



# THE SAFETY RECORD

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### Toyota Sudden Acceleration: The Story Unfolds

WASHINGTON, D.C. – After nearly seven years of complaints and quietly failed Toyota SUA investigations, the floodgates have opened. The last two months have brought more recalls, unprecedented press coverage, political and corporate theater, lawsuits, three new NHTSA investigations and a dribbling of old documents that better fill-in the outlines of the history.

Safety Research & Strategies, which has been chronicling the history of this issue, testifying before Congress and advocating for consumers – including the families of five individuals who died in a crash in which SUA was alleged – has been following every development. We've gathered them here:

#### The Recalls

Toyota now has launched six recalls involving sticking accelerator pedals or floor mat entrapment since 2005. Three are currently active and expanding: 09V388, 10V017 and 10V023. These recalls cover 16 different Lexus,

Toyota and Pontiac models (made at the joint GM / Toyota plant), from 2004-2010. The first recall, 09V388, announced in October, and the third recall, 10V023, announced on January 27, cover the 2007 – 2010 Camry; 2005 – 2010 Avalon; 2004 – 2009 Prius; 2005 – 2010 Tacoma; 2007 – 2010 Tundra; 2007 – 2010 ES350; 2006 – 2010 IS250 and IS350; 2008-2010 Highlander; 2009-2010 Corolla; 2009-2010 Venza; 2009-2010 Matrix; 2009-2010 Pontiac Vibe. Recently, Toyota added the Highlander Hybrid to this recall.

These models are slated to get a trimmed accelerator pedal or a new shortened accelerator pedal assembly and new accessory floor mats. In addition, the Camry, Avalon and Lexus were also scheduled to get a brake to idle override. In February, Toyota announced that it was adding the 2005-2010 Tacoma; the 2009-2010 Venza and the 2008-2010 Sequoia to those models getting a brake-to-idle-override feature.

Recall 10V017, announced on January 21, addresses a “sticky”

accelerator pedal issue, for components manufactured by CTS of Elkhart, IN. This campaign covers certain 2009-2010 RAV4; certain 2009-2010 Corolla; 2009-2010 Matrix; 2005-2010 Avalon; certain 2007-2010 Camry; certain 2010 Highlander; 2007-2010 Tundra; and 2008-2010 Sequoia.

In late February, New York Attorney General Andrew Cuomo forced Toyota to step up its recall game by offering at-home pickup and return of recalled vehicles, free rental cars, and reimbursement for transportation expenses. Toyota extended these services to all its customers, when attorneys general all over the U.S. began clamoring for the same deal. Toyota apparently did one better for Chinese RAV4 owners in the Zhejiang Province. In late January, Toyota's sticky accelerator pedal recall was extended to 75,000 RAV4s in China. The Zhejiang Administration of Industry and Commerce is reported to have negotiated an agreement with Toyota in which the automaker would offer the same basic package to  
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### CPSC Gets Tough on Lead Paint Violators

Washington, D.C. – The U.S. Consumer Product Safety Commission has leveled the second largest fine against a lead paint violator and prohibited the company from selling children's toys and products in the U.S. until it creates a comprehensive safety plan.

In early March, Daiso Seattle LLC, of Seattle, Wash. and Daiso California LLC, of Hayward, Calif. agreed to pay \$2.05 million in civil penalties, after the CPSC alleged

that Daiso violated the Consumer Product Safety Act (CPSA) by distributing children's products with high lead paint and phthalate concentrations and toys with small parts for children under three years of age, without proper warning labels. Under the consent decree, Daiso agreed to take a number of steps to ensure product safety in the future.

Daiso's fine was just a hair under the

highest penalty ever levied against a manufacturer by the CPSC for violating the old limits on lead paint in children's products. In June, Mattel/Fisher Price agreed to pay a \$2.35 million penalty. In total, the agency has imposed nearly \$8 million in civil fines. Under these settlements, manufacturers are allowed to deny the CPSC allegations that they knowingly violated a 30-year-old law limiting the lead content in paint to .06  
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RAV4 owners in that province, along with any lost wages incurred because of the repairs.

### Where's NHTSA?

During two weeks of Congressional hearings, U.S. Department of Transportation Secretary Ray LaHood declared that he would be "getting into the weeds" on the electronic causes of sudden unintended acceleration. And, in late March, the agency announced that it was launching two new investigations. The National Academy of Sciences would be heading a 15-month inquiry into sudden unintended acceleration and automotive electronic vehicle controls. The study will focus on mechanical, human and electronic causes. The agency also launched a separate probe to specifically study sudden unintended acceleration in Toyota vehicles with help from the National Aeronautics and Space Administration, to look at software, hardware, electronics and hazard analysis. A third investigation, conducted by the DOT's Inspector General, will examine NHTSA's past eight investigations to determine if they were properly conducted. The agency also has been consulting with outside electromagnetic interference experts from Great Britain, Keith Armstrong, whose specialty is EMI, and Antony Anderson, an electrical forensic engineer, on the possibility of EMI to Toyota's electronic throttle system.

