and the electrical connections would have to

account for all possible variations in video monitors and video power systems that may be installed in those tractors.”

In November 2000, NHTSA published an advance notice of proposed rulemaking, posing more questions on rear cross-view mirrors, rear video systems, and rear object detection systems. While commenters were supportive of the concept of rear safety, many did not want a regulatory solution and raised a variety of issues, including scope of any regulation, potential exclusions, alternatives to regulation, maintenance and training requirements, and preemption. Nonetheless, in September 2005, the agency published an NPRM, proposing to amend FMVSS No. 111. The amendment would require medium straight trucks to be equipped with either a cross-view mirror or rear video system that would provide the driver with a 3-by-3 meter visual image immediately behind the vehicle. The NPRM proposed compliance options and test procedures. Mindful that such systems might not be feasible on some types of trucks, the agency also requested comments on which types of trucks should be excluded from the final rule.

In general, a commitment to back-over safety was thrust upon the agency by consumer advocates, who persuaded Congress to include a mandate to study the issue as part of a \$286.4 billion transportation bill enacted in August 2005. To satisfy that requirement, NHTSA tested several systems available as original equipment and aftermarket devices to evaluate their performance and potential effectiveness in mitigating back-over crashes. The agency’s final report concluded that while camera-based systems “showed promise,” sensor-based technology was unreliable. The agency also concluded that further study was needed on a wide range of issues ranging from driver behavior to the scope of the problem. Janette Fennell, founder of the advocacy group KIDS AND CARS, has sharply criticized the agency for only testing three 2003 systems, when there were about 50 such systems on the market. Fennell also questioned researchers’ decision not to test the most recent and advanced iterations of the technology and to ignore sys-

tems that use sensors and cameras in combination, which constitute the most effective systems. The agency acknowledged in its report that it was difficult to determine the frequency of back-over injuries and fatalities because it does not collect non-crash, auto-related statistics. Using other sources, such as Centers for Disease Control emergency room data and 1998 death certificates, NHTSA estimated 183 back-over fatalities and between 6,700 and 7,419 injuries occurred annually. Fennell has also criticized the agency for grossly underestimating the scope of the back-over problem.

According to KIDS AND CARS, which gathers data from news clippings, back-over incidents have increased dramatically since 2001. In a four-year period from 2002-2006, 474 children died in back-overs. From 1997-2001, back-overs claimed 128 lives. Back-overs now account for half of all non-traffic fatalities involving children, according to KIDS AND CARS.



Published by:
Safety Research & Strategies
340 Anawan St. / Suite 200
Rehoboth, MA 02769
www.safetyresearch.net
508-252-2333

Editor: Sean Kane
Contributors:
Ellen Liberman
Tony Di Viesti
Melanie MacDonald
Lauri Stevenson
Ann Boudreau
Marilyn Charest
Felix Click

The Safety Record is published
bimonthly.
Annual Subscription: \$125
International: \$150
Copyright © 2008

Alternative Vehicles Gain Popularity, But Skirt Regulations

(Cont. from p. 2)

But, again, states have expanded their use – about 35 have passed legislation or regulations allowing NEVs to be licensed and driven on roads that generally are posted at up to 35 miles per hour, without consideration to the safety of occupants in crashes at these higher speeds.

Consumers eager to save on fuel are being persuaded by marketing pitches that encourage them to view these alternatives as full-service economy models. States are paving the way with laws that allow their operation ahead – sometimes way ahead – of their mechanical capabilities. When will NHTSA stop merely monitoring this fuel-for-occupant protection trade and take action? The agency has no comment.

WF-120V Total Electric Car



Complaints to NHTSA Matter

(Cont. from p. 5)

“We’re encouraging the public, particularly attorneys who are screening crash incidents on a daily basis, to take the time to report safety-related issues to the agency. The complaints data are an important public resource – and public contributions are the only way to enhance their value” says SRS president Sean Kane. “And reporting legitimate defects that involve lesser damages – even if they are no longer economical to litigate – can be as important as giving the agency timely information on cases that are litigated. Minor incidents often go unreported, but they can be just as relevant to understanding potential defects.”

Jim Gilbert, a leading plaintiff’s attorney, whose practice focuses on motor vehicle safety, agrees. “We are instituting a firm-wide policy to report incidents with our clients to the NHTSA complaints database. Reporting these defects goes beyond our potential cases and serves a common good – understanding how people are injured and killed in and around motor vehicles. This is a public health issue.”

Report Complaints to NHTSA at:

<http://www-odi.nhtsa.dot.gov/ivoq/> or 888-327-4236