



November 25, 2002  
Docket No. NHTSA-2002-12391  
U.S. DOT Dockets, Room PL-401  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590

**Re: Comments on National Highway Traffic Safety Administration's (NHTSA) Vehicle Safety Rulemaking Priorities: 2002-2005**

Public Citizen applauds NHTSA for publishing a rulemaking priority plan and appreciates the opportunity to comment on the agency's rulemaking vision for the upcoming three years. Procedural transparency, in conjunction with public oversight and participation, is a fundamental aspect of the rulemaking process. In addition to establishing priorities that are financially practical, it is critical that the priority plan serve also as a visionary document and enumerate the unmet needs in auto safety. We apologize for the tardiness of our submission and hope that our comments will nevertheless be helpful in encouraging NHTSA to speak out about its real budgetary and statutory needs during the coming reauthorization legislation.

**The Semiannual Regulatory Agenda and Relationship to the Agency's New Priority Plan**

In May of 2002, the Department of Transportation (DOT) published its Semiannual Regulatory Agenda, which outlines the rulemaking activities by agency for the entire department. The Semiannual Regulatory Agenda remains the official planning document for the agencies that comprise the DOT. It is therefore puzzling that NHTSA's Vehicle Safety Rulemaking Priority Plan fails to make even a single reference to the Semiannual Regulatory Agenda. For the sake of clarity, NHTSA must contextualize the Semiannual Regulatory Agenda as it relates to the agency's priority plan. Although we presume that the priority plan identifies those rulemakings that will actually be pursued by the agency, this may not be correct. Attached to our comments is a chart which compares the scope of the priority plan as it relates to the agency's Semiannual Regulatory Agenda, showing those items included in both documents, and those included only in the Semiannual Regulatory Agenda.

**NHTSA Should Reconcile the Title and Content of its Priority Plan**

We begin by commenting on the agency's general concept of priority as embodied in the agency's so-called "priority plan." By definition, a priority is, "something given or meriting

attention before competing alternatives.”<sup>1</sup> In titling this planning document “NHTSA Vehicle Safety Rulemaking Priorities 2002-2005” and by noting that, “[f]or the current plan, we have included those rulemaking actions of highest priority for the period,”<sup>2</sup> the agency creates an expectation that the future rulemaking actions would be relationally ordered to reflect the initiatives of greatest importance for the advancement of vehicle safety. Yet, NHTSA undermines the concept of priority and confuses the reader in also stating that, “the placement of the priorities in this plan are for organizational clarity, but do not reflect any specific ordering in terms of importance or emphasis.” *sic*<sup>3</sup> The agency also asserts that, “[t]he absence of a particular regulatory activity from this document does not necessarily imply that the agency will not pursue it.”<sup>4</sup> Amazingly, the only relative importance imparted to future rulemaking activities is based on the anticipated year of completion, rather than the agency’s own articulated ordering principles: the saving of lives, the prevention of injury and the likelihood for successful action.

Public Citizen urges NHTSA to adopt one of the following recommendations:

1. Amend the title of the current regulatory priority plan to make the title consistent with the substance of the document.
2. Publish a priority plan that is consistent with the definition of a priority. Rather than divorcing the concept of relative importance from the priority plan, the agency should rank particular rulemakings in the context of vehicle safety priority.

### **NHTSA Negates its Role in the Advancement of Automotive Safety**

In the year 2000 alone, 6.4 million motor vehicle crashes occurred on our nations roadways. As a consequence, 41,821 individuals lost their lives and 3,189,000 others suffered injuries. NHTSA estimates the economic impact of these crashes to total 230.6 billion dollars. These startling figures highlight the continuing, critical importance of the agency’s mission: to save lives and reduce injuries.

Public Citizen remains committed to pressing for motor vehicle safety with highest level of automobile safety technologically possible. Although NHTSA cites the above statistics to emphasize the need for increased motor vehicle safety, the agency also claims essentially, that the need to regulate the auto industry is now diminished. The agency states that, “Automotive manufacturers and suppliers are now pro-active players in vehicle safety by providing to their customers the best safety technologies available.” How we wish this were true. Unfortunately, however, the automotive industry continues to object to critical safety regulatory proposals and fails to negate regulation by offering the best safety technologies available.

In light of the widespread industry resistance just in the last few years to adopting direct tire pressure monitoring systems, improved air bag design, increased rollover prevention, improved door and trunk latches, seatbelt pretension devices, and improved seating assemblies,

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<sup>1</sup> Merriam Webster’s Collegiate online dictionary, <http://www.m-w.com/cgi-bin/dictionary>

<sup>2</sup> NHTSA Vehicle Safety Rulemaking Priorities: 2002-2005. NHTSA-2002-12391-2, at iii.

<sup>3</sup> *Id.* at v.