On April 5, NHTSA levied the maximum fine -- \$16.4 million -- against Toyota for failing to report the sticky accelerator problem to the agency within the 5-day statutory reporting period. This resolves Timeliness Query (TQ) 10-002, which the agency opened on February 16. Toyota has two weeks to

contest the fine. That leaves two other open investigations into Toyota's recall responses: TQ10-001, which addresses the timeliness of the floor mat recalls, and Recall Query 10-003, which covers 7.7 million 2004-2010 Lexus, Toyota and Pontiac vehicles. RQ10-003 requests additional information from Toyota to evaluate whether the scope of the recalls "is sufficiently broad."

"The agency is seeking to determine whether Toyota viewed the underlying defects too narrowly as interference between the accelerator pedal and the driver's side floor mat, or as a lever design (including materials) or performance problem giving rise to a sticking accelerator pedal, without fully considering the broader issue of unintended acceleration and any associated safety-related defects that warrant recalls," the RQ states.

One notable feature of this investigation is NHTSA's new broadened definition of sudden unintended acceleration: "unintended, unrequested, uncontrollable, and/or unexplained acceleration of a subject vehicle, and to the failure of a vehicle's engine to return to idle when the driver takes his or her foot off of the accelerator pedal or raises his or her foot to a position where the engine ordinarily would return to idle, regardless of the alleged or determined cause of the acceleration or failure to decelerate or return to idle and regardless of the speed at which the event allegedly took place. Unintended acceleration thus is broader than interference between the accelerator pedal and driver's side floor mat and sticking accelerator pedals with levers made of a particular plastic(s)." NHTSA says that its is also

seeking information about how Toyota viewed complaints, how it assessed potential electromagnetic interference and why some models of vehicles with electronic throttle control were not included in the recalls.

### More Theories Emerge

Into a root-cause vacuum of knowledge the last two months, outside scientists and engineers have floated a variety of theories on the non-mechanical sources of Sudden Unintended Acceleration. They included: electromagnetic interference; the use of tin as the main ingredient in solder material (tin whiskers); single event upsets, electronic "latch up," and other software problems.

At the February 23 House Subcommittee on Oversight and Investigations, Energy and Commerce Committee, Dr. David Gilbert, an automotive technology professor from Southern Illinois University Carbondale presented a preliminary research report performed for Safety Research & Strategies, which examined the failsafe detection capabilities of electrical circuitry, particularly, at the Accelerator Pedal Position Sensor (APPS) and the voltages and associated wiring circuits. Gilbert's electronic diagnostic tests showed that there are conditions in the Toyota and Lexus models tested in which the failsafe redundancy from the APPS, the primary signal input that controls acceleration, in the Electronic Throttle Control System (ETCS) can be lost without detecting an error code or employing a failsafe mode. This important finding is the first analysis to demonstrate that problems can exist in which Toyota's Electronic Control Unit (ECU) doesn't detect a critical system failure. Loss of a signal redun-

dancy, the safety net for electronic control systems, should always be detected in order to trigger a failsafe mode. Once the redundant signal is lost and undetected as an error, the vehicle is in an unsafe condition. The purpose for setting an error code and putting the vehicle into a failsafe mode is to protect the driver from any further potential scenarios in which the ETCS behaves in a manner inconsistent with driver input. Further Gilbert demonstrated that when the Toyota ETCS loses signal redundancy, a small voltage spike can cause wide open throttle. The single most significant finding is that Toyota's assertion that its electronics will always detect a failure is incorrect. This forms the basis for further study of potential electronic failures that might lead to sudden unintended acceleration.

An anonymous individual submitted the single-event upset (SEU) at sea level theory via a letter with accompanying technical papers to RQ10-003. The self-described "Concerned Scientist" raised the possibility of cosmic rays disrupting electronics at sea: "this phenomenon is a 'soft' error that is not detectable except through redundant electronic and communication systems." The e-mail to NHTSA recall investigator Jennifer Timian explained that SEUs had traditionally occurred at high altitudes in aircraft and spacecraft and that the avionics industry has successfully countered these events through highly redundant electronics and software. The automotive industry has yet to truly anticipate SEUs. The reason SEUs are now relevant to the automotive industry is because electronics have gotten smaller and the required voltage levels have

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dropped significantly, therefore making electronics more susceptible to cosmic radiation even at sea level. SEU is one possible explanation for sudden unintended acceleration (SUA) in Toyotas.

