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National Highway Traffic Safety Administration  
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U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590

**New Car Assessment Program (NCAP)  
Safety Labeling  
71 FR 4854 *et seq.*, January 30, 2006**

*Introduction*

Public Citizen, a national consumer advocacy organization, is pleased to offer these comments on the agency's proposed rule regarding consumer information labeling at the vehicle's point-of-sale. We commend the agency for its clear notice, but raise several points which require improvement prior to the final rule.

We think that the following revisions would greatly assist consumers in clearly comprehending the ratings and their significance. In sum, NHTSA should:

- Include pickup trucks in the rulemaking under its authority to require that safety information be provided to consumers at the point-of-sale pursuant to 49 U.S.C. § 30117;
- Clarify the specific meaning, for consumers, of the special safety concerns indicated on the label, and provide a 1-800 number for consumers to call for more information about those concerns while still at the dealership and to ascertain whether unrated vehicles have been rated since the date of label publication;
- Provide an indication on the label of other sources for consumer information;
- Specify a background of white or off-white and revise the font-size requirements to a 12-point minimum;
- Reduce the 30-day window to a more reasonable 15 days;
- Eliminate the loophole and gaming possible in mid-year model testing under the agency's proposal by providing the rating contained on the prior label on all vehicles and explaining a new test is being conducted until the revised label is available; and
- Respond aggressively to the growing obsolescence of the NCAP program, as documented by the Government Accountability Office (GAO), by upgrading crash test criteria and adding new tests for compatibility, handling and pedestrian safety.

We are delighted that the agency is moving forward to make NCAP information far more available to consumers at the point in the purchase decision so that it will have maximum impact. However, the above-indicated aspects of the rule require the agency's attention to ensure that the final rule will serve the clear purpose outlined in SAFETEA-LU: to make "legible, visible, and prominent" safety information available to consumers.

*Consumer Information Labels at the Point-of-Sale Are Long Overdue and Should be Required on Pickup Trucks*

This rule is mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which directs the agency to establish a rule governing New Car Assessment Program (NCAP) labeling at the point-of-sale. While the agency's response to the mandate enacted in August 2005 is prompt, a rule to place NCAP crash test information on vehicle labels at the point of sale is long overdue.

NHTSA initially proposed putting safety information labels at the point-of-sale in a 1981 rulemaking, *see* 46 FR 7025 (Jan. 22, 1981), which proposed that the results of manufacturer testing – audited by NHTSA – at crash speeds 5 miles-per-hour (mph) above compliance speeds be placed on stickers at the dealership and disseminated as comparative information in brochures produced by NHTSA and made available in the showroom.

After years of neglect, this proposal was rescinded in 2003, *see* 68 FR 43899. In dismissing the rule as "overtake by events," *id.*, NHTSA fails to even mention the aspect of the proposal relating to the posting of results on window price stickers, despite the strong urging of Public Citizen and other safety groups in comments to the rollover and dynamic rollover NCAP rulemakings that the agency give active consideration to placement of NCAP results on stickers at the point-of-sale.

In so doing, NHTSA also ignored feedback from its own four consumer "town meetings" held in 1994, which, according to a 1997 summary by the agency, reflected that "consumers want . . . expanded outreach for NHTSA's safety information," *see* 62 FR 27648, 27649. The 1996 study by the National Academy of Sciences (NAS) study, also concluded as part of its short term recommendations that NHTSA should improve the dissemination of existing auto safety information by increasing awareness of its availability and improving its accessibility, both goals which are certainly furthered by publication of the NCAP results on window stickers at the point-of-sale. *See* "Shopping for Safety – Providing Consumer Automotive Safety Information," National Academy of Sciences Special Report 248 (1996).

Indeed, the NAS report throughout clearly contemplates that NHTSA will create and implement a safety labeling program at the point-of-sale, *see, e.g., id.* at 28, 124 (noting that "[t]he safety label ensures that consumers will have relevant information at the point of sale."). As this and 1981 proposal demonstrates, NHTSA's statute, at 49 U.S.C. § 30117 has long provided authority for the agency to require manufacturers to publish safety information at the point-of-sale.

In relevant part, that section is as follows:

Sec. 30117. Providing information to, and maintaining records on, purchasers

- (a) Providing information and notice. – The Secretary of Transportation may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:
- (1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturers, in a way the Secretary decides is appropriate.
  - (2) to the first purchaser of a vehicle or equipment other for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

In this proposal, NHTSA explains that the SAFETEA-LU mandate specifies the Monroney label and that the regulatory definitions specific to this label exclude pickup trucks under Department of Justice (DOJ) rules governing the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231 – 33. It is not clear why DOJ has adopted such a limited definition, as the price information available on the Monroney label would have an equal value for consumers interested in purchasing pickup trucks. DOJ should certainly be prevailed upon to alter its definition to include pickup trucks. Since the original definition was crafted in 1958, certainly the use of the pickup truck to transport people, and even families, has undergone a dramatic shift. It is well past time to revisit these undue limitations on the Monroney sticker.