<sup>4</sup> *Id.* at iv.

the failure to design crush resistant roofs, among other essential safety systems. Public Citizen finds it inappropriate that NHTSA would make such a factually inaccurate statement. NHTSA’s job is to improve motor vehicle safety, not to promote the auto industry in a manner suggesting that NHTSA’s principle mission is now outdated. We urge the agency to either justify or remove this statement from the priority plan.

Among the efforts noted in the introduction of the agency’s priority plan, NHTSA cites its intent to “influence the automotive industry to incorporate the rapidly accelerating pace of advances in vehicle and safety technology into new vehicles...”<sup>5</sup> Public Citizen reminds the agency of its statutory obligation to require vehicle safety improvements. Efforts to “influence” the industry cannot be relied on, as revealed by General Motor’s recent decision to cease offering side impact head protection air bags as standard equipment, and must not preempt or undermine the agency’s statutory obligations to require such adaptations where safety needs merit.

### **The Scarcity of Agency Resources Highlights the Importance of Rulemaking Activities**

In order to contextualize the magnitude of life lost annually as a result of motor vehicle crashes in a different context, consider that the total number of individuals killed on our nation’s highways in the year 2000 exceeded the death toll of the September 11<sup>th</sup> terrorist attacks on the World Trade Center and Pentagon combined by a factor of *thirteen*.<sup>6</sup> In fact, the annual number of highway fatalities equates to a major plane crash every three days. Yet, in comparison to the billions of dollars being spent on national aviation security, NHTSA is forced to operate on a shoestring budget of \$403 million annually, with only \$25 million devoted to safety performance standards.<sup>7</sup> Public Citizen recognizes that NHTSA’s paltry budget severely handicaps the agency’s ability to function. It is therefore imperative that NHTSA prioritize its rulemaking activities to maximize the number of lives saved and injuries prevented. Furthermore, the agency needs to determine exactly what needs to be accomplished for the given time period and then seek the appropriate funding from Congress, rather than compromising the agency’s rulemaking agenda before attempting to fund its vision.

Ideally, NHTSA’s funding would proportionally reflect the alarmingly high loss of human lives to motor vehicles in comparison to other activities and modes of transportation. However, this is clearly not the case. Therefore, in order to maximize the number lives saved annually, the agency must take regulatory action in spite of shortcomings in data and research. NHTSA must ignore the industry mantra, which masks an effort to induce regulatory paralysis

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<sup>5</sup> *Id.* at ii.

<sup>6</sup> Brostoff, Steven, “Insurers Still Optimistic About Terrorism Insurance Bill. Insurance Industry Pushes For Legislation That Insures Losses Caused By Acts of Terrorism,” *National Underwriter Property & Casualty-Risk & Benefits Management*, Sept. 9, 2002.

<i>Victims</i>	<i>Total Fatalities</i>
WTC victims (workers and visitors)	2,666
WTC hijacked jets (incl. 10 hijackers)	157
Pentagon victims on ground	125
Pentagon hijacked jet (incl. 5 hijackers)	64
Pennsylvania jet crash (incl. 4 hijackers)	44
Total	3,056

<sup>7</sup> Department of Transportation Budget, Fiscal Year 2003, at 753.

through cries for more analysis. As the agency continues to weigh the trade-offs associated with particular rulemaking activities, Public Citizen reminds the agency of the protective posture adopted in a 1989 rulemaking decision, which stated the following:

“Although NHTSA attempts, within its capabilities to quantify the benefits of its actions, it still has a duty to regulate when such regulations would meet the need for motor vehicle safety, even in areas with inherent uncertainty. Therefore, especially for the crash avoidance standards, decision making necessarily rests in part on policy judgment.”<sup>8</sup>

Public Citizen encourages the agency to continue its pursuit of a rigorous regulatory agenda. Federal Motor Vehicle Safety Standards (FMVSS) are responsible for the proliferation of today’s most highly praised safety features. The best way to improve vehicle safety is through technological enhancements to both vehicle design and performance. NHTSA alone possess the power to spark such improvements. Therefore, the agency must appropriately focus its resources and priorities on its regulatory programs.

### **Pre-Crash Data Collection**

Public Citizen agrees that NHTSA should compile more complete pre-crash data in order to better address crashes from a causal perspective. The priority plan proposes to employ the methodology used in the Large Truck Crash Causation (LTCC) study to passenger vehicle crashes. Although this exercise might prove to be valuable, this approach rests on the assumption that the methodology employed in the LTCC can be applied analogously to passenger vehicle crashes.

Public Citizen believes “black box” or event data recorder technology to be a better avenue for obtaining accurate pre-crash data. Requiring black box systems in all vehicles, including large trucks, will greatly reduce the cost and difficulty of obtaining accurate information. By collecting large amounts of data on all types of crashes, it will allow the agency to focus its crash investigations on key crashes for a highly efficient use of agency resources.

