

SAFETY SELLS: Market Forces and Regulation in the Development of Airbags

By Martin Albaum

CHAPTER 4: A Standard Emerges Temporarily: 1977-1980

Jimmy Carter's close victory over Gerald Ford in the 1976 presidential election meant that both the executive branch and the two houses of Congress were governed by the Democratic Party.¹ Under Nixon and Ford, a Republican president had to deal with Democratic Congresses. But in all three administrations it was possible for conservative Democrats to combine with Republicans to block regulatory measures that seemed not to have massive popular support.

Carter had campaigned as a moderate, rational reformer who wanted to eliminate regulations that did not work and introduce inexpensive reforms — including pro-consumer measures — that would. He presented himself as an outsider to the Washington establishment who would apply the tools of modern business planning to an essentially moderate agenda. But as an outsider, he was fairly ineffective in mobilizing the Democratic majorities in Congress behind most of his initiatives. Many in Congress were antagonized, for example, when he proposed killing 18 water projects as “pork barrel.” Congress rejected the broadest proposal that could have affected auto safety regulation when it did not go forward with the consumer protection agency Carter proposed.

One of the first cabinet officers appointed by Carter was the new secretary of transportation, Brock Adams, a moderate Democratic congressman from the state of Washington. After some delay, it was announced that Joan Claybrook would be administrator of NHTSA. While Adams had no particular association with highway safety issues, Claybrook, as noted earlier, had worked at the agency as a special assistant to William Haddon, leaving shortly after Toms told her that she was too identified with the Democrats. While at the agency she had been a fervent promoter of airbags. For the next six years Claybrook worked with Ralph Nader. She and Esther Peterson, Carter's new special assistant for consumer affairs, were among the Nader associates recruited by the new administration.

During the first two years of the Carter administration, domestic politics were dominated by economic issues related to apparently continuing high unemployment and inflation. In hindsight, the National Bureau of Economic Research saw the period from March 1975 to January 1980 as the growth phase of a business cycle. Inflation, however, did increase during 1977-78, and then seemed to spiral out of control in 1979-80, driven by the increase in oil prices brought on by the Iran crisis. The rise in the consumer price index went from an uncomfortable 6.5 percent in 1977 to 13.5 percent in 1980.² The administration reacted with a policy of voluntary price and wage controls administered by the Council on

1. The discussion of the Carter Administration draws mainly on Burton I. Kaufman, *The Presidency of James Earl Carter* (Lawrence, Kansas: University Press of Kansas, 1993) and *Congress and the Nation*, vol. V, 1977-1980 (Washington: Congressional Quarterly, Inc., 1981).

2. *Statistical Abstract of the United States, 1990* (Washington: U.S. Department of Commerce, Bureau of The Census, 1990), pp.469 and 539.

Wage and Price Stability (COWPS). That agency had been established by the Ford administration in 1974 to review regulatory measures, like passive restraint standards, for their inflationary effect. Carter strengthened the review process with Executive Order 12044, issued on March 24, 1978, which required that alternative approaches be considered and the least burdensome one be chosen.

The Carter administration and Congress were still wrestling with the need for a comprehensive energy policy in the aftermath of the 1973 oil crisis when another external shock, in late 1978, the Iranian revolution, caused a worldwide petroleum shortage. By May 1979 long lines at gasoline stations were the rule in many parts of the country, and fuel prices were increasing dramatically. Automobile buyers had begun to drift back to larger cars before this crisis, but now preferences switched again to smaller cars with more efficient engines. Auto buyers found that foreign manufacturers, especially the Japanese, frequently met their needs when American producers did not. Domestic new car sales increased by about a half million from 1976 to 1977, and the increase in sales of imported new cars, a much smaller market, was about the same. In 1978 domestic sales increased about 200,000, while imports shrank slightly. By 1979, domestic new car sales dropped by nearly a million while imports increased by nearly a third of a million. New sales of U.S. autos plunged 21 percent in 1980, but in spite of the contracting economy and high inflation, import sales held their own.³ In 1979 Chrysler, the smallest of the “big three” U.S. auto manufacturers, had to be rescued from bankruptcy by a federally guaranteed loan. By 1980 the whole domestic industry was suffering large losses and demanding protection from imports and relief from the expense of regulation, including safety rules.

