Testimony of
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on

Vehicle Safety for Children

before the
Consumer Affairs, Insurance, and Automotive Safety Subcommittee,
Senate Committee on Commerce,
Science, and Transportation

February 28, 2007

Thank you, Mr. Chairman and members of the Consumer Affairs, Insurance, and Automotive Safety Subcommittee of the Senate Committee on Commerce, Science, and Transportation, for the opportunity to provide this testimony on the need for improved efforts to protect children from vehicle-related injury. I am Joan Claybrook, the president of Public Citizen, a national non-profit public interest organization with over 150,000 members nationwide. We represent the interests of consumers and ordinary citizens through lobbying, litigation, regulatory oversight, research, and public education.

Child safety issues first gained the spotlight in the 1990s, with the discovery that auto manufacturers were installing cut-rate airbags that were killing children. I had alerted manufacturers in 1980 of research pointing to the need to consider designs and technologies such as top-mounted, vertically deploying airbags, dual inflation, technical folds, and tethers in order to reduce risks to children and small-statured adults, but most automakers failed to follow through on this information. Although automakers had known for a dozen years that the child/airbag relationship was delicate, they neither warned the public against placing children in the front seats nor designed airbags to protect children. Instead, they exploited the discretion granted them by the National Highway Traffic Safety Administration's (NHTSA) broad performance standard and abused it. It took congressional action to force NHTSA to require the automakers to accommodate children in airbag design. This story, unfortunately, is paradigmatic of the child safety issue.

Motor vehicle crashes are the leading cause of death for children ages 3 to 14 in the United States.[1] NHTSA reports that in 2005, 1,946 children were killed and 234,000 children were injured in

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[1] National Highway and Traffic Safety Administration, 2005 Traffic Safety Facts: Children *available at* <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2005/2005TSF/810_623/810623.htm>.

motor vehicle crashes.[2] That means that each day an average of 5 children are dying in motor vehicle crashes while another 640 are injured.[3] Moreover, children are also at serious risk in and around motor vehicles in non-traffic related incidents, and these data are completely missing from state and federal safety databases. In the absence of government data collection, KIDS AND CARS, a national nonprofit safety organization, maintains a database of child fatalities from motor vehicle events other than crashes on the nation's roadways. These non-traffic motor vehicle related events—which include children being backed over by vehicles, being inadvertently left in hot vehicles, being strangled by power windows, and setting cars in motion when left unattended in a vehicle—killed at least 226 children in 2005 alone.[4] (We suspect these numbers could be even higher, because NHTSA does not currently collect non-traffic death and injury data; KIDS AND CARS is the only source for these data.)

What is even more tragic about these bleak statistics is that many of these deaths and serious injuries could have been prevented. When I refer to preventability, let me be clear that I am not blaming parents; instead, I am referring to the failures of industry to design motor vehicles for children and of our federal government to use the resources at its disposal to gather data and set standards to protect children from needless harm. I am sure that we will undoubtedly hear today about the need to educate parents, or that many of the deaths and injuries we will discuss today are attributable to parental neglect. I caution you to reject these arguments, for they are simply the child safety equivalent of the "nut behind the wheel" argument that industry raised for years in order to avoid accepting responsibility for its design failures. We know that children must be driven to school, the doctor, and so on; we know as well that parents do not have fifteen arms or eyes in the backs of their heads, and that children can get into enormous danger in a split second. Vehicles must be designed with some recognition of these simple facts of life, and NHTSA must ensure that they are. As NHTSA and manufacturers continue their pattern of neglect, then we must turn to Congress to make sure children are protected.

I. CHILD SAFETY IS UNDERMINED BY UNNECESSARY INFORMATION GAPS.

A core issue for child safety is how little information is available to guide policy makers and help the public hold NHTSA and the motor vehicle industry accountable. One problem is that information which NHTSA has at its disposal is not readily accessible to the public. For example, a researcher interested in learning the number of children killed in rear-impact crashes or side-impact crashes in a given year cannot find this information through the public interface for NHTSA's Fatality Analysis Reporting System (FARS). NHTSA can and will generate reports from that data, but only upon request.

NHTSA's data gathering systems have focused on injuries and deaths from crashes on the nation's roadways and have never tracked the deaths and injuries related to motor vehicles in non-traffic incidents. The invisibility of non-traffic incidents in NHTSA data has resulted in decades of neglect of several kinds of alarming yet preventable child deaths and injuries, such as backovers in driveways and strangulations in power windows of parked vehicles. Thanks to the enterprising work of KIDS AND CARS, we know much more about the gravity of these risks to children. NHTSA is only now taking the initial steps to begin gathering this kind of data systematically, thanks to Congress's decision in 2005's

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[2] *Id.*

[3] *Id.*

[4] *See* KIDS AND CARS, National Data Base of Non-Traffic Incidents, *available at* <http://www.kidsandcars.org/ >.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) to require NHTSA to do so.

Meanwhile, the agency is undermining our ability to know about potential defects in child safety seats. Outraged by the revelation that NHTSA had known of the Ford-Firestone deaths but failed to act, Congress demanded in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 that NHTSA create an early warning system—a database to alert the public of trends suggesting a potential safety defect. NHTSA has created that system, but it has inexplicably opted in its implementing rule to keep most of that data secret from the public. (In fact, when NHTSA created the database and starting gathering information from manufacturers in 2003, it kept *all* such data secret, pending the outcome of litigation challenging the agency's first rule to exempt the data from public disclosure. After NHTSA lost in court, it returned to the drawing board and proposed a rule that would keeps *most* of this data secret. Meanwhile, at present none of this data is yet available to the public.)[5]

In addition to monitoring NHTSA's efforts to implement the data gathering requirements of SAFETEA-LU, I encourage Congress to hold the agency's feet to the fire on its decision to keep the TREAD Act's early warning data (including data on child safety) a dark secret. I also call on Congress to require the agency to close the information gap by compiling the latest safety data on children and other vulnerable populations (such as seniors and pregnant women) in readily available periodic reports.

II. CHILDREN ARE UNNECESSARILY AT RISK FROM INSUFFICIENT MOTOR VEHICLE SAFETY STANDARDS.

It is no easy task to try to catalogue all the vehicle-related harms that children face. Of course, there are all the risks that are specific to children, such as unsafe booster seats, inadequate child restraints, and vehicle backovers. There are also all the risks that adults face — frontal, rear, side impact, and rollover crashes — which may be magnified for children. I want to focus on a few of the most urgent risks, and I believe it would be useful to group them in three categories: risks children face *inside* the vehicle, those they face *outside* the vehicle, and those they face when they are entrusted to school buses.

A. Protecting Children Inside the Vehicle

Children face a range of harms while they are inside the vehicle—as passengers in cars on the road, and as occupants (often active occupants) in cars that have been parked. I want to focus on a few core issues that are most in need of oversight and legislative action.

1. The Child Safety Gap in Motor Vehicle Safety Standards

Federal motor vehicle safety standards protect all of us, including children, every day. The increase in the number of passenger vehicles and drivers since 1966 is substantial, yet both the number of deaths and the death rate have declined dramatically in the last 40 years. NHTSA's motor vehicle safety standards have played a large role in achieving these savings. Nonetheless, there are significant gaps in existing and developing safety standards: just as manufacturers fail to design vehicles to protect children, NHTSA is not doing enough to develop safety standards that will adequately address the particular needs of children.

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[5] Public Citizen's comments on the latest rulemaking to keep the data secret outline the legislative, rulemaking, and litigation history of this disastrous plan. *See* <http://www.citizen.org/documents/EarlyWarningCBIComments.pdf>.