Due to a serious cut in funding, the data collections of the National Automotive Sampling System—Crashworthiness Data System have dropped from 18,000 crashes per year with 75 investigative teams down to a collection of 5,000 crashes per year with 24 teams of investigators.<sup>9</sup> Black box technology has proven to be extremely useful for crash analysis in the aviation sector, and it is time that NHTSA realize the potential of this technology in the automotive sector. As NHTSA seeks to solve the age-old problem of pre-crash and crashworthiness data collection in the 21<sup>st</sup> century, the agency must not overlook this technologically advanced, yet strategically simple solution. Since all motor vehicles today are computerized and many already have event data recorder systems installed to evaluate air bag performance, NHTSA should require their installation in all vehicles, and establish minimum

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<sup>8</sup> “Vehicle Glazing Light Transmission Rulemaking,” 63 FR 37820, at 37826, Jul. 14, 1998.

<sup>9</sup> Vartabedian, Ralph, “Inadequate Collection and Analysis of Accident Data Prove Costly,” *Los Angeles Times*, June 5, 2002.

standards for data collection performance and the availability of this data for NHTSA's data collection systems. Public Citizen recommends that NHTSA accelerate and prioritize its efforts on event data recorders.

### **Harmonization Without Relaxation: the Standardization of Safety Regulations Should Aim to Increase Highway Safety, Not Corporate Profits**

Although the agency ranks harmonization as a high priority for the upcoming years, the agency has no statutory responsibility or authority to adjust safety standards to serve commercial interests. Despite industry attempts to persuade NHTSA otherwise, advancing the commercial interests of the automotive industry through regulatory harmonization efforts is simply not a part of the agency's statutory job description. In fact, the harmonization of safety regulations is not even included in the NHTSA's Semiannual Regulatory Agenda. The improvement of motor vehicle and highway safety is and should remain NHTSA's central mission.

However, according to the priority plan, "Global marketing also increases the demand for nations to establish similar regulations to facilitate trade. With each new rulemaking, NHTSA determines how U.S. standards and those of the European Community, the countries of the North American Free Trade Agreement, Japan, and other countries can be harmonized without diminishing safety effectiveness in the United States."<sup>10</sup> The agency's mission is not to merely prevent the erosion of automobile safety, it is to advance it. Harmonization must not be permitted to the extent it results in merely regulatory "equivalent" standards or diminished margins of safety. Public Citizen not only objects to harmonization when it compromises current levels of safety, but also when harmonization prevents safety standards from realizing their most protective future potential. Regulatory decisions should be based on the greatest potential safety benefits.

The process of harmonization, which is fundamentally unaccountable and lacks transparency, places the ascendancy of business interests before the interests of public safety. The agency highlights a total of eleven areas related to the global harmonization of safety standards.<sup>11</sup> NHTSA's posture on harmonization will determine whether the United States remains a global leader and sets the standard for highway and automotive safety. Public Citizen encourages NHTSA to uphold its statutory obligation to advance the safety of American consumers, rather than making safety secondary to corporate interests. Also, automotive companies have the ability to harmonize on their own in most instances. By designing and producing all vehicles to meet the world's highest safety standards, in most cases such vehicles would be accepted for sale in any regional marketplace.

### **The Rapid and Increasing Proliferation of Sport Utility Vehicles (SUVs), and other Automotive Behemoths, Poses New Threats to Highway Safety to Which NHTSA Must Respond**

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<sup>10</sup> NHTSA Vehicle Safety Rulemaking Priorities: 2002-2005. NHTSA-2002-12391-2, at iii.

<sup>11</sup> The eleven areas related to harmonization include: 1. Tire Standards, 2. Advanced Dummies, 3. Offset Frontal Protection, 4. Side Impact Requirements, 5. Occupant Ejection Requirements, 6. Rear Impact Protection, 7. Vehicle Incompatibility, 8. Heavy Truck Braking Requirements, 9. Child Restraint Requirements, 10. Anti-Lock Brakes, 11. Motorcycle Safety.

Public Citizen supports NHTSA's decision to address the dangers associated with the popular SUV type vehicles. As the agency's own research shows, the trend in SUV's toward larger and heavier vehicles only increases the damage and risk to occupants of passenger vehicles, and their height, narrow track width and vulnerable roofs result in a high percentage of rollovers with resulting deaths and injuries to SUV occupants. Although SUVs are technically utility vehicles, they are generally employed as passenger vehicles and should therefore be held to the same safety standards. Due to their alarmingly high rollover propensity and their aggressivity, Public Citizen urges NHTSA to make SUV safety one of the agency's top priorities. Harmonizing the crash compatibility of SUVs and passenger cars, rather than the safety regulations of trading partners, would result in a considerable benefit to automotive safety.