EMI expert Keith Armstrong has staked a position that EMI and/or a series of other factors could cause undetectable short-circuits and faults capable of triggering an SUA event. Armstrong also enumerated the possibilities of malfunctions caused by lead-free soldering that leads to a well-known phenomenon called "tin whiskers." The elimination of lead for environmental purposes means that solder is now mostly tin:

"All sorts of new possibilities arise for short-circuits and open-circuits, and intermittent shorts and opens, mainly on printed circuit boards (PCBs) and mainly associated with small-footprint integrated circuits (ICs), especially ball-grid arrays (BGAs). These will grow out of soldered joints and can contact other conductors, causing short-circuits between PCB copper traces and the pins of connectors."

The tin can also exude microscopically thin "whiskers" which can carry enough current to short-out electronics, Armstrong says.

Another possible cause is a malfunction in an integrated circuit called "latch-up." Latch-up occurs when a path is inadvertently created between two power supply rails, forming a parasitic structure that acts as a short circuit.

### SUA: The Spectacle

There have been four Congressional hearings on NHTSA and

Toyota on February 23 and 24 and on March 2 and 11. These lengthy interrogatories were conducted by three House committees: the Energy and Commerce Committee's Sub-Committee on Oversight and Investigations and Subcommittee on Commerce, Trade, and Consumer Protection, the Committee on Oversight and Government Reform, and the Committee on Energy and Commerce and one Senate committee, Commerce, Science and Transportation Committee.

The hearings featured consumers, advocates, DOT managers and Toyota executives. The witnesses from Toyota included TMC President Akio Toyoda, Shinichi Sasaki, Toyota Executive Vice President; Takeshi Uchiyama, Toyota Executive Vice President; Yoshimi Inaba, President/CEO Toyota North America and Jim Lentz, president of Toyota Motor Sales. U.S. Department of Transportation Secretary Ray LaHood and NHTSA Administrator David Strickland represented the government regulators. Safety advocate witnesses included SRS President Sean Kane along with Professor David Gilbert of Southern Illinois University Carbondale, retired NHTSA Administrator Joan Claybrook, and Clarence Ditlow of the Center for Auto Safety.

The hearings themselves produced little new information and a lot of blustery promises from DOT and Toyota to get to the bottom of the SUA problem. The committee investigations have brought into the public arena information contained in Toyota internal documents showing that Toyota had fielded some 37,900 speed control complaints and that 70 percent of those lie outside the recalled populations. Other documents showed that executives and union officials alike had been expressing concern about slipping quality since 2006. Other emails

and presentations showed that Toyota considered its relationship to NHTSA investigators to be critical in controlling the outcome of defect investigations. The Congressional investigating committees also posted an Issue Evaluation memo by Steve Chan of the Office of Defects Investigation confirming that in 2003, NHTSA had considered investigating electronic throttle problems in Camry vehicles. This investigation did not materialize.

### Legal Maneuvers

On March 25, class-action attorneys gathered in a federal courtroom in San Diego, where a panel of judges will decide whether to consolidate the myriad of Toyota SUA cases and which judge will be assigned to preside over them. At the hearing, the automaker said that it was embroiled in 235 lawsuits. The vast majority – 138 – are class actions; a few are related to the timeliness of the recalls, filed on behalf of individuals, and about 97 are products liability actions.

In addition, Toyota is the subject of a federal grand jury probe in the Southern District of New York. The company has said that it had received a subpoena in early February requesting documents relating to sudden unintended acceleration and the Prius braking system. The Los Angeles office of the Securities and Exchange Commission also subpoenaed SUA documents to the Japan-based Toyota Motor Corp. and the Torrance, CA-based Toyota Motor Sales USA.

The documents of former corporate counsel Dimitrios Biller were among the topics discussed during the House

Oversight and Government Reform Committee hearing. Biller has accused the automaker of withholding and destroying evidence in rollover lawsuits. He departed Toyota in September 2007 with a severance package totaling nearly \$4 million in wages, legal expenses, and a \$2.3 million lump severance payment for emotional distress. In addition, Toyota forgave a loan in an unspecified amount that it made to Biller in 2005.