Side impact crashes. Perhaps the most important example is side-impact crash protection. The current side-impact crash protection standard (FMVSS No. 214) does not address rear occupants. NHTSA proposed in 2004 to amend the side-impact standard to include demanding new tests for front seat occupants, essentially requiring the use of upper and lower interior side impact air bags. The proposed rule's requirements for rear seat occupants, however, are far less demanding and can be met with foam padding instead of dynamic side-impact airbags, which offer greater protection. What does this inadequate proposal mean for children? Simple: parents are instructed to place children in the rear seats, precisely where the current and proposed side-impact standards fail to offer sufficient protection.[6] Moreover, the proposed rule endangers children under 12 who are in the front seat of a vehicle, because side-impact airbags for front seat occupants that comply with the proposed rule still allow children to be ejected from the vehicle. In short, NHTSA's new proposal offers no protection for children whether they ride in the front or back seat.[7] Meeting the needs of children in side impact crashes should be a higher priority, given that side-impact collisions account for 42% of vehicle-related child fatalities for rear-seated children ages 0-8.[8]

Rollover crashes. The safety gap for children also means that weak standards will be doubly weak for children. A significant portion of vehicle-related child fatalities—around 30% of child deaths from motor vehicle crashes—is attributable to rollover crashes.[9] Unfortunately, NHTSA has proposed a standard for roof strength in rollover crashes that will not adequately protect anyone, much less children. Among its problems: it maintains the static platen test, which fails to accurately replicate the damage and forces a vehicle is subjected to during a rollover crash, and its inadequacy will not mitigate the deaths and injuries specifically attributable to the cascading effects of a weak roof, which include the creation of ejection portals when the window glazing fails, belt failure, door retention failure, and injury from the violent intrusion of the roof itself. I look forward to this particular issue being addressed in more detail in the months to come, as this committee conducts oversight of the administration's implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which requires NHTSA to issue roof crush and ejection mitigation standards.

Seat backs. Unmet needs for adult safety protection can put children at particular risk. One case in point is the need for stronger seat backs. In a rear-impact crash, the vehicle's front seats can collapse rearward. The result is not just back injury, paraplegia, and quadriplegia for the front-seat occupant: the rearward collapse of the back of the front seat injures any occupants behind it, in the rear seat. All too often, the rear seat occupants injured or killed in cases of seatback collapse are the vehicle owners' own children. NHTSA does currently have a seat strength standard, but it remains so pathetically inadequate that some believe vehicle seats are held to a weaker standard than lawn chairs. Manufacturers are well

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[6] Consider other deficiencies regarding back seats: we lack reminder telltales alerting drivers when backseat passengers are unbelted, and we have no reminder systems to alert parents that a child has been left in the backseat of a parked vehicle, where the child could overheat and die.

[7] Meanwhile, although it is beyond the scope of child safety issues, it is also worth noting that the 2004 proposal came out before Congress required, in 2005's SAFETEA-LU, that NHTSA upgrade the side-impact standard for occupants in all seating positions. The proposed rule clearly does not meet that test.

[8] Children's Hospital of Philadelphia, *Researchers Release New Findings on Protecting Children in Side Impact Crashes*, Press Release, Sept. 13, 2005.

[9] From 1993 to 1998, 31.8 percent of children who died in motor vehicle crashes died in rollovers. *See* F.P. Rivera, P. Cummings & C. Mock, *Injuries and Death to Children in Rollover Motor Vehicle Crashes in the United States*, 9 INJURY PREVENTION 76 (2003).

aware of the dangers of seat back failures in crashes,[10] and NHTSA is likewise aware[11]—although it nonetheless aborted its proposal in 2000 to remedy the problem.[12] Congress must insist that NHTSA make necessary updates to this important rule.

2. Child Restraints

The revolution that was supposed to fill, or at least bridge, this safety gap for the youngest children was the widespread use of child restraints and booster seats. Child restraints have definitely had a positive effect on child safety, even when they are misused. Nonetheless, there is much more NHTSA can do to improve child safety by focusing its safety and consumer information programs on child restraints.

The Need for Safety Standards

Under FMVSS 213, the only test child safety restraints must pass is a standard for 30 mile per hour frontal impact crashes. Children are at risk in all crashes, not just frontal-impact crashes. For example, side-impact collisions account for 42% of child fatalities for rear-seated children ages 0–8,[13] and on average 32% of children killed in motor vehicle crashes die in rollovers.[14] Federal motor vehicle safety standards are designed to ensure that our motor vehicles meet a very basic level of safety and are capable of protecting occupants from common crashes and other safety concerns. Is it unreasonable to expect these standards to require basic protections for children, the most precious cargo our vehicles will ever carry, in common vehicle crashes?

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[10] Internal GM documents obtained by CBS News reveal that General Motors (GM) knew of the dangers of weak seats in 1966. *See* CBS, "Collapsing Car Seats," Nov. 19, 2002. Also, in a recent court case, a former Chrysler manager responsible for minivan safety issues testified that his investigation team determined that Chrysler seat backs needed to be redesigned. Chrysler, however, did not redesign the seats and disbanded the investigation team. Experts at the trial also testified that minivan seats collapsed in nearly every rear impact crash test that Chrysler conducted. In the case, the jury ultimately awarded $105.5 million to the parents of an infant who died when the seat back collapsed and a family friend was thrown backward into the child. *See* R. Robin McDonald, *$105 Mil. Verdict Returned Over Minivan Seats*, THE LEGAL INTELLIGENCER, Dec. 2, 2004.

[11] NHTSA has long acknowledged the need to improve federal seating system requirements. Over 30 years ago, NHTSA proposed a rulemaking that would address seating system safety and consolidate FMVSS No. 202 "head restraints" and No. 207 "seating systems." Most recently, in a 2000 Notice of Proposed Rulemaking (NPRM), NHTSA stated that in crash tests the agency conducted "the values of head and neck injury criteria… were much higher than acceptable thresholds. Direct contact of the head of the dummy with the interior of the vehicle compartment, which occurred when the front seat rotated backward excessively due to the high impact, contributed to these high values." 65 Fed. Reg. 67,702. Additionally, fuel integrity crash tests revealed significant seat back failures that caused the front seat occupants to become projectiles into the rear seat. However, to this day, the agency has not updated federal safety standards to adequately protect occupants from seat back failure.

[12] NHTSA spokesman Rae Tyson stated that "the seatback rulemaking was terminated for the simple reason that we believe it may be wiser to approach the seat as part of an integrated unit rather than treat it as a separate part." Jeff Plungis, *$106 Million Judgment Against Chrysler and New Safety Studies Intensify the Debate Over Federal Standards*, DETROIT NEWS, Dec. 19. 2004. This is what NHTSA proposed to do in 1974. It appears that the agency has dragged its feet hardly an inch in three decades.

[13] *See* Children's Hospital of Philadelphia, *supra* note 8.

[14] *See* Rivera *et al.*, *supra* note 9.

In 2000, Congress instructed NHTSA in section 14 of the TREAD Act to initiate a rulemaking on side-impact crash test standards for child restraints, which was supposed to be completed two years later. After considering the issuance of such a rule NHTSA decided that more research was necessary and then promptly abandoned the rulemaking it was explicitly required to complete. Congress never authorized NHTSA to abandon this rulemaking. Congress must ensure that NHTSA does not continue to stall on this important issue but instead pushes forward with research and the timely issuance of a much needed standard.

In addition to failing to issue safety standards for child restraints in even the most basic of vehicle crashes, NHTSA also fails to guarantee that child restraints are safe and appropriate for the upper age/size range recommended to use them. FMVSS 213, the only standard applicable to child restraints, which includes booster seats used by older children, is severely limited because it tests safety seats only for children weighing up to 65 pounds, even though booster seats are recommended for children up to 80 pounds.[15]

Finally, it is essential for NHTSA to issue standards for child restraints for the crash types discussed above, while including a full range of representative child test dummies, including the 10-year-old child test dummy for children up to 80 pounds which the agency has developed but not included in performance standards. Currently, the one standard test required for child restraints only requires child restraints to perform adequately in frontal crash tests at 30 miles per hour. This is dangerously inadequate. NHTSA must also test child safety seats in side-impact, rear-impact, and rollover crashes in order to guarantee that children are properly protected.

The Need for Built-In Restraints

Properly installed child restraints can reduce the chance of a fatality in a vehicle crash by 71 percent for infants and by 54% for children 1-4 years old.[16] A recent NHTSA study that evaluated the effectiveness of a new standardized installation method, however, found that many parents still improperly install child restraints in vehicles.[17] Child car seats are the only consumer product mandated by law that requires a 32-hour training course to learn how to install correctly.