### **Improvements in Vehicle Compatibility Are Necessary to Protect the Motoring Public from SUV Battering Rams**

Vehicle aggressivity refers to the risk of fatality or injury to an occupant of another vehicle in a multiple-vehicle crash. Vehicle compatibility refers to the variance in risk associated with vehicles of different characteristics crashing into one another. Generally, the more compatible two vehicles are, the more likely it is that both vehicles will absorb the impact of a crash without transferring harmful crash energy to the occupants of either vehicle. In a two-vehicle crash with less compatible vehicles, there is an increased risk of fatality or injury to the occupants of the less aggressive vehicle.

Aggressive vehicles result from a collection of design shortcuts by the manufacturers, emanating in large part from the "light truck loophole" contained in the fuel economy statute, which must be corrected. Without sufficient fuel economy requirements to temper the production of inefficient behemoths, car companies produced huge, wasteful, and unsafe vehicles. In their haste to build and sell as many SUVs as possible at minimal cost, automakers failed to redesign the high, heavy, and stiff pickup truck chassis on which these "family" vehicles are built. The result is that millions of Americans now drive high-powered battering rams, capable of inflicting devastating damage on occupants in other vehicles and highly susceptible to rollover.

- Hans Joksch, a researcher at University of Michigan's Transportation Research Institute (UMTRI) using real world crash data found in a 1998 study that in front-to-front collisions involving a car and a sport utility vehicle (SUV), *car drivers were 5 times more likely to be killed than SUV drivers. In side impact collisions, a car driver was 5 times more likely to die if she was struck by an SUV rather than another car.* These ratios demonstrate the higher aggressivity of SUVs versus cars. Pickup trucks that struck cars also caused disproportionate amounts of damage, though the ratios were slightly lower.
- The Insurance Institute for Highway Safety (IIHS) testified before the Senate Commerce Committee on January 24, 2002 that "beyond about 4,000 pounds, increasing vehicle weight results in a net increase in fatalities," meaning that the deaths caused by the heavier vehicle outweigh any safety benefits to its own occupants. Most SUVs are at least 4,000 lbs., and most are above that weight.

- As Keith Bradsher of the *New York Times* reported on May 12, 2000, “sport utilities are three times as likely as cars to kill the other driver in a crash, but the death rate for sport utility occupants is just as high as for car occupants because of sport utilities’ tendency to roll over and their lack of crumple zones.”

Light trucks type vehicles including SUVs currently account for 50 percent of new vehicles sold. Yet the high death toll is unnecessary. Making basic design changes to these vehicles would solve many of the problems. Without safety standards limiting vehicle aggressivity and requiring improved compatibility between vehicles, consumers will continue to perceive themselves as locked into a vehicle arms race: If drivers believe they must defend themselves on the road with a larger vehicle than those around them, they will continue to buy heavier and less efficient vehicles, unwittingly increasing the national death toll, and harming the public as well through global warming and unhealthy emissions.

From a consumer perspective, while the marketplace is awash in information addressing the safety of vehicles for the occupants, a truly responsible consumer who is concerned with the impact of his or her vehicle upon others on the highway would have nowhere to look. As Tom Wenzel, a researcher from the Lawrence Berkeley National Laboratory has pointed out, these impacts are truly the “externalities” of heavy vehicles weight and defensive consumer purchasing patterns, the cost of which is not fully absorbed by insurance and is thus passed on to society at large. The aggressivity of particular vehicles, by make and model, should be revealed by the NCAP program, and a crucial part of any campaign to educate consumers to buy vehicles that are socially responsible.

NHTSA has been collecting crash profile data as a part of its New Car Assessment Program (NCAP) for the past ten years. When the agency conducted crash tests for the NCAP program, it recorded the load-cell information on the test platform, thus assembling the “crash profile” of particular make/model vehicles. In fact, the agency has already completed much of the research needed to form the basis of regulation, although, unconscionably, it has never acted on this information, either by proposing a rulemaking in this area or by means of disclosure under NCAP according to vehicle make and model.<sup>12</sup> Public Citizen asks that the agency employ the load cell data to develop an aggressivity rating for publication in the NCAP rating system, and to issue a minimum Federal Motor Vehicle Safety Standard. This should be a top priority in the agency’s plan.

### **Increasing Vehicle Size Equates to Shrinking Fields of Vision**

Drivers must be able to assess the environment in which they operate their vehicles. Light trucks must be evaluated to determine the extent to which they obstruct fields of vision for the drivers of passenger cars. Due to the dramatic increase in light truck type vehicles, Public Citizen recommends that NHTSA consider reissuing the conspicuity rule that took ten years to develop, and was inappropriately revoked in 1981.