Edolphus Towns sent a letter to NHTSA asking questions about the automaker's Books of Knowledge, compendiums purportedly containing, among other things, damning information about the automakers' acknowledgement of design issues and countermeasures, by component and vehicle. References to these so-called Books of Knowledge appeared in documents produced under a committee subpoena to Biller. In a letter to Yoshimi Inaba, CEO of Toyota Motor North America, Towns asked him to respond to e-mails such as this June 2005 correspondence to Toyota executive Webster Burns, regarding the Greenburg SUA lawsuit:

"When this lawsuit was threatened, no one was surprised. This issue [sudden unintended acceleration] had been the subject of a number of meetings and the exchange of a number of documents between TMS and TMC, (did anyone ever gather and organize all those documents and memorialize the "meetings"? If so, were [sic] are the documents and information about the meetings?) [emphasis indicates Biller's comments] and the possibility of a class action lawsuit was used as one way to try to get TMC to work on a series of proposed countermeasures." (Cont. on p. 4)

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Towns posted some of the Biller documents online. But they were yanked from public circulation shortly thereafter.

### Toyota's Tactics: Attack and Deny

As the pressure from Congress, the media and consumers has ratcheted upwards, Toyota has employed a variety of strategies to contain the issue. Underneath the high-profile media campaign of Toyota and its customers professing their love and commitment for one another, Toyota is executing a number of other simultaneous plays: stay the-floor-mats-and-accelerator-root cause course; vociferously attack its critics; and plead ignorance with customers who have experienced a sudden unintended acceleration incident.

The first tack has driven the other two. Toyota executives have continued to maintain in a number of settings that they are absolutely confident that vehicle electronics play no part in any of the reported sudden unintended acceleration incidents. At the Congressional hearings in late February and early March, Jim Lentz wavered ever so slightly. But for the most part, Toyota has not retreated from that stance.

For customers who continue to experience sudden unintended acceleration in their Toyotas, the result has been supreme frustration. As it has from the inception of the problem, Toyota insists that it can find nothing wrong with the vehicle and has blamed customers complaining of an SUA event or, in other words, called them liars.

An example of the former is Michael Teston, a 2006 4-Runner owner from Maaumelle,

AR, who experienced an SUA event in a parking lot that resulted in a property-damage crash. In view of witnesses, the vehicle surged forward, hit a pole, and began hopping as the rear tires continued to spin. The engine maintained wide-open-throttle until the ignition was turned off. In a February 3 letter to Teston, Gulf States Toyota, Inc., noted that during the inspection, the driver's floor mat was in place and properly secured and there were "no codes stored in the computer to indicate any product concern or failure." Instead, it blamed its own brand accessory pedals that had been installed by a Toyota dealership: "Our Technical Specialist noted that aftermarket pedal covers were installed on the brake and accelerator pedals that increased the length of the pedals, which could have contributed to the accident described." How they could have contributed was left undisclosed — Teston's vehicle was not equipped with a suspect all-weather floor mat.

An example of the latter is Elizabeth James of Eagleton, CO, who crashed in her 2005 Prius after it raced out of control on Interstate 70 at 90 miles per hour. James attempted to apply the brake and the emergency brake, while looking for a safe place to crash her vehicle, but was unable to stop the vehicle. She eventually steered her runaway Prius through the woods, hit a shed, and landed in a river. She still suffers long-term injuries to her legs and back and stomach as a result of the crash. After James attempted to recoup \$15,000 in medical costs from Toyota, she received a letter from the company blaming the incident on excessive brake wear: "We are sure she believes that her vehicle accelerated on its own; but

our inspection of her vehicle did not reveal any evidence to support her allegations."

Nearly 100 consumers have so far reported to NHTSA that they have experienced a sudden unintended acceleration event after receiving the recall fix. Consumers who have contacted SRS say that technical service personnel from either the dealership or Toyota have inspected their vehicles out of their presence and returned them saying that there is nothing wrong with the vehicle. Many of these consumers, now steeped in information about the problem, have asked to see copies of the test reports outlining what diagnostics were performed and the results. They have been consistently denied this information by Toyota personnel, owners have reported to SRS.

With its back in the corner beside a pile of accessory floor mats and bum accelerator pedals, the automaker has gone hard after the dissenting voices of Dr. David Gilbert, Safety Research & Strategies, ABC News and other news media that have questioned the company line.

Toyota appears to have honed its attack message using the results of an online survey conducted by Opinion Outpost in early March or late February just before they did a webinar attacking Gilbert's research. The survey featured Dr. Gilbert, ABC and SRS featured very prominently. The poll, offered to screened, paid respondents, asked them to judge the credibility of Gilbert, Sean Kane of Safety Research & Strategies and Brian Ross of ABC News. It started with: "Prior to taking this survey, had you heard anything about Sean Kane's report or Professor Gilbert's test?"

And it proceeded to lengthy and specific questions assessing the respondents' reactions to a variety of statements, for example:

"Toyota Motor Corp. is rebutting the findings of a study presented in a Congressional hearing and on ABC News that claimed to present evidence of a "design flaw" in Toyota's electronics that could cause sudden unintended acceleration. The company says that this was a "parlor trick" that relied on manipulation of the wires and electronic system in a way that is "extremely unlikely" to ever occur in reality, and it could be done just as easily with vehicles from several competitors."