However, because the section from NHTSA’s statute, above, provides clear and independent authority for NHTSA to require manufacturers to post information on safety at the point-of-sale, we find NHTSA’s position that it is unable to legally require the new labels on pickup trucks just plain wrong. While it may not be able to require that the information be contained on the Monroney label, it clearly could and should require that a separate sticker for pickup trucks display identical information. Although such a move is not compelled by the SAFETEA-LU mandate, which refers to the Monroney label, it would far more accurately capture its spirit and intent than does NHTSA’s proposal to exclude pickup truck purchasers from the pool of informed consumers.

It is simply insufficient to pin the effectiveness of the rule on the hope that manufacturers will voluntarily comply, as NHTSA proposes. It would also be highly irresponsible to do so in light of the clear authority provided in NHTSA’s statute to require that this information be provided on all vehicles.

### *Other Aspects of the Proposal Require Revision*

The NCAP star rating system misleadingly conveys an inherently positive message about all vehicles, even the worst ones, by using stars to illustrate vehicle performance on a rollover propensity test. While such a rating system *may* be appropriate for non-life-threatening aspects of vehicle performance, such as the rate of mechanical failure, it is patently misleading where consumer safety is at stake.

NHTSA should therefore make it explicit on the label that all vehicles receive at least one star, irrespective of how poorly they perform on the tests. Instead of the proposed text, the label should indicate the scoring system as follows “Star ratings range from 1 to 5 stars (\* to \*\*\*\*\*), with 5 being the highest. **The lowest possible score is 1 star, not 0.**” (required changes to text in bold). This emphasis is critical so that consumers fully process information concerning the range of scores available on the test, as it is extremely counterintuitive that any vehicle is awarded one star merely by virtue of being manufactured.

One alternative – far clearer than the use of stars – is for NHTSA to use an A through F (A, B, C, D, F) scale as in school grading systems. This approach would not convey the inherently positive message of the star system, and would be clear to everyone who has ever been in a classroom.

The notice indicates that: “NHTSA has conducted a substantial amount of research, and has found that consumers easily understand the graphical depiction stars.” Yet NHTSA’s research has only glossed over the question of whether grade indicators are more clear. According to the 1997 NAS report, NHTSA’s focus group study used only the three grades of A, B, and C. Participants believed that the three grades were insufficient to express the necessary information, and were confused by the fact that a “C” represented the worst grade. Expanding the letter grade method to a more standard A through F scale would allow more information to be presented in a familiar way without conveying an inherently positive, but misleading, message about inferior vehicles.

We are supportive of NHTSA’s decision to indicate special safety concerns that flow from incidents while testing with an icon highlighting that such a concern exists. Unfortunately, however, NHTSA’s referral of consumers to a Web site will do little to help them understand this concern while at the dealership. Only a paltry number of people have internet access on their person or could easily navigate the complex Web site NHTSA administers to quickly identify this information in a timely manner to inform their purchase. Most will simply note that there is a red flag of some unknown significance and move on.

Section 10307(a)(4)(3) of SAFETEA-LU requires that the label contain “information describing the nature and meaning of the crash test data presented,” which clearly indicates that Congress intended for NHTSA to make the information presented fully comprehensible to someone reading the label. NHTSA should therefore indicate a

brief description of the precise safety concern next to the icon in the same box as the test which triggered the safety concern. It can communicate the required description to the manufacturer in the letter which alerts the company of the NCAP results. Given that the special safety concerns often indicate a risk of serious concern to most consumers, maximum clarity highlighting the nature of this concern is required in order for them to understand the “nature and meaning” of the data as the statute mandates.

NHTSA should also indicate and establish a 1-800 number for consumers seeking additional information. While the vast majority of people visiting a dealership would have no access to the Internet, most will have a cell phone on their person and could call an automated line to hear a fuller explanation of the safety concern. Since there are a limited number of these safety concerns, an automated system with searchable recordings would suffice to provide consumers with an on-the-spot explanation of their concern. A 1-800 number would also be a wonderful way for the agency to connect better with the driving public and to make consumers aware of the Vehicle Owner Questionnaire hotline and other agency services.