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<sup>12</sup> A summary of their published research to date is available at: <http://www-nrd.nhtsa.dot.gov/departments/nrd-11/aggressivity/ag.html>.

## **Increasing the Survivability of Rollover Crashes Requires Mitigating the Forces Experienced by Vehicle Occupants**

The public should walk away from most rollover crashes – but few do. Rollovers account for one-third of occupant fatalities and one-fourth of all auto-related fatalities annually. Fatality Analysis Reporting System (FARS) data reveal that 10,149 people were killed in rollover crashes in light vehicles in 1999 — one-third of all vehicle occupant fatalities for that year. Moreover, as SUVs proliferate, this safety hazard is growing. A shocking sixty percent of deaths in light truck-type vehicles (vans, pick-ups and SUVs) occur in rollover crashes.

Yet the likelihood is that rollovers are more survivable crashes than current data suggests, because the forces applied to occupants during the collision are far lower than those experienced in other types of crashes. This apparent survivability suggests that rollovers are dangerous due to poor vehicle design. Safety belts, seat structures, windows and doors are not designed to keep occupants in place during a crash, permitting ejection of occupants into the road and putting them at great peril. For occupants that remain inside the vehicle, vehicle roofs are frequently so flimsy that when they absorb the full weight of the car they crush into occupants' heads and spines, inflicting very serious injuries and death. Roof distortion can also create open portals for ejection in a crash. For instance, many occupants are ejected through the windshield which typically crushes on a vehicle's first roll.

One of the founding principles of automotive crashworthiness asserts that for every collision of a vehicle into an obstacle, there is secondary and subsequent collision of the vehicle occupant into the vehicle interior. Rollover crashes are particularly lethal because of the reflexive forces exchanged between vehicle occupants and interior edifices. In order to improve the survivability of a rollover crash, vehicle occupants must be securely restrained to prevent the forceful contact of the occupant against the interior. Similarly, the vehicle compartment must retain its integrity and not impress upon its occupants.

In order to properly address the issue of rollover crashworthiness, Public Citizen recommends that the agency consider the following recommendations.

- *Dynamic roof crush standard* – The existing roof crush standard issued in 1973 is extremely weak. NHTSA's static standard does not measure the area of greatest vulnerability on roofs and measures roof strength with the windshield intact, despite the fact that windshields almost always shatter on the first roll. In early October, NHTSA released its proposed dynamic testing rollover procedures for the purpose of improving consumer information through the New Car Assessment Program, as required by the Transportation Recall Accountability and Documentation Act. But the consumer information standard measures only a vehicle's propensity to rollover, but fails to quantify a vehicle's rollover crashworthiness as well. Presently, many roofs that collapse under the weight of vehicles as they roll in real-world crashes consistently pass the agency's weak, outdated static roof crush test. As an example, a Chevrolet Suburban lowered gently onto its roof will suffer a crushed roof despite the fact that it passes the current standard. The new standard must require vehicle roofs survive forces equivalent to what they actually experience in a rollover crash.

- *Improved seat structure and safety belt design* – In the event that the roof of a vehicle does not crush during a rollover, the occupant’s life can be saved by a safety belt and seat structure that combine to hold occupants in place as the vehicle rolls. Currently, safety belts do not use technologies that fully prevent an occupant from “diving” into the roof during a rollover. Furthermore, the agency must determine whether the inertial unlatching of safety belts contributes to the inexplicably high percentage of unbelted rollover fatalities. Integrating pre-tensioned belt restraints into the design of seat assemblies will better restrain occupants in the event of a rollover. Lastly, as the agency admits in the priority plan, the outdated standard governing seat back collapse must be revised in order to keep occupants securely restrained.
- *Event Data Recorders* – Black box systems are essential to understanding the causes of occupant ejection. Analysis suggests that the inertial unlatching of safety belts might contribute to the disproportionate percentage of unrestrained rollover fatalities. If programmed properly, telemetric systems would enable the agency to conduct in depth analysis of restraint performance in rollover sequences.
- *Advanced Window Glazing* – After issuing two Advanced Notices of Proposed Rulemakings (ANPRM) in 1988, NHTSA began considering the establishment of minimum window glazing requirements in order to reduce the number of injuries and fatalities resulting from both partial and complete occupant ejection. In response to a Congressional mandate, the agency was ordered to make a final decision on ejection mitigation using advanced window glazing.<sup>13</sup> But NHTSA in 2001 abandoned the advanced window glazing rulemaking. The agency is now attempting to develop a performance-based standard that would afford automobile manufacturers substantial flexibility in meeting the requirements.
- *Side impact head protection air bags* – Already in use in some vehicles, side “curtain” airbags deploy from the roof of the vehicle above the door during rollover crashes. Their presence would prevent an occupant’s head from coming in contact with the frame or window of the vehicle. These airbags, like the airbags currently deployed in front and side-impact crashes, would save many lives and prevent countless crippling injuries, including preventing ejection, a lethal factor in rollover crashes. They should be required in all vehicles. Several years ago the agency disappointingly demurred to industry to develop a voluntary standard. After the voluntary standard was developed, General Motors announced in April of 2002, that along with antilock brakes, the company would no longer offer these systems as standard equipment on middle and low-end vehicles.<sup>14</sup> According to *Automotive News*, “A GM spokesman said the money the company saves on antilock brakes, about \$160 per vehicle, in many cases would be used to add CD players and other features that now are options... The side airbags cost GM about \$60