"The American people deserve the truth about the safety of their cars, not biased studies by trial lawyer consultants who stand to make millions suing Toyota. The facts are: Toyota and its dealers are working around the clock to make things right for its customers. More than one million cars have already been repaired. And, a world-class engineering firm has conducted a comprehensive review of Toyota's electronics. Their interim report confirms that our fail-safe systems work."

"Sean Kane, a paid consultant for plaintiffs' lawyers suing Toyota, and David Gilbert, an academic working for him, deliberately deceived Congress and the American people."

"While Sean Kane claims to be an independent safety expert, he is the owner of a for-profit company that serves as a paid consultant for the plaintiff lawyers that are currently suing Toyota. Despite what he says, he is not working for the best

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interest and safety of the American people.”

“Sean Kane, the owner of Safety Research & Strategies Inc. who testified during the Congressional hearings, is a paid consultant for trial lawyers who are suing Toyota, not a “safety expert” advocating for consumers.”

The language of this survey has echoed throughout Toyota’s offensive plays. On March 11, Toyota sent a letter to ABC President David Westin, demanding an apology for a story reported by Brian Ross on Dr. Gilbert’s study that the network aired on the eve of the first Congressional hearing. The letter hits all of the themes captured in the online opinion poll – Kane, Gilbert and their reports are tainted by litigation, ABC fabricated its test and together they are misleading Congress and the public. For example, Toyota General Counsel Christopher Reynolds writes that “the American public and the U.S. Congress were seriously misled” by ABC, Kane and Gilbert. And he takes the network to task for concealing “the fact that Professor Gilbert’s work was financed by Sean Kane, a paid advocate for trial lawyers involved in litigation against Toyota.”

Toyota dealers have also pressured local news affiliates who have aired stories about Toyota SUA.

But Dr. Gilbert has come under the harshest attack. Gilbert, a professor of automotive technology with 30 years of experience in electronic diagnostics, began his own inquiry into possible weaknesses in Toyota’s electronic throttle system out of a personal concern – he owns a Tacoma. His preliminary report

concluded simply that Toyota’s repeated claim that the redundancy in the system made it impervious to an undetectable error was not true. Gilbert actually first approached Toyota technical staff to discuss his findings.

At the February 23 House Energy and Commerce Subcommittee on Oversight and Investigations, Lentz said that Toyota would work with Gilbert to investigate Toyota SUA. Instead, Toyota used that promise to engage in some close-quarter combat with the automotive technology professor. Rather than dispatch its technical team to Carbondale for scientific inquiry, Toyota’s litigation counsel Vince Galvin, with well-known defense firm Bowman & Brooke and engineering consultants Exponent showed up at SIU. Galvin treated Gilbert to hours of deposition-style questioning, and attempting to show him why floor mats were the root cause. Galvin asked him questions such as: Do you feel guilty for impugning Toyota after testing only four cars?

Toyota has used Exponent, a firm that has been paid hundreds of millions of dollars to defend automakers, and has allocated “unlimited funds” to the company according to Lentz’s congressional testimony.

First, Exponent was hired to produce a report concluding the automaker’s contention that its electronics are inviolable, which Toyota executives offered to Congress. Then, Toyota paid for a second Exponent report to try to blunt the conclusions of Gilbert’s preliminary report. While the company was able to duplicate Gilbert’s results in tests, Exponent claimed that the scenario Dr. Gilbert describes in his report “would

be highly unlikely to occur naturally.” And in classic Exponent style, the company redefined what Gilbert’s report said and proceeded to say why their construct wasn’t likely to lead to SUA.

Toyota, which had donated \$100,000 to construct a Transportation Education Center at SIU, also put pressure on Gilbert through its connections to the university. Two Toyota managers—Terry Martin, manager of customer quality for Toyota Motor Manufacturing Indiana Inc., and Neil R. Swartz, corporate manager for North American Parts Operations, Toyota Motor Sales USA—resigned from the school’s automotive technology department advisory committee as the cash-strapped university struggles to maintain corporate donations to its applied technology division.

### What’s the Story?

In order to solve the Toyota SUA problem, there has to be a consensus, one there is a problem, and two, what the problem is. To that end, shaping the narrative around the Toyota Sudden Unintended Acceleration becomes critically important for all of the stakeholders, from consumers to Toyota, which is fighting hard to salvage its reputation and sales and to build a defense against an increasing number of class action and personal injury lawsuits. A recent Bloomberg National Poll released in late March showed that Toyota may be losing control of its story. The survey results show that more than four in ten American consumers would definitely not buy a Toyota. The automaker received an unfavorable rating of 36 percent, the highest of all automakers in the poll.