In 2002, a new safety technology known as LATCH (Lower Anchors and Tethers for Children) became mandatory in new vehicles. NHTSA mandated these new child restraint attachment standards in order to end confusion about installation methods and to help parents safely install restraints for their children. In December 2006, however, NHTSA released a final report on the study it conducted to evaluate the LATCH system. The results show that the system is so confusing that many parents and caregivers are not properly using the system, and the need for education about the system is great.[18]

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[15] For more information about children in this vulnerable category, see Public Citizen, *The Forgotten Child: The Failure of Motor Vehicle Manufacturers to Protect 4- to 8-Year-Olds in Crashes* (April 2002).

[16] National Highway and Traffic Safety Administration, 2005 Traffic Safety Facts: Children *available at* <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2005/2005TSF/810_623/810623.htm>.

[17] Lawrence E. Decina, Kathy H. Lococo, and Charlene T. Doyle, *Child Restraint Use Survey: LATCH Use and Misuse*, National Highway Traffic Safety Administration, December 2006.

[18] National Highway Traffic Safety Administration, *LATCH Child Safety Seat System Confusing Says NHTSA Study*, News Release, December 12, 2006.

To NHTSA's credit, the agency has acknowledged that there is a widespread problem with poor child restraint installation, and it has promised to work to eliminate this confusion so that all children can be properly restrained in vehicles.[19] Working to educate people about proper installation methods, however, does not go far enough to address the many installation difficulties and confusion surrounding child restraint systems. Only with built-in child restraint systems can parents avoid the problem of mis-installation.

Built-in child restraint systems, also known as integrated child restraints, when combined with 5-point harness systems are the most effective way to safely restrain children in motor vehicles. Currently, integrated child restraints can accommodate children other than infants over the age of one. Their mandatory installation in all new vehicles would eliminate widespread restraint mis-installation problems for forward-facing seats, ensuring that children over the age of one are properly restrained in motor vehicle crashes.

Furthermore, integrated child restraints would ensure easy notification if a safety defect is discovered. Currently, child seat purchasers must register themselves for notice in case of a recall, in contrast to the automatic registration that takes place when a vehicle is purchased. Built-in restraints eliminate the need for self-registration, which can reduce parents' likelihood of receiving timely recall notification.

Finally, integrated restraints would instantly make it possible that child safety seats could be included in all the safety standards for which the vehicle is tested.

The Need for Consumer Information

In the absence of any requirement for integrated child restraints, NHTSA should at a minimum provide consumers more information about the child restraints on the market. The New Car Assessment Program (NCAP), which NHTSA launched under my watch in 1978, provides consumers information about vehicle performance under conditions which are more stringent than those used for safety standards. NCAP has been quite successful in creating market incentives for manufacturers to improve safety. Additionally, NCAP's most important success has been in educating consumers about the safety of available vehicles, empowering consumers to make educated choices about the vehicles they choose to purchase for themselves and their families.

Despite NCAP's importance to consumers and the program's success at motivating manufacturers to strive for higher safety ratings, NHTSA has failed to include child restraint systems in its NCAP testing. The only evaluation rating NHTSA conducts on child restraint systems for consumers is an ease-of-use rating. Although important for consumers, the ease-of-use rating should not be NHTSA's top rating priority for child restraints when the safety of these restraint systems is left unevaluated. NHTSA's failure to test child restraints through the NCAP program leaves parents and caregivers at a great loss and children at great risk. Parents and caregivers are denied information necessary to make safe and educated decisions about the restraint systems they choose, and a valuable opportunity is squandered to encourage manufacturers to build safer restraint systems. (Of course, with built-in child restraints, the child systems would be tested every time the vehicle itself is put through its paces.) NHTSA should inform consumers about child restraint performance in frontal, side, rear, and rollover crashes.

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[19] Nation's Top Highway Safety Official Calls on Manufacturers, Retailers and Consumer Groups to Make Child Safety Seats Easier to Install, NHSTA news release

Europe and Japan administer programs similar to NCAP in order to inform consumers about the safety of available vehicles.[20] In both of these programs, child restraints are tested, and consumers are provided with a safety rating system that informs them of the different products' safety performance levels.[21] In Europe, child restraints are tested and rated in both frontal and side impact crashes, and in Japan child restraints are tested and rated in frontal impact tests.[22] Although it would be ideal for these programs to test and rate child restraint performances in a greater variety of crash scenarios, these programs are still admirably providing people with an important and necessary service. If Europe and Japan can provide their citizens with this valuable safety information, the United States can do so as well.

3. Power Windows and Strangulation

Child safety is not a static issue: as motor vehicle technology develops and evolves, potential safety hazards themselves evolve. Power windows are a case in point: as this technology has added convenience, it has also added risk. Power windows pose a serious threat to children who, time and again, are killed or injured when they are trapped in a power window as it rises.

Congress moved forward to force NHTSA to address one factor of this risk. In the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Congress required all power window switches in motor vehicles to have safer pull-up designs rather than the dangerous rocker or toggle switch designs. The risk from rocker and toggle switches was that children would unintentionally engage the window by pushing on the switch and then kill or injure themselves from the rising window.

These new switches, however, will not completely eliminate the risk of a child being injured or killed by a power window. Even with safer designs for window switches, children are still at risk if someone begins to close a power window without realizing that the child's head or other body part is in the way of the rising window. A child has been killed by a power window every month for the last three months: one in Canada this month, one in New Mexico last month, and one in Detroit in December. The Detroit incident is particularly noteworthy because the vehicle involved was a Pontiac Vibe, which has the safer power window switches. (In fact, protecting children from being trapped in power windows could also protect adults in some cases—such as, for example, the Illinois paramedic who was injured when his arm was trapped in the window of a vehicle attempting to drive around an ambulance.[23])

One solution to prevent these tragic injuries and deaths is to require automatic reversal technology in power windows when the window meets an obstruction. Automatic reversal technology would ensure that power windows would reverse direction whenever they detect a trapped object. This simple, lifesaving technology is already widely available throughout Europe, and it is even included as a feature in many of the same vehicle models that do not include this feature in the United States.

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[20] Vehicle Safety Opportunities Exist to Enhance NHTSA's New Car Assessment Program, Government Accountability Office, April 2005.

[21] Japan NCAP: http://www.nasva.go.jp/mamoru/english/2006/child/howto.html; European NCAP: http://www.euroncap.com/content/safety_ratings/ratings.php?id1=6.

[22] *Id.*

[23] *See* EMS Network, *Woman Assaults Paramedic With Car—Illinois*, Dec. 5, 2006, *available at* <http://www.emsnetwork.org/artman/publish/article_24279.shtml>.

Currently pending in the Senate and the House of Representatives, the Cameron Gulbransen Kids and Cars Safety Act of 2007 would address this need with a requirement for a performance standard that could be met by auto-reverse technologies.

4. Brake-Transmission Shift Interlock

Another danger children face in motor vehicles is the risk of shifting a parked vehicle into gear and causing it to roll away and crash. Since 1998, over 100 children have died in vehicle roll-away incidents, though this statistic is likely an undercount.[24]

A proven way to prevent roll-away incidents is with Brake-Transmission Shift Interlock (BTSI), a basic safety feature for automatic transmission vehicles that requires the brake pedal to be depressed before the driver can shift out of park. Since most children cannot reach the brake pedal, BTSI prevents them from putting the vehicle into gear, thus preventing the vehicle from rolling and crashing. NHTSA has recommended since 1980 that manufacturers include BTSI in all vehicles, yet to date only about 80 percent of new vehicles include this necessary safety feature.[25] Additionally, many of the vehicles that do include BTSI do not include BTSI versions that work in all ignition key positions.

Since the 1980s, auto manufacturers have opposed mandatory BTSI standards and have attempted to avoid them by proffering voluntary standards. Voluntary standards rarely work and are often just a tactical delay employed by manufacturers to avoid regulations. Automakers' repeated failure to include BTSI in all vehicles is another example that voluntary standards are unreliable, subject to manufacturer caprice, set without a public process, and not subject to compliance requirements.