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<sup>13</sup> See House of Representatives Conference Report 106-940 to accompany H.R. 4475

<sup>14</sup> Truett, Richard, “GM Hits the Brakes on ABS : Antilocks Will Become Options on Low-End Cars,” *Automotive News*, April 15, 2002.

per vehicle.”<sup>15</sup> So much for voluntary standards.

- *Roof injury protection measures* – Simply adding more substantial energy-absorbing surfaces such as General Motor’s “airgap” material to line the roofs of vehicles could save lives by providing a more forgiving surface for occupants striking roof interiors. This will be even more important once roof structures are improved.
- *Closing the regulatory loopholes for 15-passenger vans* – Fifteen-passenger vans have fallen through the cracks in the Federal Motor Vehicle Safety Standards (FMVSS) program. Because these highly rollover prone vans are classified as buses, they do not have to meet a number of essential safety standards. NHTSA should reclassify these vans as “small buses” and subject them to the full rigor of the FMVSS program as well as the dynamic rollover consumer information system.

### **Federal Motor Vehicle Safety Standards Must Better Protect the Safety of Special Populations**

Public Citizen encourages NHTSA to conduct further rulemaking proceedings aimed at increasing the motor vehicle safety of the special populations including the disabled, children, small adults, and older populations. The bill of rights guarantees everyone equal rights under the law. Similarly, everyone ought to be afforded equal protection under the Federal Motor Vehicle Safety Standards. The agency must actively seek to include a more diverse body of vehicle occupants under the protective umbrella of the FMVSS program.

A major deficiency today is the absence of federal regulation of booster seats designed to accommodate children who are heavier than 50 lbs. Regulation that will protect larger children in crashes with meaningful booster seat testing and consumer information requirements is a necessity. The Fiscal Year 2003 Senate Transportation Appropriations Committee report requires that NHTSA look into the potential benefits of integrated child restraints and the recent passage of H.R. 5504, Anton’s Law, authorizes \$5 million to evaluate the safety performance of built-in child and booster seats. As we demonstrate below, the current system is inadequate because:

- 1) Booster seat/vehicle compatibility – which determines safe performance– for a given make and model of vehicle is not assessed by vehicle manufacturers, nor are there recommendations for the use of a specific type of seat;
- 2) The federal standards pertaining to child restraint seats and booster seats are inadequate, confusing, and can be misleading for the consumer;
- 3) Booster seats do not provide reasonably safe protection for children in this age group in all types of crashes;

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<sup>15</sup> *Id.*

- 4) Twenty-nine state laws that are currently in effect provide parents with the option of complying with mandatory child seat laws by placing children in this age group in adult belts, which is dangerous for them in crashes;<sup>16</sup>
- 5) Parents and caregivers do not understand or appreciate the dangers that adult belts pose for children from ages 4 to 8; and
- 6) Parents and caregivers are not provided with sufficient information by the auto industry to make an informed choice about the safest means of protecting children between the ages of 4 and 8 in motor vehicles.

Integrated child seats, or child seats built into the cushion of the vehicle seat with five-point harnesses, have been available since the 1980's. Although Chrysler first introduced the concept domestically in 1992, foreign manufacturers recognized the enhanced safety of the concept much earlier. But today few manufacturers offer these seating systems as optional, let alone standard equipment.

For children between the ages of 4 and 8, the integrated child restraint with a five-point harness is the "safest form" of restraint known to exist.<sup>17</sup> The seat is indistinguishable from a normal bench seat when the child portion is not in use,<sup>18</sup> and has been recognized as being "safe" and "convenient."<sup>19</sup> It is likewise acknowledged by experts within the industry that integrated child restraints provide increased protection for children in side impact collisions<sup>20</sup> because the five-point harness provides upper-body restraint for both shoulders.<sup>21</sup> Providing an upper-body restraint with two shoulder harnesses for children aged 4 to 8 is vitally important because children in that age group are highly susceptible to spinal cord injuries resulting from spinal stretching, or distraction.<sup>22</sup>

It is beyond dispute that five-point harnesses in the form of integrated child restraint seats provide the safest form of restraint for children in the 4 to 8 age range. It is likewise beyond

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<sup>16</sup> See Appendix I; Traffic Safety Facts 2000; Table 123: Child Passenger Protection Laws, National Center for Statistics and Analysis, Research and Development, NHTSA, page 180; see also Stalnaker, Richard, *Inconsistencies in State Laws and Federal Regulations Regarding Child Restraint Use in Automobiles*; SAE 933087 [1993].

