



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 14, 1997

Airbags

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines *[Signature]*

FROM: Sally Katzon *[Signature]*

SUBJECT: Heads Up on DOT's Airbag Cutoff Switch Final Rule

On October 6, 1997, we sent you a heads-up memo on a DOT **final** rule allowing individuals to obtain on/off switches for airbags in existing vehicles. Since then, DOT has given further thought to its role as "gatekeeper" and redrafted the final regulation to provide that individuals who want to have an on/off switch are to send the form to the government before the switch is installed. We are now ready to go and we understand that DOT will announce the rule next Tuesday. I have attached a copy of our October 6 heads-up memo to refresh your memory on the substance. Please give me a call if you have questions.

cc: Maria Echaveste
Rahm Emanuel
John Hilley
Ann Lewis
Thurgood Marshall, Jr.
Sylvia Mathews
Bruce Reed
Gene Sperling
Elena Kagan
Victoria Radd
Barry Toiv
Michael Waldman
Kathy Wallman
Michael Deich
Larry Haas



EXECUTIVE OFFICE OF THE PRESIDENT
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October 6, 1997

ADMINISTRATOR
OFFICE OF
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REGULATORY AFFAIRS

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines *FDR*
FROM: Sally Katz *S. Katz*
SUBJECT: Heads Up on DOT's Airbag Cutoff Switch Final Rule

We expect to conclude review of the DOT final rule allowing dealers and repair shops to install on/off switches for airbags in existing vehicles. You may recall that this was one piece of the four-part approach announced by the President last December (the other pieces, all well received, included warning labels, depowering, and extending authorization for on/off switches for the front passenger seat in new vehicles that do not have back seats). The rule we are about to clear has already been the subject of several critical news stories, and will be a major news event when it is published.

This rule is in response to the fact that while airbags save lives, there is a real risk of serious injuries and fatalities in low-speed crashes where the drivers are short-statured people sitting too close to the steering wheel and/or the passengers are unbelted children riding in the front seat (instead of being belted in the back seat). Everyone agrees that the at-risk group (which also includes infants (under 1 year old) in rear-facing seats who must ride in the front seat and individuals with certain medical conditions) should be allowed to turn off their airbags. The issue has been whether others should be allowed to deactivate their airbags and the role that DOT would play as a gatekeeper. A coalition of auto manufacturers, insurance companies, and safety advocates has opposed any form of broad-based deactivation of airbags (by which they mean if there is not prior approval by DOT to install the switches). DOT, on the other hand, claims it cannot process all of the applications it will receive, and it would not want to be responsible if there were an accident while an application was pending.

The DOT rule would require the vehicle owner to sign a form certifying (under penalty of law) that at least one occupant in his/her vehicle falls into one of the risk categories. It would expressly state that the dealer's only responsibility is to see that the form is filled out, not to verify the appropriateness of the box checked. It would be accompanied by an education campaign to seek and minimize misuse (i.e. do not turn off if you are not at risk). This is important because the rule is calculated to save the lives of approximately 11 drivers and 44 passengers each year over the next four years; however, if there is as little as one percent misuse (i.e., drivers turning off the switch if they are not at risk) it will offset all of the benefits to drivers.

The message on roll-out (which we recommend be low key and at the Department level) is important because this is an interim step -- the real solution lies in smart airbags for which an NPRM is being prepared. Please let me know if you have any questions.

cc: Maria Echaveste
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**ADVOCATES
FOR HIGHWAY
AND AUTO SAFETY**

Autobag

MEMO TO: Erskine B. Bowles
Chief of Staff to the President

MEMO FROM: Joan Claybrook, President, Public Citizen
Jacqueline Gillan, Vice President,
Advocates for Highway and Auto Safety

RE: Meeting with Sen. Dirk Kempthorne Concerning his
Amendment to Eliminate the Unbelted Crash Test in
FMVSS 208 Requiring Air Bags.

