

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<http://oversight.house.gov>

March 18, 2020

Mr. James C. Owens
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Acting Administrator Owens:

The Subcommittee on Economic and Consumer Policy is investigating why the National Highway Traffic Safety Administration (NHTSA) has not issued federal standards for side-impact testing of babies' car seats or children's booster seats.

Congress ordered NHTSA to create side-impact testing standards for babies' car seats and booster seats two decades ago. In 2000, Congress passed the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, which required NHTSA to initiate a rulemaking *within one year* "for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions."¹

NHTSA did not initiate a rulemaking. In 2004, NHTSA explained the delay to Congress by blaming "a number of areas of uncertainty regarding the performance of child restraints in side impact crashes."²

In 2012, Congress passed the Moving America for Progress in the 21st Century Act (MAP-21 Act), directing NHTSA to enact a final rule by October 2014 "to improve the protection of children seated in child restraint systems during side impact crashes."³

NHTSA did not meet Congress's requirement and has still not finalized a rule. However, NHTSA issued a proposed rule that would require all seats designed for children up to 40 pounds or children between 0 and 4 years old to be tested in a simulated side-impact collision.⁴

¹ Pub. L. No. 106-414, § 14 (2000).

² National Highway Traffic Safety Administration, *Report to Congress: Child Restraint Systems* (Feb. 2004) (online at www.nhtsa.gov/nhtsa/announce/NHTSAREports/TREAD.pdf).

³ Pub. L. No. 112-141, § 31501 (2012).

⁴ National Highway Traffic Safety Administration, *Notice of Proposed Rulemaking: Federal Motor Vehicle Safety Standards; Child Restraint Systems, Child Restraint Systems—Side Impact Protection; Incorporation*

The Subcommittee is concerned that, in the absence of authoritative rulemaking by NHTSA, manufacturers are marketing car seats in ways that put children at risk of serious injury. With no federal standard for side-impact testing, manufacturers are free to make up their own testing and standards. In today's environment, a product marketed as "side-impact tested" may not be safe, despite giving consumers the impression that it is. That dangerous reality is possible because of the lack of federal standards.

For example, ProPublica recently reported that Evenflo's "Big Kid" belt-positioning booster seats may not be safe for children under 40 pounds, even though Evenflo has marketed the seats for children as light as 30 pounds. Evenflo has also marketed the "Big Kid" seat as "Side Impact Tested," even though Evenflo's own side-impact tests appear to show a high risk to young children of serious injuries to the head, neck, and spine. Videos of Evenflo's side-impact tests for the Big Kid seat show child-sized test dummies bending violently at the hip, torsos, and neck during a far-side collision. Test dummy heads are thrown to the side.⁵

The Subcommittee is also concerned about the substance of the proposed rule. It sets forth standards for only near-side collisions, but not for far-side collisions. Ignoring far-side collisions creates serious risk for children. According to the data presented in the notice for the proposed rule, for children in Child Restraint Systems during a side-impact collision, more than 40% of fatalities and 30% of serious injuries occurred during far-side impacts.

In addition, the proposed rule would not cover belt-positioning booster seats since it is limited to seats recommended for children up to 40 pounds and uses only test dummies representing a 12-month old and a 3-year-old child. As NHTSA stated, in achieving compliance, "an approach available at no additional cost to manufacturers would be to re-label the belt-positioning seat as not recommended for children weighing less than 18 kg (40 lb)."⁶ By contrast, there is no 40-pound limit for front-impact tests, and those tests use a 12-month, 3 year-old, or 6 year-old dummy.

Finally, the proposed rule would fail to address how to label children's seats or how to determine recommended size and age ranges for the seats. For instance, child safety experts warn that belt-positioning booster seats are not safe for children under 40 pounds or 4 years old and that children should not change to a belt-positioning booster seat until they are no longer able to sit in the harnessed seat.⁷

by Reference, 79 Fed. Reg. 4570 (Jan. 28, 2014), Docket No. NHTSA-2014-0012 (online at www.regulations.gov/document?D=NHTSA-2014-0012-0001).

⁵ *Evenflo, Maker of the 'Big Kid' Booster Seat, Put Profits Over Child Safety*, ProPublica (Feb. 6, 2020) (online at www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety).

⁶ National Highway Traffic Safety Administration, *Notice of Proposed Rulemaking: Federal Motor Vehicle Safety Standards; Child Restraint Systems, Child Restraint Systems—Side Impact Protection; Incorporation by Reference*, 79 Fed. Reg. 4570 (Jan. 28, 2014), Docket No. NHTSA-2014-0012 (online at www.regulations.gov/document?D=NHTSA-2014-0012-0001).

⁷ *When Is the Right Time for a Booster Seat?*, Consumer Reports (Feb. 7, 2020) (online at www.consumerreports.org/booster-seats/when-is-the-right-time-for-a-booster-seat/).

In order to assist the Subcommittee in its investigation of this matter, please provide the following information by April 1, 2020:

1. A description of NHTSA's plan to issue a final version of the proposed rule, including a timeline with demonstrable milestones, including the development and certification of any required test dummies, and the status of each such milestone;
2. A list of NHTSA's anticipated areas of change to the proposed rule;
3. An explanation as to why the proposed rule:
 - a. does not establish side-impact performance requirements for Child Restraint Systems recommended for children weighing over 40 pounds;
 - b. does not include testing for far-side side-impact collisions, including any analysis of the differential in injury risk between near-side and far-side side-impact collisions; and
 - c. has been pending for more than six years; and
4. A list of other amendments to Federal Motor Vehicle Safety Standard No. 213 that NHTSA has considered since July 1, 2012;
5. All communications between NHTSA and the Office of Information and Regulatory Affairs regarding the proposed rule, including any pass-back documents, proposed changes, or comments to proposed or final rules;
6. All communications with any external groups or individuals from July 1, 2012, to the present concerning the proposed rule or the proposed rule regarding the "Q3s" crash test dummy for side-impact testing representing a 3 year-old (Docket No. NHTSA-2013-0118-0001), including scheduling emails and calendar items; and
7. All communications with Child Restraint System manufacturers or their agents from July 1, 2012, to the present referring or relating to:
 - a. labeling concerning the age, weight, and height of children for whom the seat is recommended for use, including on marketing materials, packaging, instructional materials, or the seat itself;
 - b. labeling of potential risks, including on marketing materials, packaging, instructional materials, or the seat itself;
 - c. safety and risk standards in connection with side-impact testing performed by CRS manufacturers; and
 - d. actual results and records of side-impact testing performed by CRS manufacturers.

Mr. James C. Owens

Page 4

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy

Sincerely,



Katie Porter
Member of Congress

Enclosure

cc: The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.