This 1-800 number would also allow the agency to disseminate information on vehicles that have been tested but that lack an updated label due to the lag time between label publication and testing data availability. SAFETEA-LU directs the agency to develop a statement for the labels regarding untested vehicles, but does not dictate the comment of that notice. Given that there is considerable delay in NHTSA’s testing of new vehicles, and that the goal of the labeling initiative is to maximize information available to consumers to inform purchase decisions while at the dealership, NHTSA can and should use an automated phone system to better make such information available.

The label should therefore indicate that a vehicle is: **“Unrated at time of publication. Call 1-800-xxxx to check whether ratings are now available on this vehicle.”** This would enable most consumers equipped with cell phones to call directly while at the dealership. Others could also use telephones at dealerships to obtain this information. Given the increase in consumer interest in ratings that is virtually assured to accompany this program, this would also encourage dealerships to remain informed of which vehicles in the showroom had and had not yet been rated, and would enable them to refer consumers to an objective source for updated information. The time currency of this information is part of its inherent value and salience, and every effort should be made by the agency to assure that as soon as tests are publicly available, every potential purchaser may be informed.

NHTSA should also provide, on the footer to the label, the Web addresses of other major sources of reliable consumer information on vehicle testing, such as the Insurance Institute for Highway Safety (IIHS) and Consumer Reports, in keeping with the SAFETEA-LU mandate that the label include “a reference to additional vehicle safety resources.” Given the strong criticism by the GAO regarding the growing inability of NCAP to distinguish the safety performance of vehicles, the salience of other sources of information is undeniable. Consumers should not be encouraged to believe that NCAP tests are the sole data points for their evaluation of the safety of a vehicle, particularly in

light of the fact that NHTSA has declined to conduct a frontal off-set program similar to that of IIHS and recently terminated its fledging effort to upgrade its side impact crash test. *See* 70 FR 75536.

NHTSA should also conform to its mandate to present the information in a manner that is “legible, visible, and prominent” by requiring all type on the label to be at least 12 points font size. Indeed, while the agency notes that space is scarce, under the SAFETEA-LU language the space requirements are clearly identified as “minimum,” not maximum space for the label, and the agency is free to require automakers to place a larger label on the vehicle if it better facilitates consumer comprehension.

The agency’s proposal to allow 8-point font for some explanatory text is contrary to the statutory language, would disadvantage older or disabled consumers, and fails to adequately emphasize the significance for safety of the information being conveyed. NHTSA regulations for other labels, *i.e.*, concerning Automobile Parts Content, *see* 49 CFR § 583.5(d), permit a font size no smaller than 12 points. Surely safety information concerning a passenger or driver’s risk of serious injury or death in a crash deserves equal, if not greater, emphasis on the same label.

For clarity’s sake, NHTSA should also require a background color of white or off-white. While the proposal now requires “a color that contrasts easily with dark text,” this means that NHTSA may have to review labels and their text to ascertain whether this contrast is adequate. It would be far easier for the agency simply to provide certainty in this area by specifying a background color of white or off-white.

In addition, the window between manufacturers’ receipt of the letter notifying the manufacturer of the test results and the requirement that information be put on the label should be reduced from 30 days to 5 or, at the very most, 10 days. Manufacturers attend NCAP tests and receive advance notice of the test results from NHTSA and are often even given a chance to dispute those results, if controversial. Therefore, it is manifestly unwarranted to allow them such a long delay before including that information on the label. Labels with an “unrated” indication will already be planned for each vehicle in a manufacturers’ line; it is therefore an exceedingly simple task to replace this language with the actual test results.

In a vehicle marketplace where sales of new vehicles amount to 17 million each year, thirty days – an entire month – is a very long time in the sales life of a new vehicle, and may involve sales to hundreds, if not thousands, of consumers. There is simply no good reason for NHTSA to permit needless delay in conveying this information.

NHTSA is also undercutting the effectiveness of its program by allowing a mid-model year “revocation” of NCAP testing results should a manufacturer decide to request a re-test of a previously tested vehicle following a design change. In the vast majority of cases in which these re-tests occur, they are no doubt prompted by negative test results or a serious safety concern uncovered by the agency. Yet the re-design may produce results that are no better, or are even worse, than the original results. In the meantime, pending

the delay in conducting the new tests plus the 30-day window, consumers would be deprived of information concerning risks highlighted by the agency's own testing. In such a circumstance, the label "unrated" is inaccurate, is contrary to the statutory language of SAFETEA-LU, and is unnecessarily misleading.