DATE: October 6, 1997

- Co-Chair:**
Richard D. Crabtree,
President & CEO
Nationwide Mutual
Insurance Company
- Andrew McGuire
Executive Director
Trauma Foundation
- President:**
Judith Lee Stone
- Consumer and Safety
Organizations:**
Stephen Brobeck
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Center for Auto Safety
- Donald Friedman
MCR Technology Inc.
- Jay R. Halton
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San Francisco State University
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American Public Health
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Insurance Companies
- Len Brevik
Independent Insurance Agents
of America
- John Connors
Liberty Mutual
Insurance Company
- Steve Hassenbiller
The Hartford
- Rodger S. Lawson, PhD
Alliance of American Insurers
- Gerald Maatman
Kemper Insurance Companies
- Robert J. McMillan
Progressive Insurance
- Robert Voglby
American Insurance Association

On Thursday, October 2 we met with Sen. Kempthorne to discuss his amendment to S. 1173, the Senate version of the reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA). During our meeting with Sen. Kempthorne he relayed to us that he has spoken with you about his amendment which would eliminate the "unbelted" requirement for testing compliance with the National Highway Traffic Safety Administration's (NHTSA) air bag standard, Federal Motor Vehicle Safety Standard (FMVSS) 208.

Sen. Kempthorne's amendment is opposed by highway safety groups, insurance companies, air bag suppliers, the Parents' Coalition for Air Bag Warnings (an organization of parents whose children have been killed or injured by air bags) and the U.S. Department of Transportation (US DOT). Because the Senate is scheduled to take up S. 1173 as early as this Wednesday, October 8, it is urgent that the White House urge Sen. Kempthorne to agree to a compromise provision being advocated by Sen. Boxer. Sen. Boxer's amendment will permit the US DOT to upgrade the air bag standard within one year without jeopardizing safety, which is the likely effect of Sen. Kempthorne's proposal.

A diverse group of consumer, safety, victims, insurance groups and air bag manufacturers oppose the Kempthorne provision for several important reasons. Removal of the unbelted test will not protect unbelted children and small women from harm during crashes because the vast majority of occupants killed by air bags were unbelted or improperly belted. A short-term solution to the aggressiveness of air bags is already being addressed in a rule NHTSA issued in February allowing auto manufacturers to depower air bags (which is equivalent to Sen. Kempthorne's amendment to eliminate the unbelted crash test). However, NHTSA and the auto manufacturers acknowledge that depowering may mitigate but not significantly reduce the risk to unbelted children and may result in additional deaths and serious injuries in high speed crashes as a result of weakening the air bag.



Removing the unbelted crash test will also compromise the safety of at-risk occupants like teenagers who are particularly lax about belt use and statistically over-represented in fatal car crashes. In fact, 65% of people involved in fatal car crashes are unbelted. Additionally, the Kempthorne amendment will slow the development of advanced air bag systems because it would require only a minimal restraint system. You should be aware that advanced technology that would improve the protection of unbelted adults in high speed crashes and unbelted children in low speed crashes exists today with the current standard (such as the vertically inflating top-mounted air bags in Hondas, Nissans, General Motors cars, and other models).

Sen. Boxer has proposed an alternative compromise to Sen. Kempthorne's provision which would require NHTSA to issue a revised FMVSS 208 standard within one year of enactment of the ISTEA bill (see attached language). If the agency fails to issue a revised standard, then the Kempthorne proposal will go into effect. This preferred alternative will give NHTSA a year to upgrade the current standard and test air bags to assure protection in a full range of crashes (i.e., low as well as high speed) and a full range of occupants (i.e., unrestrained 3 year old, 6 year old, small woman, as well as the existing test for a mid-sized male). The solution is not to eliminate the unbelted crash test currently required in the standard, but to add additional unbelted crash tests that will assure the safety of out-of-position children and women in lower speed crashes.