The Cameron Gulbransen Kids and Cars Safety Act of 2007 would require that BTSI be included in the vehicle safety standards for all light vehicles and in all ignition key positions.

B. Protecting Children Outside the Vehicle

Children also face serious vehicle-related hazards outside the vehicle. We are familiar, of course, with backover deaths, which occur when a parent is backing out a driveway and cannot see a child who has appeared in the path of the car. Children are also, like all of us, exposed to potential danger as pedestrians. Further action is needed to protect children from these risks.

1. Improving the Driver's Ability to See Children in the Path of the Vehicle

Drivers must be able to view the environment in which they are operating their vehicles. It is a simple premise, one that takes on a tragic dimension when children are hurt or killed simply because the driver could not see them.

Among the dangers vehicles pose to child pedestrians are backover incidents. Backovers occur when a motor vehicle backs up and hits or rolls over a child. These terrible tragedies occur because drivers can't see the children behind their vehicles. Many light trucks and SUVs have blind zones behind the vehicles that can be startlingly large: in fact, the latest Consumers Union analysis shows that the worst offender is the 2006 Jeep Commander Limited, which has a blind zone of 44 feet for a driver who is

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[24] Automakers Agree to Add Break-to-Shift Interlocks The Safety Record September/October 2006, Volume 3 issue 5

[25] *Id.*

5 feet 8 inches tall, or 69 feet for a driver 5 feet one inch tall.[26] Dozens of children could fit in such a large blind zone and be hidden from the driver's view.

Because of NHTSA's historical failure to assess these risks, we have relied on other sources to reveal the magnitude of the problem. KIDS AND CARS has found evidence pointing to 100 children killed in backovers each year, and the Centers for Disease Control and Prevention report 7,500 children treated in hospital emergency rooms between 2001 and 2003 for backovers.[27] NHTSA has subsequently confirmed the gravity of this risk in a November 2006 report (which was mandated by SAFETEA-LU) on technology designed to prevent backover incidents from occurring. NHTSA concluded that, every year, thousands of children are injured and at least 183 people die in backovers. The study also found that camera-based detection systems were much more effective than sensor-based systems at helping drivers detect child pedestrians behind their vehicles.[28]

Children are also at risk precisely where everyone assumes they must be most visible: in *front* of vehicles. Especially with the rise in popularity of large SUVs, drivers cannot see the area immediately in front of them, which puts small children in intersections and driveways at increased risk.

Children are like the canary in the coal mine, their heightened risk alerting us to a problem that affects all of us: the need for standards to secure drivers' ability to see the environment in which vehicles are operated. When I was the administrator of NHTSA, I supervised the completion of a decade-long effort to develop a conspicuity standard. I issued this standard in 1980, but it was revoked before it could take effect. NHTSA has not relaunched the rulemaking in the 20 years since.

The Cameron Gulbransen Kids and Cars Safety Act of 2007 would require a performance standard for rearward visibility to help end the tragedy of backovers. In addition to a rearward visibility standard, however, Congress should require NHTSA to issue a general conspicuity standard. Clearly, the importance of driver visibility has been recognized for sometime, and the issuance of a new standard is long overdue.

2. Improving Protection for Child Pedestrians

In 2005, 339 child pedestrians were killed, and an estimated 16,000 child pedestrians were injured.[29] In addition to visibility standards, NHTSA also needs to address the design of motor vehicles, which through proper engineering can minimize the injuries inflicted on pedestrians hit by a moving motor vehicle.

In Japan and Europe, motor vehicles are routinely tested and rated for their performance in crashes with pedestrians. Vehicles receive stars based on their ability to inflict the least amount of possible injury on a pedestrian. These ratings, which are a part of Europe and Japan's New Car Assessment Programs (NCAP), help to encourage auto manufacturers to invest in design and technology innovations for pedestrian safety. Additionally, the European Union has also issued a pedestrian safety

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[26] *See* Attachment 1.

[27] *See id.*

[28] NHTSA's report is not, despite this positive conclusion, the last word on backover issues. See Attachment 3 for safety groups' response to NHTSA's inexplicable conclusions that backover avoidance technologies, such as cameras, are somehow other than cost-effective.

[29] NHTSA Traffic Safety Fact Sheet 2005 Child Safety

directive, in which European, Japanese, and Korean (but not, notably, U.S.) auto manufacturers have agreed to voluntarily improve pedestrian protections in their vehicles.

Although a voluntary agreement is inadequate to address the importance of pedestrian safety (and European safety groups, accordingly, are advocating mandatory pedestrian safety standards), the European Union is still taking greater steps to address the importance of pedestrian safety than the United States. Pedestrian protection is not rocket science: numerous technologies already exist which auto manufacturers could incorporate into new vehicles, such as sensor systems that detect pedestrians and automatically reduce vehicle speeds and vehicle hoods that give way, thereby reducing impact forces, when they collide with pedestrians. I challenge Congress to follow the lead of the rest of the world by taking a far more aggressive stand against the dangers vehicles pose to pedestrians. Congress should instruct NHTSA to issue safety standards to protect all pedestrians, including children.

C. Protecting Children on School Buses

We have NHTSA safety standards to thank for the nationwide implementation of safety features that school buses have enjoyed for so long it is difficult to remember a time without them. Among the important safety features are the stop sign arm that extends out when the bus is loading or unloading children and improvements to fuel tanks. The statistics bear out these benefits: according to NHTSA, between the years of 1990 to 2000, an estimated 26,000 school buses crashed each year, with only 10 children dying and 9,500 children being injured each year.[30]

The leading safety feature on school buses for several decades has been *compartmentalization*: the design of the seats as compartments that contain children in a crash. Historically, compartmentalization has served as an effective safety measure in frontal school bus crashes; however, in other crash modes, children have been left unprotected and unrestrained. For compartmentalization, seats are positioned close together so that in frontal crashes children impact into deformable seatbacks that absorb the impact force. In other crash modes, such as side impacts and rollovers, compartmentalization is ineffective and children can be thrown around the bus and hit their heads on unpadded structures. In crashes of this nature, specially designed restraints can be effectively used to protect children, but no federal standard exists to require restraints in school buses.

Currently, states have been left to themselves to develop laws for school buses, with no guidance from the federal government. The only federal standards regulating school bus crashworthiness require occupant protection only in frontal crashes, and even for frontal crashes the standards do not require dynamic testing with child dummies.

In the absence of federal guidance, the states are embarking upon their own policy plans, with the result that we are on the brink of seeing a confusing mish-mash of different laws in all of the states, rather than one uniform law that provides comprehensive safety for all child passengers. At this point there are five states with school bus seat belt laws, including Florida, where most safety advocates fear that the law will cause more harm than good. Restraints cannot simply be retrofitted into existing bus designs.

State policymakers have requested guidance from NHTSA on developing these laws, but NHTSA has declined to offer any assistance, claiming that three years (minimum) of research and development are necessary before any recommendations can be made. The federal government's failure to address this issue is unacceptable.

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[30] School Bus Restraint Study National Highway Traffic Safety Administration, 2000 PowerPoint presentation.

The only way to ensure that children are safe in school buses is to pass comprehensive federal standards that will protect children in all crash modes and require appropriately designed restraint systems in all school buses. With states left to themselves to develop these regulations on a state by state basis, the country will be left with an inconsistent hodgepodge of school bus restraint systems, which would hinder and confuse school bus safety developments

III. CONGRESS MUST IMPROVE NHTSA'S CAPACITY TO PROTECT CHILDREN.

I want to conclude by reiterating the very important role NHTSA has played and should be playing in improving safety for children, and for us all, in and around motor vehicles. I have advocated for motor vehicle safety improvements for 40 years, from the very birth of NHTSA to today. We cannot ever forget how far we have come from the time that people were routinely impaled by steering columns and air bags were an achievable but nonetheless neglected safety technology. After 40 years of being caught in a tug of war between industry interests and its statutory mission, NHTSA still has much to do to protect the public, especially children. Unfortunately, this important agency has been pulled away from its mission and stuck in a morass of analyses, reviews, and indifference for far too long.