When the economy expanded and car sales rose during the first two years of the Carter administration, motor vehicle fatalities also rose, both as a whole and in passenger cars and light trucks. After all such fatalities dropped from 54,000 a year in 1972-1973 to 44,000-45,000 in 1974-1976, they rose to 47,878 in 1977 and 50,331 in 1978. Passenger car fatality trends paralleled these figures at a lower level. As gasoline became scarcer and more expensive, total motor vehicle fatalities leveled off at about 51,000 a year in 1979 and 1980.

Reopening the Passive Restraint Standard

At his confirmation hearing, in 1977, Brock Adams said that he would review “most carefully,” Coleman’s plan for demonstration projects, but during an interview on NBC’s “Meet The Press” on February 6, 1977 he declared that he could not “rationalize” the plan.⁴ Toward the end of March, Adams did issue a proposed passive restraint rule. Claybrook had not yet been confirmed, but she fully agreed with the action.⁵ The notice gave three reasons for reopening the issue. First, consumer resistance might not be statutory grounds for Coleman’s decision. Second, the fear of consumer resistance was based on

3. American Automobile Manufacturers Association, *Facts and Figures '93*, p.14.

4. *Status Report*, February 3, 1977, p. 1, and February 14, 1977, p. 1.

5. Interview with Joan Claybrook, September 13, 1993.

public reaction to the ignition interlock, which forced car occupants to take action; passive restraints by definition required no action. Third, the demonstration agreements implied a five to eight year delay in the decision to install passive restraints, a period during which the anticipated “downsizing” of cars would heighten the need for increased occupant protection. Three possible courses of action were laid out in the notice:

1. Maintain the current standard;
2. Mandate passive restraints in three model years, as proposed in the notice of June 1976, with lap belts required at all designated front seats unless there was a fully passive way of dealing with lateral impacts and rollovers; the alternative offered was to require passive protection at one of the extreme front seats, delaying full front-seat protection;
3. Raise belt usage to 80-85 percent either through Congressional approval of incentives for state belt use laws or through a federal act mandating belt use. Adams said, “I have no illusions about the popularity of such (state) laws.”

A day of public hearings was set for April 27, 1977.⁶

In a press conference to announce the new rulemaking, Adams agreed that the Coleman demonstration project was “now out the window,” when asked by a reporter. The new standard would be promulgated, he promised, by July 1, 1977, the date by which Congress had required that new fuel economy levels be established for 1981-1984 cars. The fuel requirements would result in smaller, lighter cars, needing improved occupant protection.⁷

The hearings actually continued over two days, April 27 and April 28. Adams was an active questioner during many of the presentations. The major protagonists largely repeated arguments that they had aired in the Gregory and Coleman hearings. The carmakers were unanimous in opposing mandated passive restraints and questioning whether airbags plus lap belts were truly passive. Almost all still favored keeping the current standard while adding federal incentives for state seat belt use laws and reinstating the Coleman plan so that passive restraints, especially airbags, could be definitively tested. When Adams asked why the public would react to these laws more favorably than to the ignition interlock, the Motor Vehicle Manufacturers Association cited favorable foreign experience with such belt use laws and better current understanding of seat belt benefits. General Motors noted that there were no good data on passive belt benefits and challenged DOT’s estimates of airbag benefits. A new study in which a jury of its engineers again compared injuries in collisions involving ACRS cars with matched unrestrained front seat occupants concluded that ACRS plus lap belts provided no more protection than the current level of belt use. Adams found this hard to believe.⁸

6. National Highway Traffic Safety Administration, [49 CFR Part 571] [Docket No. 74-17; Notice .08] OCCUPANT CRASH PROTECTION: Alternatives For Passenger Cars. *Federal Register*, Vol. 42, No. 57, March 24, 1977, pp. 15935-15937.