When we met with Sen. Kempthorne he was reluctant to change his amendment but did indicate a willingness to consider a compromise and to work with Sen. Boxer. However, he is skeptical about more delay and whether the agency will take the necessary action to issue a new standard that will eliminate the risk to children. His staff believes the only condition under which Sen. Kempthorne would compromise is if the President endorses the Kempthorne-Boxer proposal and gives his assurance that NHTSA will act within a year to correct the problem (NHTSA leadership says this timetable is feasible). We also believe that Sen. Chafee, Chair of the Senate Environment and Public Works Committee, and Sen. Warner, Chair of the subcommittee of jurisdiction, would welcome a compromise to the Kempthorne proposal in light of opposition from the safety community and the US DOT.

With only 2 days remaining until the bill could possibly be brought to the Senate floor, it is imperative to correct this problem in the Senate bill. At last week's White House meeting with Vice President Gore and Secretary Slater on the Administration's NEXTEA proposal, the Kempthorne amendment was identified as one of the Administration's major concerns about the Senate bill. The Administration's best opportunity for correcting the objectionable provision is to have Sen. Kempthorne agree to substitute his amendment with Sen. Boxer's compromise. This can best be accomplished with a letter to Sen. Kempthorne from the President stating that the Administration opposes his amendment in the ISTEA reauthorization bill but will support a Kempthorne-Boxer compromise with assurances that NHTSA will meet the legislative deadline for acting to protect children in the standard.

We are available to assist in any way. You can reach Joan Claybrook at 202-588-1000 and Jackie Gillan at 202-408-1711.

cc: The Honorable Barbara Boxer, U.S. Senate
Bruce N. Reed, Assistant to the President for Domestic Policy
John L. Hilley, Senior Advisor to the President and Director for Legislative Affairs
Ronald A. Klain, Assistant to the President and Chief of Staff and Counselor to the Vice President
John D. Podesta, Assistant to the President and Deputy Chief of Staff for Policy and Political Affairs

PROPOSED MODIFICATION TO KEMPTHORNE AMENDMENT

SEC. 1407. AUTOMATIC CRASH PROTECTION UNBELTED TESTING STANDARD.

(a) IN GENERAL.--

(1) TESTING WITH SIMULTANEOUS USE.-- Beginning *one year from* ~~on the~~ the date of enactment of this Act, *and as provided in subsection (b)*, for the purpose of certification under section 30115 of title 49, United States Code of compliance with the motor vehicle safety standards under section 30111 of that title, a manufacturer or distributor of a motor vehicle shall be deemed to be in compliance with applicable performance standards for occupant crash protection if the motor vehicle meets the applicable requirements for testing with the simultaneous use of both an automatic restraint system and a manual seat belt.

(2) PROHIBITION.-- In no case shall a manufacturer or distributor use, for the purpose of the certification referred to in paragraph (1), testing that provides for the use of an automatic restraint system without the use of a manual seat belt.

(b) REVISION OF STANDARDS.-- *Subsection (a) shall take effect unless, within one year from the date of enactment of this provision, the Secretary issues a final rule to amend federal motor vehicle safety standard number 208 to require additional types of tests to protect all sizes of occupants, particularly children. Should such a final rule not be issued within one year from the date of enactment, the Secretary shall issue such revised standards under section 30111 of title 49, United States Code, as are necessary to conform to subsection (a).*

Bold Italics = New Language



**ADVOCATES
FOR HIGHWAY
AND ~~AVIATION~~ SAFETY**

FAX TRANSMISSION SHEET

DATE: October 6, 1997

TO: Bruce N. Reed, Assistant to the President for ~~Domestic Policy~~

FAX #: 456-2878

FROM: Jacqueline Gillan, Vice President, Advocates for Highway and Auto Safety

PAGES TO TRANSMIT (INCLUDING COVER SHEET): ④

COMMENTS:

URGENT

Please phone 202/408-1711 if there is difficulty receiving this material.

