



THEODORE R. KULONGOSKI
Governor

November 21, 2005

Ms. Jacqueline Glassman
Acting Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

RE: National Highway Traffic Safety Administration Notice of Proposed Rule
Making, Standard 216, Roof Crush Resistance
DOT Docket Number NHTSA-2005-22143

Dear Ms. Glassman:

As Governor of the State of Oregon, I am concerned about how language in the National Highway Traffic Safety Administration's ("NHTSA") Notice of Proposed Rulemaking on Federal Motor Vehicle Safety Standard 216, Roof Crush Resistance for Motor Vehicles, will affect the rights of our citizens to access the courts in the event of serious injury or death caused by defective roof structures in motor vehicles.

While I am supportive of a meaningful upgrade in the roof strength of vehicles, it appears that this proposal, by NHTSA's own estimates, does little to address this safety issue. NHTSA's own figures show that the proposed changes would prevent only a mere one-half of one percent of the current fatalities of rollover crashes. The proposal also notes that a substantial majority of cars currently on the road already meet the standard set forth in the proposal. Although the agency's proposal appears to do little to protect against the tremendous harm caused in rollover crashes, the proposed rules nonetheless seeks to pre-empt state common law, including tort law. State common law is often the only recourse for seriously injured victims of car crashes. It is my concern about the proposed preemption of state tort law that motivates my letter.

Despite the significant change to the balance between federal regulation and state tort law rights proposed by this rulemaking, the agency determined that this proposal does not raise sufficient federalism implications to warrant consultation with state and local officials or the preparation of a federalism summary impact statement. I respectfully disagree. Preemption of state tort law would likely result in a shift of medical expenses from the private sector to the public sector. The preemption of state law and the resultant effects of preemption are important issues that warrant careful consideration and analysis and consultation with state and local officials.

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Existing federal law does not provide authorization to undertake a dramatic shift in medical expenses or the elimination of state and common law rights. In practice as well as under law, the Federal Motor Vehicle Safety Standards (FMVSS) are promulgated as minimum requirements. The standards are the lowest level of safety that a manufacturer can build into a vehicle under U.S. law. Vehicles and equipment may contain hazardous features and still meet federal minimum safety standards. To address this shortcoming, state common law establishes a duty of care that protects citizens when the government is too slow to act or minimum standards have proven insufficient. It would be a mistake to suggest that federal safety standards are not the floor, but the ceiling, on safety. NHTSA's proposed actions as written are likely to erode automaker incentives to assure vehicles are as safe as possible for their intended use.

I urge NHTSA to reconsider its position on the purported preemption of state and common law rights and remedies.

Sincerely,



THEODORE R. KULONGOSKI
Governor

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