Up until the Santee crash that killed a California Highway Patrol officer and his family, Toyota

controlled the plot line: sudden unintended acceleration in its vehicles was a driver problem or a floor mat issue; its electronic throttle system was robust and infallible. Once more players, including SRS, began to look closely at the incidence data, this story was challenged. Floor mats simply could not explain all of the experiences consumers were reporting, and the media began to publish and broadcast stories raising the possibility that electronics might be to blame. While Toyota, with its near-daily defensive press releases and news conferences has led the pushback to nudge the narrative back in line, they have found takers in the media.

Many in the mainstream press who have jumped on the story have a rather shallow understanding of automotive defects, history, statistics or the role of the National Highway Traffic Safety Administration, and their ignorance produces some interesting results.

For example, on March 23, CNN ran a story about obtaining a Toyota “internal memo” that proved that Toyota knew that the Camry had electronic throttle problems in 2002. Investigative reporter Drew Griffin told viewers: “The document is called a ‘Technical Service Bulletin’ and was given to CNN by a group of attorneys now seeking a nationwide class action lawsuit against Toyota.” TSBs are public documents, filed with NHTSA by regulation and Griffin didn’t need attorneys to hand over the “internal document;” he could have Googled it. This particular 2002 TSB for electronic throttle surging had long-ago been noted as part of the public record. (Cont. on p. 7)

## CPSC Gets Tough on Lead Paint Violators

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percent in paints and surface coatings. Nonetheless, advocates say that the settlements send a strong message to industry about the CPSC's newfound intolerance for companies that import products that harm children.

"I feel there's a renewed commitment to safety in these actions," says Nancy Cowles, executive director of the advocacy group, Kids In Danger. "It won't be a slap on the wrist – you won't be able to ignore the requirements. You are actually going to have to pay fines. That injunction (against Daiso), they've never done that before. That's an interesting part of the whole package."

Under the consent agreement, Daiso must complete a number of steps before the CPSC will allow the company to resume selling children's products. The company must conduct a prod-

uct audit to determine which merchandise requires testing and certification; establish and implement product safety testing; retain an independent product safety coordinator; a third-party testing entity and toxicologist and/or an accredited testing laboratory; create guidance manuals for managers and employees on how to comply with product safety requirements; and establish recall procedures. Finally, the company has to demonstrate to the commission that it understands its safety obligations and is in compliance with all federal laws.

Since June, the CPSC announced that it had levied fines of more than \$3.1 million against 13 children's product manufacturers, importers and sellers to settle the federal lead paint ban. The settlements covered toys, children's metal jewelry, children's pens, metal water bot-

tles, pencil pouches, sunglasses and children's Halloween pails and baskets recalled in 2007 and 2008 that also violated the 1978 limits on lead in children's products.

The companies are: RC2 Target Corp. of Minneapolis, Minn., \$600,000; OKK Trading, of Commerce, Calif. \$665,000; Schylling Associates Inc., of Rowley, Mass., \$200,000; Excellence Learning Corp. of Monterey, CA, \$25,000; Cardinal Distributing Co. Inc., of Baltimore, Md., \$100,000; Dollar General Corp., of Goodlettsville, Tenn., \$100,000; Family Dollar Stores Inc., of Matthews, N.C., \$75,000; Hobby Lobby Stores Inc., of Oklahoma City, Okla., \$50,000; First Learning Company Ltd., of Hong Kong, \$50,000; Michaels Stores Inc., of Irving, Texas, \$45,000; A&A Global Industries Inc., of Cockeysville, Md., \$40,000; Raymond Geddes & Co, of Baltimore, Md., \$40,000; and Downeast Concepts

Inc., of Yarmouth, Maine, \$30,000.

These settlements reflect violations under the more lenient lead limits dictated by a 32-year-old regulation. Under the Consumer Product Safety Improvement Act of 2008, products sold to children must be manufactured under more stringent guidelines. In August, the allowable amount of lead in surface coatings of children's products dropped to .009 percent. The commission has not yet enforced the new, tougher, lead limits under the CPSIA; the lead testing provision is currently under a stay, designed to provide temporary relief to manufacturers while they gear up to adhere to the new regulations.

Rachel Weintraub, Director of Product Safety and Senior Counsel at Consumer Federation of America, called it "the  
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## NTSB Latest Top Ten Drops Occupant Protection in School Buses from Latest List

WASHINGTON, D.C. – Eleven years after the National Transportation Safety Board recommended that the National Highway Traffic Safety Administration establish performance standards for school bus occupant protection systems in all types of collisions, the NTSB removed it from the top ten list of most wanted safety improvements.