If Congress expects that this hearing, or the Cameron Gulbransen Kids and Cars Safety Act of 2007, will result in a renewed dedication to child safety, then it will have to take additional steps to improve NHTSA's capacity to meet these compelling needs. Throughout my testimony, I have already identified many specific steps that are needed to address particular issues for children. What I want to address now is the bigger picture: what Congress can do to ensure that any of the specific remedies discussed so far will actually result in improved protections for children.

Most important, of course, is that NHTSA needs funds for testing and analysis of child dummies and the development of performance tests for needed safety standards. Moreover, as we have found repeatedly over the years, NHTSA also needs specific mandates and clear deadlines in order to make issuance of new or improved standards a real priority. I would like to conclude by discussing a factor that Congress will need to address but which often goes unmentioned: the need to shield the agency from the political interventions of the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget.

Although Congress delegates authority to act directly to the Department of Transportation, which acts through NHTSA to meets its safety obligations, the White House has for over 20 years asserted the right to interfere with that delegation and impose its political priorities in the rulemaking process. Through Exec. Order No. 12,866, the successor to Exec. Order No. 12,291, the White House arrogates to itself the power to weaken or eliminate proposed motor vehicle safety standards, power it executes by requiring the agency to submit its draft regulations to OIRA.

OIRA has long stood in the way of improved motor vehicle safety. For example, OIRA ordered NHTSA to weaken its proposed rule for tire pressure monitoring systems—the telltales that alert drivers whenever their tires are dangerously underinflated. Although Congress required NHTSA to mandate a TPMS that alerts drivers whenever a tire is underinflated, OIRA intervened to force the agency to produce a weak rule that would fail to alert drivers whenever all four tires were underinflated or if two tires diagonal from each other were underinflated. OIRA's interference has resulted in unnecessary harm to the nation's motoring public and litigation that is still being waged to force the agency to do what Congress told it to do.

I fear that, even if the Cameron Gulbransen Kids and Cars Safety Act of 2007 were passed, and even if Congress were to require NHTSA to address the other issues I have identified, children will still be in unnecessary danger because of the political machinations of OIRA. The White House signaled its

hostility to any further improvements in safety standards by nominating Susan Dudley, an anti-regulatory extremist from the industry-funded Mercatus Center, to head OIRA. Dudley has been no friend to motor vehicle safety; in fact, she opposed advanced air bag standards, based incredibly on the argument that if consumers truly valued air bag protections they would have already compelled recalcitrant auto makers to install them.[31] Dudley's history of regulatory comments and other public pronouncements has led me and others in the public interest community to conclude that she would, as OIRA administrator, demand the impossible of agencies, standing in their way until they prove a case for regulating that Dudley will ensure cannot be proven.

Although the Senate wisely declined to allow Dudley's nomination to leave committee in the 109th Congress, the White House decided to renominate her in the 110th—and to put her in office through the backdoor, while her nomination is officially pending, as an appointed "senior advisor." The Bush administration then moved to give her even more power by releasing, on January 18, Exec. Order No. 13,422 and the Final Bulletin on Good Guidance Practices. These proclamations, combined, give OIRA the power to review not just regulations but also "guidance," an amorphous category of agency information that apparently includes any "pronouncement about the conditions under which [an agency] believes a particular substance or product is unsafe."[32] The new order and bulletin give Dudley a powerful new ax she can use to chop this Congress off at the knees.[33] Whatever this Congress decides to do for the important issues of the day—global warming, fuel economy, and, yes, child safety—Dudley will be able to undo.

CONCLUSION

Members of the subcommittee, I thank you for this opportunity today to testify on these critical needs of children for improved motor vehicle safety. I am eager to address your questions.

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[31] *See* Public Citizen & OMB Watch, *The Cost Is Too High: How Susan Dudley Threatens Public Protections* (Sept. 2006), *available at* <http://www.citizen.org/documents/dudleyreport.pdf>.

[32] OMB, Final Bulletin on Good Guidance Practices, *available at* <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-07.pdf>, at 10

[33] More information is included in Attachment 2.

Attachment 1
Consumers Union Release on
Blind Zones

Testimony of
Joan Claybrook,
President, Public Citizen,
and Former Administrator, National Highway Traffic Safety Administration,

on

Vehicle Safety for Children

before the
Consumer Affairs, Insurance, and Automotive Safety Subcommittee,
Senate Committee on Commerce,
Science, and Transportation

February 28, 2007

Consumer Reports
PUBLISHED BY CONSUMERS UNION

NEWS

FOR IMMEDIATE RELEASE

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CONSUMER REPORTS RELEASES NEW VEHICLE BLIND ZONE DATA, LISTING 2006 JEEP COMMANDER LIMITED AS WORST OVERALL

_CR_ cautions: the area behind your vehicle can be a danger zone for youngsters

YONKERS, NY — *Consumer Reports'* latest examination of vehicle blind zones—the area behind a car or truck that's hidden from the driver's view—shows that the 2006 Jeep Commander Limited ranks as the worst vehicle overall.

Consumer Reports measured the blind zone behind the Commander at 44 feet for a driver who is five feet, eight inches tall and a stunning 69 feet for a shorter driver (five feet, one inch tall) with all three rows of seats raised. The Commander's blind zone is considerably larger than that for other midsized and large sport-utility vehicles (SUVs).

Until now, the vehicle with the worst blind zone in *Consumer Reports'* tests was the 2002 Chevrolet Avalanche 1500, a pickup truck, which had a blind zone of 29 feet for a five-foot, eight-inch driver and 51 feet for a five-foot, one-inch driver. But the redesigned, 2007 Chevrolet Avalanche LT has no blind zone when equipped with the optional rearview camera. Without the camera, the vehicle had a 31-foot blind zone for a five-foot, eight-inch driver and 50 feet for a short driver. The Commander also offers an optional rearview camera, which *CR*'s test vehicle lacked. This camera can significantly reduce or eliminate the blind zone.

To help consumers understand how large some blind zones are, *Consumer Reports* has been measuring the blind zones on vehicles that it tests and rates since 2003. *CR's* database now covers about 200 vehicles from model years 2002 through 2007. To measure the blind zones, a 28-inch traffic cone was positioned behind the vehicle at the point where the driver could just see the top. This cone simulates the height of a small child.

"*Consumer Reports* findings illustrate that the danger of vehicle blind zones correlates with the use of large SUVs, minivans and pickups trucks as common family vehicles. Consumers must be cognizant of this danger—and the value of rearview cameras—when going out to purchase a new vehicle," said Don Mays, senior director for product safety and consumer science at *Consumer Reports.*

Kids and Cars, the safety group, estimates that more than 100 children were killed by vehicles whose drivers simply could not see them in the blind zone behind the vehicle. According to the Centers for Disease Control and Prevention in Atlanta, nearly 7,500 children were treated in United States emergency rooms between 2001 and 2003 for backover injuries. Many of these incidents could have been prevented if drivers had a way to see or detect what is behind them while backing up. Every vehicle has blind zones. Side and rearview mirrors are insufficient to combat them. *Consumer Reports* tests show that, in general, the longer and higher the vehicle, the bigger the blind zone is likely to be.

There are no federal government requirements for backup warning sensors or rearview cameras on any passenger vehicle sold in the United States

"Unfortunately, the few vehicles that now come with this technology are higher-end models, and most devices are available as an extra-cost option—often requiring the purchase of other equipment like an expensive navigation system," said Sally Greenberg, senior product safety counsel for Consumers Union in Washington, D.C. "We believe that backup technologies, such as rearview cameras are essential, and should be a requirement by federal law. Their cost is small compared to the cost of a child's life. And once this technology becomes standard equipment in vehicles, systems will become more economical for manufacturers to produce."

"Without these devices, parents and families will continue to suffer the terrible tragedy of accidentally backing over a child," Greenberg said. "That is why it is critical that Congress pass the Cameron Gulbransen Kids and Cars Safety Act of 2005—to require a rearward visibility standard that will provide drivers with a means of detecting a child behind the vehicle."

