



Justice Denied?

Why Federal Preemption in the New Proposal for Vehicle Roof Strength Puts Consumers in Jeopardy and Is Wrong on the Facts

The issue: The National Highway Traffic Safety Administration (NHTSA) in August 2005 issued a new proposal that requires only a very minor upgrade in the strength of vehicle roofs.

The problem: After more than 30 years of inaction, 70 percent of new vehicles will require no change to meet the standard, yet rollover crashes kill more than 10,000 people each year – one-third of all occupant deaths. The proposal is so weak it is projected by NHTSA to save only 11 to 44 lives annually – fewer than one-half of 1 percent of rollover deaths. **The Ford E-250 pictured above would comply with the new proposed rule, yet its occupant, Reverend Lawrence Harris, became a quadriplegic in a rollover crash.**

To make a bad rule worse, the agency's proposal states that compliance with the rule would preempt state tort liability for automakers. **This unprecedented power grab by federal authorities would leave victims uncompensated and remove incentives to improve the safety designs beyond the weak new proposed rule – imposing a ceiling on safety and stripping victims like Rev. Harris of their due process rights under the law.**

The agency's reasons for preemption lack any scientific or policy basis:

1) NHTSA states a higher standard would make vehicles more rollover prone from the heavier roof:

- The Volvo XC-90 far exceeds NHTSA's standard and yet is one of the safest SUVs on the road.
- Advanced steels and other lightweight materials can strengthen roofs without a weight increase.
- NHTSA does not suggest that it would be unsafe to exceed the standard, nor does it provide penalties or disincentives when vehicles do so. NHTSA provides no examples of vehicles with elevated rollover risks due to the weight of the roof.
- NHTSA's data show the impact of weight increases on the center of gravity is immeasurably small.
- Rollover and stability control systems can more than compensate for any small increase in weight.
- If rollovers are significantly more survivable because of a stronger roof, the actual risk of injury is reduced even if there is a marginal increase in rollover propensity.
- The tort system provides the best incentive for automakers to make design decisions that will not increase rollover propensity – an outcome NHTSA's design-neutral standard does not guarantee. By reducing automaker accountability, NHTSA makes vehicles more, not less, dangerous.

2) NHTSA suggests a higher standard would interfere with its "comprehensive" package of rollover safety measures:

- The agency gets it exactly backwards. Without a strong roof, the geometry of safety belts is ruined by roof crush, making them far less effective. Without a strong roof, side windows will shatter and allow side impact air bags to flop out through the broken window, providing little protection and increasing the risk of deadly full or partial ejection. A stronger, not a weaker, roof is required for a successful, truly comprehensive approach to rollover injury reduction.
- A static roof crush standard fails to measure the comprehensive interaction between safety systems in a real-world rollover crash. A dynamic test comprehensively measures the safety protection from the roof, windows, doors, belts and airbags working together.
- The agency's main duty to Congress and the public is to improve motor vehicle safety. Because liability law enhances safety by providing continual incentives to improve, the agency's action violates its core mission.