<sup>17</sup> Ford Motor Company ICR Strategy Status Report [October, 1995].

<sup>18</sup> Ford Motor Company ICR Strategy Status Report [October, 1995].

<sup>19</sup> Letter from Helen Petrauskas [Ford] to NHTSA commenting on NTSB recommendation for Integrated Child Restraints. [October, 1997].

<sup>20</sup> Trial Testimony of Alan Dorris, expert for Ford Motor Company, citing deposition testimony of Ford engineer Dr. Prasad. [February, 26, 2002].

<sup>21</sup> Trial testimony of Ford expert Verne Roberts at page 89 [February 19, 2002].

<sup>22</sup> Trial testimony of Ford expert Verne Roberts at page 98-99 [February 19, 2002].

dispute that five-point harnesses provide increased protection in frontal, offset frontal, rollover, rear and side impact. Given the immature nature of children's anatomical and physical development, it is essential to consider the unique risks associated with children in the 4 to 8 age group and provide maximum protection for those risks that can result in severe injury or death. Children have been used as guinea pigs in motor vehicles for far too long. It is time to leave partial solutions behind and move decisively to ameliorate these clear and present dangers to the child occupants.

As NHTSA continues to advance child occupant safety, the agency must also keep in mind the safety needs of other vulnerable populations. Public Citizen commends the agency for beginning to address the safety issues related to older populations. Statistics suggest that there will be an increase in the number of older drivers in the upcoming years. The agency must anticipate and address the safety needs of older drivers. For instance, vision tends to become less keen with age and it is therefore imperative that NHTSA standardize both the type and angles of headlamps. Also, light truck type vehicles should be evaluated with respect to their tendency to obstruct fields of vision.

The agency's priority plan cites a number of technology-based initiatives aimed at enhancing crash prevention. Public Citizen hopes that the agency will first evaluate whether these technologies distract older drivers and disabled drivers particularly. Furthermore, seat assemblies, safety belts and air bags must all be reformulated to account for both differences in occupant fragility, size and weight of older drivers.

### **Efforts to Uncover Defective Tires Are Only As Effective As the Weakest Link**

The Ford Firestone debacle exposed the critical link between tire integrity and highway safety. In the passage of the TREAD Act, Congress recognized the need to update both tire performance standards as well as the administrative mechanisms for uncovering emergent equipment defects. Public Citizen is concerned that the priority plan did not include many initiatives related to tire performance and safety. Despite agency claims that automobile manufacturers provide consumers with the best safety technologies available, automobile manufacturers are fighting to permit both indirect and direct tire pressure monitoring systems (TPMS) in new vehicles.

Public Citizen strongly opposes the use of indirect systems on all vehicles regardless of the vehicle's type, number of tires or weight. Indirect systems rely on the *relative* rotational speed of a vehicle's tires. This presents serious risks to consumers who will presumably rely on their tire pressure monitoring system to warn them when their tires are significantly under inflated. If all four tires on a vehicle were dangerously under inflated, the driver would not be alerted of this hazard because all four tires would be rotating at the same speed relative to one another. Therefore, due to the indirect system's inherent unreliability and inability to meet the statutory requirements of the Transportation Recall Enhancement and Accountability Act, the use of these systems should be prohibited. Considering the agency has promised in the final rule issued on May 30, 2002, to make a decision on whether to permit both direct and indirect systems in the second stage of the TPMS final rule by March 1, 2005, we find it surprising that revisiting the TPMS final rule is not cited as an agency priority. It is well established that

maintaining proper tire inflation pressure is of a high priority for the advancement of highway safety, and the TPMS final rule should therefore be of major concern to the agency.

Another aspect of tire safety left unaddressed by the NHTSA priority plan is the need to regulate retreaded truck tires. The agency has established standards for retreaded passenger vehicle tires, but such tires are rarely used, and yet no standards exist to ensure the safety of large trucks riding on refurbished alternatives, which are in widespread use. NHTSA needs to ensure that companies choosing to save money on tires do not pass the cost onto the public.

In order for consumers to be notified about tire defects, it is necessary that consumers register their tires. It is therefore essential that NHTSA mandate tire registration as the responsibility of the tire seller who must transmit the information to the manufacturer. Manufacturers must be able to notify consumers of tire recalls and defects. A significant amount of agency resources has been devoted to implementing an early warning system and it would be unconscionable for NHTSA to neglect such a simple procedure for notifying owners of defective tires. The effectiveness of the Early Warning System for tire related defects hinges on the ability to contact consumers. Tire registration is the cornerstone of an effective tire recall campaign, and NHTSA should therefore mandate that consumers register their tires at the time of purchase. NHTSA ought to restore the statute mandating tire registration as one of its regulatory priorities.