Consumers who wish to improve the safety of their current vehicle can add an aftermarket rearview camera. *Consumer Reports* tests have shown that most work well. Such cameras typically cost several hundred dollars and are best installed by a professional.

To learn more about the vehicle blind zones, and see measurements for models tested by *Consumer Reports*, visit **www.ConsumerReports.org**.

Consumer Reports is one of the most trusted sources for information and advice on consumer products and services. It conducts the most comprehensive auto-test program of any U.S. publication or Website; the magazine*'s* auto experts have decades of experience in driving, testing, and reporting on cars. To subscribe to *Consumer Reports*, call 1-800-234-1645. Information and articles from the magazine can be accessed online at **www.ConsumerReports.org**.

— 30 —

OCTOBER 2006

Consumer Reports
PUBLISHED BY CONSUMERS UNION

Consumer Reports Tested

Best & Worst Rear Blind Zones

Vehicle Class:	Driver Height:	Best:	Worst:	Average:
Small Sedans	5' 8"	2006 Subaru Impreza 2.5i (6')	2003 Suzuki Aerio GS (23')	12’
	5' 1"	2006 Subaru Impreza 2.5i (11')	2003 Suzuki Aerio GS (49')	24’
Midsized Sedans	5' 8"	2006 Hyundai Sonata GLS (9')	2005 Cadillac STS (21') 2004 Ford Taurus SES (21') 2005 Mitsubishi Galant GTS (21')	13’
	5' 1"	2004 Acura TSX (12')	2006 Mercury Milan (35')	22’
Large Sedans	5' 8"	2003 Lexus LS430 (9')	2004 Audi A8L (20')	12’
	5' 1"	2003 Lexus LS430 (16')	2006 Cadillac DTS (30')	22’
Wagons & Hatchbacks	5' 8"	2004 Chevrolet Aveo LS (5')	2005 Chevrolet Malibu LS Maxx (17')	10’
	5' 1"	2004 Chevrolet Aveo LS (10')	2005 Chevrolet Malibu LS Maxx (23')	16’
Small SUVs - Four Door	5' 8"	2006 Subaru Forester 2.5X (9')	2003 Honda Element EX (18') 2006 Toyota RAV4 Base (18')	13’
	5' 1"	2006 Subaru Forester 2.5X (12')	2003 Honda Element EX (35')	21’
Midsized SUVs	5' 8"	2004 Volkswagen Touareg (11')	2006 Jeep Commander Ltd. (44')	18’

	5' 1"	2005 Nissan Pathfinder LE (18')	2006 Jeep Commander Ltd. (69')	29’
Large SUVs	5' 8"	2002 Toyota Sequoia Ltd. (14')	2004 Dodge Durango Ltd. (19')	17’
	5' 1"	2004 Dodge Durango Ltd. (24') 2004 Nissan Armada LE (24')	2007 Chevrolet Tahoe (38')	27’
Minivans	5' 8"	2005 Dodge Grand Caravan SXT (12')	2005 Saturn Relay FWD (19')	15’
	5' 1"	2004 Ford Freestar SEL (16')	2005 Toyota Sienna XLE (28')	26’
Pickups	5' 8"	2005 Nissan Frontier LE (16')	2004 Ford F-150 XLT (34')	23’
	5' 1"	2005 Dodge Dakota SLT (24')	2007Chevrolet Avalanche (50')	35’
Coupes	5' 8"	2003 Hyundai Tiburon GT (10')	2005 Chevrolet Cobalt SS (23')	15’
	5' 1"	2004 Mazda RX-8 (19') 2006 Honda Civic Si (19')	2005 Chevrolet Cobalt SS (32')	23’

In this chart *Consumer Reports* identifies the length, in feet, of the blind zone for each listed vehicle. The distance noted is how far behind the vehicle a 28-inch traffic cone had to be before the person, sitting in the driver's seat, could see the cone’s top by looking through the rear window. Distances are provided for vehicles that are currently sold with no major changes from the vehicle *CR* tested. This chart does not include tests performed on vehicles using rear view camera systems, either standard or optional.

Attachment 2
Information on
New Executive Order and Guidance Bulletin

Testimony of
Joan Claybrook,
President, Public Citizen,
and Former Administrator, National Highway Traffic Safety Administration,

on

Vehicle Safety for Children

before the
Consumer Affairs, Insurance, and Automotive Safety Subcommittee,
Senate Committee on Commerce,
Science, and Transportation

February 28, 2007

Latest White House Power Grab Puts Public at Risk

Problems of the Jan. 2007 Executive Order and Bulletin on Guidance

January 2007

The White House released a double whammy attack on the public interest on Jan. 18, 2007: (1) a new executive order increasing burdens on the regulatory process, and (2) a final bulletin creating new burdens on agencies ability to inform the public. Together, this double whammy is an enormous challenge to the ability of the federal government to protect and inform the public.

Market Failure… and New Excuses for Failing the Public

The White House already demanded, under Exec. Order No. 12,866 (1993), that agencies state the reason for a new regulation in an economic impact assessment. The new Bush executive order now changes the language, putting the spotlight on "market failure" as the chief rationale — and adding that the purpose of the justification is "to enable assessment of whether any new regulation is warranted."

Exec. Order No. 12,866	Revised Text
Each agency shall identify	Each agency shall identify in writing
the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action)	the specific market failure (such as externalities, market power, lack of information) or other specific problem that it intends to address (including, where applicable, the failures of public institutions) that warrant new agency action,
as well as assess the significance of that problem.	as well as assess the significance of that problem,
	to enable assessment of whether any new regulation is warranted.

Market failure is an economics term describing situations in which private markets, left to themselves, fail to bring about results that the public needs. This order, however, will be enforced by Susan Dudley, the radical extremist that the White House is setting up for a recess appointment to become the administrator of the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget. Based on an evaluation of Dudley's record in a report released last year, Public Citizen has concluded that, in her hands, the market failure provision will become a barrier to the protections that the public needs.

Deputy Dudleys in Every Agency

Although Congress delegates power directly to the agencies themselves, thereby diffusing authority throughout the executive branch and preventing any single office from becoming all-powerful, the White House has claimed yet more power to control agencies and distort regulatory policy with political goals. The new executive order commands every agency to designate a presidential appointee to serve as the "Regulatory Policy Officer." Agencies will not be allowed to add new regulatory initiatives to their annual plans without the approval of the new officer.

Putting Industry Costs Above the Public Interest

The new order requires agencies to develop annual plans for upcoming rulemakings that identify "the combined aggregate costs and benefits of all … regulations planned for that calendar year to assist with the identification of priorities." This new requirement will make cost/benefit analysis the central factor in setting priorities for needed protections of the public interest. These cost/benefit analyses are notoriously biased against regulation, especially long-term goals such as preventing global warming or cancers that manifest years after exposure to toxic substances.

From Guidance to Darkness

The executive order and the new bulletin on guidance work together to create a new bureaucratic bottleneck that would slow down agencies' ability to give the public information it needs.

Guidance

agency policy other than a rulemaking which sets forth

- a policy on a statutory issue
- a policy on a regulatory issue
- a policy on a technical issue
- an interpretation of a statutory issue
- an interpretation of a regulatory issue

Significant Guidance

guidance which

- leads to an annual effect of $100 million or more or materially and adversely affects the economy
- creates inconsistencies with another agency's activities
- materially alters budgetary impact of grants, entitlements, etc.
- raises novel legal or policy issues
- implicates the president's priorities

The bulletin requires significant guidance to be approved by a senior-level agency official, and the executive order adds another layer of review by the White House itself. By requiring White House approval of important guidance, the White House will insert its political agenda and pro-business bias into every level of agency policy, so that our federal government will handcuff itself instead of the companies that violate the law and put the public in danger.

The bulletin also requires the agencies to create a Web page listing all significant guidance and creating a public challenge process, for industry to demand changes to the policy statements, interpretations, and so on that it opposes.

So Much for the New Congress

The upshot of this whole executive order is that the White House is already working to undermine not just agencies but also the new Congress' ability to protect the public. Whatever gains might come to consumers and other public interest sectors in the 110th Congress are already vulnerable to being rendered meaningless by the powers the White House is giving itself.