The NTSB voted to drop "Enhanced Protection for School Bus Passengers" from the annual list last month, after NHTSA issued a Final Rule that increased seatback height, and established performance specifications for voluntarily installed seat belts.

The agency's actions actually fell short of the NTSB's origi-

nal recommendations, issued in 1999. At that time, the NTSB urged NHTSA to develop performance standards for school bus occupant protection systems that would work in all crash types. Further, and more importantly, the NTSB wanted NHTSA to require such systems in all newly constructed school buses, "including those in child safety restraint systems, within the seating compartment throughout the accident sequence for all accident scenarios."

NHTSA's response has been much more limited.

By the NTSB's timetable, older bus riders have not fared even half as well. In 1999, the NTSB also issued recommendations to improve occupant protection in

motor coaches. The board's original suggestions to NHTSA included a redesign of motor coach window emergency exits for easy egress, stronger roofs and the establishment of an occupant ejection mitigation standard. In 2008, the NTSB rated NHTSA's progress as "yellow," indicating slow progress forward, because in 2007 the agency performed a full-scale frontal crash test for research purposes and followed up in 2008 with some roof strength and sled tests. But in lieu of any agency action, the NTSB ranked this most-wanted as red, meaning no real progress.

The designation is ironic, given that U.S. Secretary of Transportation Ray LaHood has jump-started the agency's motorcoach

safety effort with the November release of an ambitious action plan. Emanating from an April 30 directive to develop an integrated approach to motorcoach safety, the plan encompasses seven actions that would have the greatest impact on improving motorcoach safety. Among the regulatory responsibilities for the Federal Motor Carrier Safety Administration (FMCSA) are rulemakings to require electronic on-board recording devices on all motorcoaches to monitor drivers' hours and fatigue; and to propose prohibiting texting and limiting the use of cellular telephones and other devices by motorcoach drivers. NHTSA would be required to initiate rulemaking to require the installation of seat belts on motor  
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One of the dominant counter themes is: There is No Electronic Problem, Only Human Error and Mass Hysteria, and its corollaries, Toyota Equals Audi and Audi Was Exonerated. These editorials and news stories posit that reports of Toyota SUA are nothing more than a driver error and a modern-day re-enactment of the Audi sudden acceleration controversy.

One can make that case, as long as one sticks to the surface of some facts. Like Audi, lots of consumers complained about SUA incidents and like Audi, these complaints were the subject of a network news story that itself became a story about how not to replicate an auto defect for television cameras. Like Audi, the National Highway Traffic Safety Administration has not found an electronic cause for SUA in Toyotas—yet.

None of these similarities should lead anyone to conclude that either Audis or Toyotas were without safety defects. Both automakers filed multiple Part 573 defect and non-compliance reports related to these sudden acceleration complaints.

Between 1982 and 1987, Audi launched six recalls to address the problem. The first two attempted to fix what Audi had characterized as the driver-error problem by moving the accelerator and brake pedal positions. Recall 82V037, for example, added an accelerator shield to prevent floor mat entrapment.

In 1987, Audi launched three more recalls for Audi 5000 and 4000 vehicles from the 1984-1986 model years, for worn idle stabilizer units. As Audi ex-

plained to its customers: “The idle stabilizer has the purpose of maintaining uniform engine idle speed by regulating air flow under different operating conditions, such as variations in engine temperature, and on/off cycling of the air conditioner or power assist pump. Excessive idle stabilizer wear causes engine idle fluctuations which increase with the usage of the car. If a worn unit is not replaced in a timely fashion, the engine idle could ultimately see-saw so severely that it may surprise a driver who is not acquainted with the vehicle’s condition and fails to apply the brake. Under these circumstances, there is a risk of a collision in a confined space with the possibility of injury.”

A sixth recall for 251,000 1978 to 1987 Audi 5000S

vehicles added a brake-shift interlock – which requires drivers to depress the brake pedal before shifting out of the Park position.

A key difference between the two is their throttle controls. The Audi 5000 of the 1980s employed a cable. Toyota’s electronic throttle consists of a complex system of sensors and microprocessors. This has led to a broad spectrum of Toyota and Lexus speed control complaints across multiple models and model years. It has also led to SUA incidents under varied and much different circumstances than the Audi incidents – SUA at high speed and at times when the driver already has the brake depressed.

Nonetheless, that narrative offers Toyota a useful – though false – equivalence.

More on [Toyota SUA](#)  
[Toyota SUA: Real Stories](#)

**NTSB Latest Top Ten Drops Occupant Protection in School Buses from Latest List**

*(Cont. from p. 6)*

coaches; rulemaking to improve tire performance and establish performance requirements for roof crush and for ESC on motorcoaches.