<b>Semi-Annual Regulatory Agenda: Pre-Rule</b>	<b>NHTSA Priority Plan</b>
<i>Review:</i> Odometer Fraud	Excluded
<i>Review:</i> American Automobile Labeling Act	Excluded
<i>Review:</i> Heavy Truck Conspicuity	Excluded
Child Restraints For Older Children	Included
Ejection Mitigation Advanced Glazing	Excluded
<i>Review:</i> Head Restraints for LT	Included
Lower Leg Adaptation Hybrid III Male and Female Adult	Included
Event Data Recorders	Excluded

<b>Semi-Annual Regulatory Agenda: Proposed Rules</b>	<b>NHTSA Priority Plan</b>
Seating Systems Performance	Included
Convex Cross View Mirrors	Excluded
Upgrade Roof Crashworthiness	Included
Hybrid III 95 <sup>th</sup> Percentile Male	Included
Upgrade Door Retention Performance	Included
Administrative Rewrite Of Lighting Requirements (other than headlamps)	Excluded
Accelerator Control Systems	Excluded
Frontal Off set Protection	Included
Headlamp Glare	Included
Stowable Child Restraint Anchors	Related (Not Specifically Cited)
Defect Reporting and Notification	Excluded
Label Placement on Rear Impact Guards	Excluded
Reorganize and Harmonize Dashboard	Excluded
Confidential Business Information	Excluded
Improving the Safety of Child Restraints	Included
Seat Belt Fit	Included
Seat Belt Emergency Locking Retractor	Related (Not Specifically Cited)
Seat Belt Assembly Anchorages Voluntary	Related (Not Specifically Cited)
Idle Stop Technology	Excluded
Convex Mirrors Commercial Trucks	Excluded
Passenger Side Mirror System	Excluded
Horizontal Discharge Trailers	Excluded
Hybrid III 6yr old test dummy	Included
Day Running Lamps Voltage/ Conspicuity	Included
Allow Roll Bar in Brake Testing	Excluded
CRS Webbing Strength	Related (Not Specifically Cited)
LT Fuel Economy Standard	Excluded
Static Out of Position Test 6yr Dummy	Included

<b>Semi-Annual Regulatory Agenda: Final Rule</b>	<b>NHTSA Priority Plan</b>
Brake Lining	Excluded
Platform Lift Systems	Included
Radiator Safety Cap	Excluded
Upgrade Fuel Integrity Performance Requirements	Included
Alternative Geometric Visibility Requirements	Excluded
Power-Operated Windows; Roof Panels	Excluded

Power Window Safety Switches	Excluded
Seat Belt Positioning Devices	Related (Not Specifically Cited)
Glare Reduction From Daytime Running Lamps	Included
Administrative Rewrite for Headlamp Requirements	Included
Signal Lamps used with Light Emitting Diodes	Excluded
Allocation of FE Credits	Excluded
Wheelchair Restraints Buses	Excluded
Harmonization of Head Restraints	Included
Heavy Vehicle ABS Performance Requirement	Included
Upper Interior Impact	Included
Vehicles With Raised Roofs	Excluded
Clarify Test Procedures for Brake Fluids	Included
Guidelines for states on Enforcement of Light Trans	Excluded
Child Restraint Anchorage Sys Part 2	Included
Hybrid III Type 6 year old Dummy	Included
Firth Percentile Female Test Dummy	Included
Moving Barrier Tire Specification	Excluded
Early Warning Defect Reporting Requirements	Excluded
Defects in Foreign Countries	Excluded
Acceleration of Manufacturer Remedy Program	Excluded
Disposition of Replaced Tires	Excluded
Prohibition of sale or lease of Equipment	Excluded
Improve Tire Safety Information	Included
FE Manufacturing Incentive for AFV	Excluded
Trailer Test Rig	Excluded
Improved Tire Safety	Included
Child Safety Information Labels	Included
Child Restraint Safety Rating	Included

<b>Semi-Annual Agenda: Long-Term Actions</b>	<b>NHTSA Priority Plan</b>
Crashworthiness Ratings	Included
Flammability of Interior Materials- School Buses	Excluded
Review: Side Impact Protection	Included
Review: Child Safety Seat Registration	Related (Not Specifically Cited)
Review: Air Bag On-Off Switches	Included
Review: Redesigned Air Bags	Included
ABS Heavy Trucks	Included
Rear Impact Guards	Included
Tire Pressure Monitoring Devices	Included (Heavy Trucks Only)
Civil Penalties	Excluded