Definitions

Guidance Documents

agency policy other than a rulemaking which sets forth

- a policy on a statutory issue
- a policy on a regulatory issue
- a policy on a technical issue
- an interpretation of a statutory issue
- an interpretation of a regulatory issue

Excluded

from the Bulletin only:

- legal advisory opinions for internal Executive Branch use and not for release;
- litigation and enforcement materials;
- speeches and press materials;
- congressional correspondence;
- grant solicitations;
- in re government facilities;
- internal guidance documents directed solely to other Federal agencies

from the EO only

- guidance on regs produced from formal (trial-like) rulemaking

from both

- purely internal agency policies;
- military, foreign affairs (except in re procurement or import/export of non-defense articles and services);
- any other category exempted by agency head in consultation with the OIRA Administrator.

Significant Guidance Documents

A guidance document disseminated to regulated entities or the general public that may *reasonably be anticipated to*:

- Lead to an annual effect of $100 million or more
- Adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof
- Raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in this executive order

Economically Significant Guidance Documents

A significant guidance document disseminated to regulated entities or the general public that may *reasonably be anticipated to*:

- lead to an annual effect on the economy of $100 million or more or
- adversely affect in a material way the economy or a sector of the economy,

except that economically significant guidance documents do not include guidance documents on Federal expenditures and receipts.

New Burdens

Guidance Documents

- No new burdens for *all* guidance documents – only subset of "significant" guidance

Significant Guidance Documents

- Approval by OIRA (EO § 7)
- Approval by senior agency official (Bulletin § II(1)(a))
- Agency cannot depart from it without justification and supervisory approval (Bulletin § II(1)(b))
- Must comply with standard formatting requirements (Bulletin § II(2))
- Must be listed in a comprehensive Web catalogue (Bulletin § III(1)))
- Agency must have a designated office for fielding complaints (Bulletin § III(2)(b))
- System for public to comment/challenge, but no formal response by agency required (Bulletin § III)

Economically Significant Guidance Documents

- All requirements above, plus
- Full-fledged notice and comment (Bulletin § IV(1))
    - Publication of draft and final in the *Federal Register*
    - Make document available to the public
    - Response-to-comments document
- Agency head in consultation with OIRA can determine these requirements are not "feasible or appropriate" (Bulletin § IV(2))

Power to Pick and Choose Which Guidance Is (or Is Not) Burdened

- OIRA can deem any particular document a "significant guidance document" subject to the executive order and guidance bulletin (EO § 7)
- OIRA can elect to waive the requirements (Bulletin § IV(2))
- In practice, OIRA has waived regulatory review requirements of cost-benefit analysis for *de*-regulatory actions, at its pleasure. Undoubtedly, it will exercise the same arbitrary authority in guidance matters.

Attachment 3
Safety Groups' Response to NHTSA Backover Report

Testimony of
Joan Claybrook,
President, Public Citizen,
and Former Administrator, National Highway Traffic Safety Administration,

on

Vehicle Safety for Children

before the
Consumer Affairs, Insurance, and Automotive Safety Subcommittee,
Senate Committee on Commerce,
Science, and Transportation

February 28, 2007

REVIEW AND RESPONSE OF SAFETY GROUPS TO NHTSA'S
Vehicle Backover Avoidance Technology Study, Report to Congress

AGENCY'S CONCLUSIONS CONTRADICT STUDY FACTS

The National Highway Traffic Safety Administration (NHTSA) Study, *Vehicle Backover Avoidance Technology Study, Report to Congress* (Nov. 2006), reaches a number of negative conclusions about the state of backover detection technology, even though the Study itself contains many positive factual findings – findings that support both the need to adopt this technology and the readiness of the technology for use in motor vehicles. This review and response evaluates the major conclusions reached by NHTSA and shows why those conclusions are not backed up by the facts in the Study.

***SCOPE OF THE SAFETY PROBLEM*:**

The Study admits that estimates of almost 200 people killed and thousands injured each year in backover crashes is too low, NHTSA does not yet collect data on this issue.

The Study uses available sources of data to estimate that each year at least 183 people are killed and between 6,700 and 7,400 are injured, at least 1,000 seriously enough to need hospitalization, in backover crashes. The Study estimate is based on samples taken in a single year and on older data (1998) that does not capture the full effect of the sales of larger vehicles over the past decade. The Study acknowledges that in light of current data limitations the reported deaths and injuries are only a rough estimate. Yet, NHTSA dismisses the data collected by KIDS AND CARS which has documented news reports of backover incidents indicating that the annual death toll of children continues to rise.

Due to limitations of available data on backover crashes, NHTSA asserts that it "is unable to conclude . . . that there is an increasing trend in backover crashes." This does not mean, however, that backover crashes are not on the rise. NHTSA does not have annual data on backover and other non-traffic deaths and injuries, and only began to consider how to collect such data in response to a mandate from Congress in SAFETEA-LU (2005). The Study admits that "there are no accurate trend data specifically for the non-traffic incidents" in federal databases, and also acknowledges that "the extent and nature of backover crashes are difficult to determine because many crashes are not reported in currently available crash databases." Without comparative data, collected over a number of years, no conclusive determination can be made about whether there is an increasing trend in backover crashes.

The Study confirms that young children are at greatest risk. Yet, NHTSA has not developed plans to use technology currently available in many high-end vehicle makes and models to protect these children.

The Study confirms the KIDS AND CARS data showing that children under 5 years old, especially toddlers up to age 2, are the highest risk group. Despite information dating back to 1971 that children are at risk in backover crashes, NHTSA relies on general education messages that are not part of an overall strategy to prevent backover crashes. Moreover, NHTSA has not included this issue as part of its crash avoidance program or its advanced vehicle safety technology (AVST) initiative.

The Study also confirms that many, if not most, backover crashes involve parents or neighbors, people who are highly motivated to avoid injuring their children. Yet, NHTSA mistakenly concludes that technology is not currently an appropriate remedy.

The Study points out that people in their 20s and 30s have a greater exposure as drivers in backover crashes because they are parents of young children and are involved in more backing situations when young children are present. The Study also cites data from Utah indicating that 48 percent of backover incidents involve a family member and another 24 percent involve a neighbor. These drivers can be expected to be highly motivated to avoid such incidents, probably have greater awareness of nearby children and many may already heed some or all of the existing educational messages intended for their benefit. Such drivers are also highly motivated to use backover prevention technology properly.

***FEASIBILITY OF BACKOVER PREVENTION TECHNOLOGY*:**
The Study finds existing backover prevention technology can detect children and other objects in the rear blind zone. Yet, as child deaths continue to mount NHTSA dithers and concludes much more research is needed.

The Study found that camera systems provide drivers with a clear image of most of the rear blind zone behind their vehicle and that these systems "have the potential of providing a good field of view of the objects including pedestrians behind the vehicles." Also "[t]he rearview camera systems examined had the ability to display pedestrians or obstacles behind the vehicle clearly in daylight and indoor lighted conditions." The Study found these facts even though it reviewed only a limited number of so-called "parking aids" and did not evaluate technology specifically designed for use as a backover prevention system.

Even though the Study finds that rearview camera systems allow drivers to see pedestrians in "the majority of the rear blind zone areas[,]"NHTSA concludes that more research is necessary because current sensor and video/camera systems do not always provide a view of obstacles in the entire rear blind zone. However, drivers without any backover avoidance technology have absolutely no warning that pedestrians are in the rear blind zone. Backover prevention technology would at least provide drivers with an opportunity to avoid backing collisions.

NHTSA is actively engaged in developing and promoting other, similar radar- and sensor-based crash avoidance technologies, such as advanced cruise control which is already in the market, lane departure warning systems which are now being field tested and used in some commercial vehicles, as well as intersection collision warning systems. Despite this active effort to use the same type of technology to provide driver warnings in other crash modes, NHTSA is highly negative about the use of backover prevention systems despite the fact that a version of that technology is already standard equipment in many vehicle lines and is already being used by drivers for that purpose.