Consumers are certainly capable of understanding that a manufacturer is has conducted a redesign of the model to improve an unsatisfactory result on a previous test. The agency should therefore communicate clearly with consumers about the situation. The label could indicate the pre-model year score and, if applicable, any safety concerns and should further contain text as follows: **"This model has been redesigned and is being retested. Prior test results may or may not apply. To check whether new test results are now available, call 1-800-XXXX."**

In this way, consumers are clearly informed about the status of the test results being displayed and yet are not kept ignorant of a potential serious safety concern related to the previous test results. This text could be contained on all labels until the new results are published by the manufacturer. Again, we believe 30 days is far too long given the minimal adjustment to the label and the manufacturer's advance knowledge of the results, and recommend that this window instead be 5 or 10 days at most.

#### *NHTSA Must Reform NCAP to Address Its Growing Obsolescence*

In April 2005, the Government Accountability Office (GAO) released a comprehensive, and stinging, evaluation of NCAP, *see Vehicle Safety: Opportunities Exist to Enhance NHTSA's New Car Assessment Program*, GAO-05-370, finding that:

- "The usefulness of the current tests has been eroded by changes in the vehicle fleet that have occurred since the program began."
- "Because most vehicles now receive four- or five-star ratings, NCAP tests provide little incentive for automakers to continue to improve vehicle safety and little differentiation among vehicle ratings for consumers."
- Planned upgrades to frontal and side crash tests in safety standards will soon make the current NCAP tests less meaningful.

NHTSA can and must respond aggressively to the growing and threatened future obsolescence of the NCAP program by upgrading its crash test criteria and adding new tests for compatibility, handling or active safety, rollover crashworthiness and pedestrian safety. Sadly, the agency's recent actions in this regard, including its termination of proposed upgrades to the side impact crash test, *see* 70 FR 75536, provide evidence that NHTSA is instead committed to inaction and atrophy.

This is a serious derogation of the agency's clear obligation to maintain current safety information which adequately distinguishes among better and worse safety performers. If the "grade inflation" of the program continues to mean that a majority of vehicles score in the top two ratings on the test, the program will do little to educate consumers or to drive marketplace safety improvements.

NHTSA's 2003 notice terminating the 1981 rulemaking on consumer information indicated in no uncertain terms that the agency was planning changes to the NCAP program, promising "additional ratings are under development for dynamic rollover, braking and lighting." *See* 48 FR 43899. While the agency was required by the Transportation, Recall Enhancement, Accountability and Documentation (TREAD) Act to issue the dynamic rollover rule and thus has done so, nothing has been forthcoming in the three years since in the areas of braking and lighting. Nor has the agency appeared to make any significant progress on the handling program outlined in its notice of proposed rulemaking on the dynamic NCAP program.

Instead, recent news coverage includes quotes from NHTSA spokespersons who acknowledge the GAO findings yet indicate that "NHTSA is not likely to upgrade the [NCAP] program." *See* Thomas, Ken, "Tests Play Catch-Up With Reality," *Chicago Tribune*, Mar. 12, 2006 (citing comments from Rae Tyson for NHTSA). NHTSA is content to merely indicate, in vague terms and without a timetable, that it "may" do something on vehicle handling. *See id.*

As that article notes, the near-ubiquity of high scores on NHTSA's test may be confusing for consumers who notice that the same vehicle earned poor ratings from other crash tests, such as those administered by IIHS. And although the agency terminated its side-impact crash test revision proposal, NHTSA spokesperson Rae Tyson acknowledged in the article that the test "is not capturing some of the most serious types of injuries you get in a side-impact crash." Such failures threaten the very viability of NCAP, and should be cause for revisions to the program on an accelerated schedule. Instead, NHTSA appears content to acknowledge NCAP's serious inadequacies only when and if the agency is asked.

Meanwhile, the European NCAP program continues to expand with public certainty into some of the very areas of shortcomings identified by the GAO: vehicle-to-vehicle compatibility and active safety. In addition, they will soon address whiplash injury in a proposal described as advanced in its development. *See* Lewin, Tony, "Safety Ratings Ready to Expand," *Automotive News Europe*, Jan. 9, 2006 (describing the EU's programs for compatibility, active safety and whiplash).

NHTSA should immediately move to address NCAP's serious deficiencies and must upgrade its crash tests to assure their continued utility. The agency should also begin an urgent consideration of new crash test programs in the areas of active safety, compatibility, pedestrian safety and rollover crashworthiness, including roof crush and ejection potential. It must and should not wait for Congress to require it to act before it fulfills its mandate under the law to develop critically needed safety information, drive safety advances through marketplace mechanisms, and address long-neglected holes in our consumer information on crashes.