The NTSB also listed as yellow the prohibition of cell phone use by motor coach drivers. Any such regulation would fall under the jurisdiction of the FMCSA. To date, the agency has only studied the issue in determining if it should establish a regulation limiting cell phone use by commercial drivers. In July 2009, it released the results of a naturalistic driving study it commissioned the Virginia Tech Transportation Institute to do. The FMCSA has taken a more aggressive stance against texting while driving.

*(See FMCSA Issues Texting Ban; Advocates Say It’s a Good First Step, p. 7 )*

Other slow-moving perennials on the top-ten list were: preventing collisions by using enhanced vehicle safety technology and preventing medically unqualified drivers from operating commercial vehicles.

The NTSB said that the FMCSA was not making enough progress in the areas of requiring electronic on-board data recorders for commercial vehicles and in promulgating rules preventing motor carriers from operating if they put vehicles with mechanical problems on the road or unqualified drivers behind the wheel.

**FMCSA Issues Texting Ban; Advocates Say It’s a Good First Step**

WASHINGTON, D.C. – The Federal Motor Carrier Safety Administration has issued interim regulatory guidance prohibiting commercial drivers from texting while operating a commercial vehicle.

The agency published guidance on the ban in late January under a regulation that generally restricts the use of “additional equipment and accessories that decrease the safety of operation of commercial motor vehicles.” In its Federal Register notice, the FMCSA said that an electronic device for texting would be considered additional equipment or accessories. The agency was also clear that the guidance notice did not prohibit the use of cell phones in commercial vehicles.

In issuing the recommendation, the FMCSA also cited its October study, “Driver Distraction in Commercial Vehicle Operations,” which investigated the prevalence of driver distraction in crashes, near-crashes, lane departures and other safety-critical events. The naturalistic driving study concluded: “The odds of being involved in a safety-critical event is 23.2 times greater for drivers who are texting while driving than for those who do not. Texting drivers took their eyes off the forward roadway for an average of 4.6 seconds during the 6-second interval immediately preceding a safety-critical event. At 55 mph (or 80.7 feet per second), this equates to a driver traveling *(Cont. on p. 8)*



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### FMCSA Issues Texting Ban; Advocates Say It's a Good First Step

*(Cont. from p. 7)*

371 feet, the approximate length of a football field, including the end zones, without looking at the roadway. At 65 mph (or 95.3 feet per second), the driver would have traveled approximately 439 feet without looking at the roadway."

The notice follows a September petition by Advocates for Highway Safety requesting that the FMCSA prohibit or restrict any electronic device that could divert commercial drivers' attention. Advocates had asked the FMCSA to immediately open a rulemaking to review the most current research on distracted driving, determine which electronic devices and technologies distract commercial drivers and then consider prohibiting them. The Advocates petition says anything that takes drivers off their primary task must be considered – cell phones and hands-free remotes, global positioning systems, texting and entertainment devices – for a ban or a severe restriction. The group had asked that first responders, such as police and emergency medical technicians be exempted and that exceptions be made

for operators using electronic devices to summon help during an emergency. Finally, the petition requested that any rule apply to all commercial motor vehicle drivers – including bus drivers covered by the FMCSA – and that violations automatically result in an Out of Service order – meaning the driver is prohibited from operating a commercial truck for a specified period of time.

Henry Jasny, Advocates' general counsel said that the notice is only a partial response and doesn't address the multitude of electronic distractions that are part and parcel of the cab in a commercial vehicle.

"At least the train is moving in the right direction, but it doesn't go far enough," he said. "Our petition went far beyond texting alone. Texting is only the tip of the iceberg. It's the distraction of all the devices for work and infotainment. Drivers' attention should always be on the road and not looking at maps or responding to messages even if its voice activated."

The agency said that it would address the use of other electronic devices while driving in a later rulemaking.

### CPSC Gets Tough on Lead Paint Violators

*(Cont. from p. 6)*

dawning of a new CPSC." She praised the commission not only for holding companies responsible for complying with the law, but for "creatively" imposing sanctions such as the injunction against Daiso.

Weintraub also pointed out that the CPSC recently broke with past practice, issuing a general warning to the public about the dangers of baby slings about two weeks before manufacturer Infantino LLC recalled more than 1 million baby slings. Infantino announced the recall on March 24, after three infant deaths were reported. The U.S. CPSC issued a general warning on March 12, "advising parents and caregivers to be cautious when using infant slings for babies younger than four months of age, based on a survey of incident reports from the past 20 years and open investigations into at least 14 deaths associated with sling-style infant carriers, including three in 2009."

"The recall wasn't ready to be announced, but they wanted to warn the public about baby slings, and that is not something that we have seen for a long time – using their ability to communicate hazards to the public," Weintraub said.