DETECTION TECHNOLOGY TESTING:
The Study finds that existing rear visibility technology provides drivers with a view of rear blind zones that prevents backover crashes even when children move into the vehicle path. Yet, NHTSA surprisingly concludes that these technologies are not effective.

The Study cites research to show that some rear object detection systems were successful in detecting and preventing impact with rear objects most of the time. 65% of drivers avoided unexpected obstacles that appeared suddenly during backing when relying on a combination of existing technologies. Another study showed "Rear video cameras [are] effective in 23% of rear backing maneuvers when [an] "unexpected" obstacle is placed 2-3 feet behind the vehicle." Thus, nearly one-fourth and possibly as many as two-thirds of incidents, including those in which a child runs immediately behind the vehicle while it is backing, may be prevented by existing backover prevention technology. This would represent a vast safety improvement and could save as many as 46 (23%) or 123 (65%) lives annually based on NHTSA's rough estimate of 183 deaths each year (an estimate that may understate the problem).

The Study documents that in 2006 there were already 36 vehicle makes and 100 model lines offering some form of backover "parking aid" technology as <u>standard equipment</u>. The use and installation of such technology is clearly feasible as backover detection technology. Many drivers are already using "parking aids" for this purpose. The widespread proliferation and use of these systems to improve rearview visibility appears to have a high level of driver acceptance. The Study cites survey results of drivers who own "parking aid" equipped vehicles. The majority of drivers found the systems to be helpful in parking, at least 85 percent felt the systems are effective or very effective in giving warnings, and 80 percent thought that the system would lower their risk of being in a backing crash. Overall, it appears these drivers know how to properly use the technology.

The Study also mentions that the effectiveness of backover prevention systems, especially cameras, could be diminished as a result of practical problems caused by weather conditions such as snow, rain, fog and glare from the sun. However, this is largely a red herring. Based on a review of cases in NHTSA's databases the Study finds that "[t]he weather did not appear to be a major factor in these backovers, as the weather was classified as 'normal' in the majority of crashes. . . ."

The Study also combines two research and testing issues. The first is whether the technology itself can perform the function required, that is, provide the driver with visual notice of obstacles in the rear blind zone. Statements in the study support a conclusion that current camera-based or combination video-sensor systems do provide drivers with a view of obstacles in the rear blind zone. As the Study admits, the existing technology is capable of detecting objects in the blind zone behind the vehicle and warning the driver.

The second issue is whether the technology will be properly used by drivers, i.e., the human factors issue common to all technological applications. While both issues are related to the overall effectiveness of the system, the human factors issue goes beyond the evaluation of whether the technology itself can perform the task required. Human factors evaluation is highly dependent on the complexity of the system, clear user instructions, the amount of time permitted to become familiar with the system, and repeated use. In this respect, use of a backover avoidance system is analogous to use of the required vehicle rearview mirror system, including the need to properly arrange and pay frequent attention to the inside as well as both the driver and passenger outside rearview mirrors. The same type of attention and appropriate response is required for backover prevention technology.

<u>REARWARD VISIBILITY STANDARD</u>:

The Study documents the need for a rearview visibility performance standard. Yet, NHTSA defers and delays while children are at risk.

Large rear blind zones exist that threaten everyone -- children, seniors, the disabled, and all pedestrians -- despite a federal safety standard for rearview mirrors, intended to reduce the number of deaths and injuries that occur when the driver does not have a clear view to the rear of the vehicle. The Study acknowledges that "[a]lmost all vehicles have rear blind zones that could obscure the driver's visibility of small children." This confirms research conducted by Consumers Union showing the size of the average blind zone behind different types of vehicles. The Study also documents that current backover technologies are, to varying degrees, effective in providing drivers with a view of the rear blind zone. Still, NHTSA presents no plans to conduct rulemaking on a rearward visibility performance standard to limit the size of the vehicle blind zone and enhance the ability of drivers to see behind their vehicle. Furthermore, there is no stated timeline for agency action to develop specifications for the performance of the technology to prevent backover crashes and no intention to make the specifications mandatory.

BACKOVER CRASH EDUCATION:

The Study finds that current backover awareness and educational efforts are not scientifically sound countermeasures that have proven effective. NHTSA concludes that such educational efforts have value but available technology does not.

The Study finds that current backover prevention programs "have been designed based on specific backover incidents rather than on a data-driven, research-based backover strategy." Despite the disconnect in logic, NHTSA promotes these types of education and awareness efforts even though the agency states that none of the programs have an evaluation component to establish their effectiveness as a countermeasure. NHTSA concludes that such efforts may make drivers sensitive to the problem and provide common sense safety tips. At the same time, NHTSA disapproves of requiring the use of available technology that has shown positive results in tests and already is in wide use, as part of a comprehensive approach to backover prevention.

The educational programs reviewed in the Study, as well as in NHTSA's "Safety Tips for Parents" found on their website in *Preventing Backovers in America's Driveways,* call for checking the area around the vehicle before backing the vehicle. The Study, however, relies on research testing of rearview backover prevention technology that uses "surprise" or "unexpected" obstacles that are introduced after backing has begun or near the end of a backing maneuver. Merely education and awareness programs that rely on checking around the vehicle before backing begins cannot address such dynamic situations. Backover prevention technology systems that detect people and objects in the vehicle blind zone are needed to allow drivers to continuously check behind their vehicle during backing.

The educational messages also caution parents to "know where your children are and have them stay in your full view and well away from your vehicle" and to listen for children who may have dashed behind your vehicle suddenly" while you are backing up ("Safety Tips for Parents").

First, parents are highly motivated to protect their children and may be already aware of these educational safety tips. Second, some of these safety tips may actually divert the driver's attention from the driving task during backing by constantly trying to keep children in full view with conventional mirrors or turning your head. Third, reliance on

your sense of hearing (auditory cues) to detect children who have moved into the vehicle path during backing is not only unreliable but can be masked by other interfering sounds. This safety tip ignores the fact that children often assume that they can be seen and may make no sound to attract attention. Although these safety tips may be good advice for drivers with no other means of detecting children and objects in the vehicle blind zone when backing, they are an inadequate substitute when far more direct and effective detection and warning technology systems are available.

Education and awareness are not an adequate substitute for lifesaving technology to prevent backover deaths and injuries. Legislation is necessary to direct NHTSA to advance a comprehensive strategy that couples reasonable information with backover detection technology to assist drivers.

***COST EFFECTIVENESS ANALYSIS*:**

The Study states that, at present, meaningful estimates of safety benefits and cost effectiveness cannot be calculated. In contradiction NHTSA offers up an unsupported conclusion that backover systems will have low effectiveness and do not appear to be particularly cost effective.

The Study clearly asserts that data on which to base accurate benefit/cost assessments of backover detection technology is not available. Therefore, no conclusions can be drawn. Nevertheless, the Study attempts to analyze the cost effectiveness of existing "parking aids" as a surrogate for backover prevention systems. The analysis, however, is based on a series of assumptions that are not supported by data or evidence, including assumptions about incremental system cost, the cost of system repairs due to damage, crash speed distribution and human reaction using the system. No data was collected or presented to support any of these assumptions.

The Study also failed to include any estimate of savings from reduced damages and costs avoided as a result of rear-end collisions prevented by the "parking aids." The failure to include any such savings was based on the unsupported reasoning that "parking aids only mitigate the cost of the smaller number of minor backing crashes which tend to have smaller total costs." However, no data was collected from drivers using "parking aids" to determine the accuracy of this conclusion.

Finally, this analysis also assumes that there are no safety benefits, that is, potential deaths and injuries that would be prevented, because the agency believes that "parking aids" are not intended to function as backover prevention systems and, therefore, would not provide such benefits. In actuality, reports indicate that drivers with "parking aid" systems are in fact using the systems for backover prevention purposes as well as to avoid damages from low-speed backing crashes. Thus, NHTSA uses its analysis of "parking aids" to eliminate the inclusion of safety benefits and to conclude that none of the currently installed rear object detection systems are cost effective.

As a result, the Study casts a pall over the cost effectiveness of backover detection systems even though it readily admits that without studying a true backover crash detection technology system "meaningful estimates of death and injury benefits and cost effectiveness cannot be calculated."