7. *Status Report*, March 29, 1977, pp. 1-3.

8. Department of Transportation, National Highway Traffic Safety Administration, *Public Hearing on FMVSS 208, Transcript of Proceedings*, Washington, D.C., 27 April 1977, pp. 58-64 for testimony by David Potter of General Motors. MVMA’s testimony is on pp. 42-49. Other carmakers’ statements are scattered throughout the two days of hearings.

Edward Cole, the retired president of General Motors, had written a letter to Dr. Haddon on January 20, 1977, saying:

The passive restraint system is different than emissions. The technology is available and the need is there. I think the only way passive restraints are going to get to first base is making them mandatory. Another test will prove nothing. Let the passive air cushion evolve like all other systems... (m)andating the basic performance requirement and not telling the industry how it should be done will get the job done.

With Cole's permission, on February 10 Haddon submitted this letter to the docket along with an earlier one critical of active seat belts.⁹ When he was invited to testify at the Adams hearings, Cole told Claybrook that he would rather not because "the boys were really pressuring me, and I'm going to have to say that there needs to be time." Claybrook convinced him to testify anyway. Without a prepared statement, Cole told Adams that, while he favored passive restraints, six years would be needed to solve the problems raised by mass production and product liability.¹⁰

Don Friedman, president of Minicars, a consultant to NHTSA, told Adams that not only were 30 mph airbag designs for small cars current reality, which could easily be adapted by manufacturers, but protection could be expanded to 45 mph.¹¹ Ralph Nader had already cited small car airbag tests by Calspan and Transco to document his belief that "advanced passive restraints can make small cars safer than present large cars." But auto companies had gotten used to the *de facto* moratorium on auto safety standards during the Nixon and Ford years, and would, Nader believed, continue to resist standards for new technology.

It is important, Mr. Secretary, for the Department to be alert, once this standard is issued — and I certainly hope it is shortly — to potential collusion by the car companies to try to meet it by passive seat belt standards...¹²

Like most committed passive restraint advocates, both inside and outside NHTSA, Nader believed that passive belts were second best to airbags. Insurers who testified in favor of the passive restraint standard reiterated that it would result in discounts, but only for airbags did they cite a specific figure — 30 percent.¹³ Haddon stressed IIHS' analysis showing the superiority of airbags plus lap belts in real-world crashes over lap and shoulder belts even when used, although he acknowledged that there were not enough airbag cases to make the difference statistically significant. But on the more general issue of passive restraints, Haddon criticized Coleman for ignoring the IIHS survey showing that 80 percent of the public preferred restraints that required no action on their part when Coleman said in his decision that the public would not accept airbags.¹⁴

9. Insurance Institute for Highway Safety files.

10. *Public Hearing on FMVSS 208*, April 27, 1977, pp. 20-27; interview with Joan Claybrook, September 13, 1993.

11. Department of Transportation, National Highway Traffic Safety Administration, *Public Hearing on FMVSS 208, Transcript of Proceedings*, Washington, D.C., 28 April 1977, pp. 138-145.

12. *Public Hearing on FMVSS 208*, April 27, 1977, pp. 51-52.

13. *Ibid.*, pp. 11-15 for Allstate, pp. 139-144 for Nationwide.

14. *Ibid.*, pp. 65-70.

Airbag suppliers, as in the past, were generally optimistic about their technology. Rocket Research told Adams that using pyrotechnic gases would help solve the problem of short deployment time in small cars. Except for Eaton, suppliers supported the standards, which they seemed to believe implied widespread use of airbags. Eaton, however, thought mandates were impractical because there was insufficient capacity to meet the need they would create for airbags. Claybrook said that she discounted Eaton's testimony because it was falling behind in technology.¹⁵ Thiokol thought that, with 6-12 months for design, mass production could begin in 36 months.

Seat belt manufacturers, represented by Howard Gates and Lawrence Goldmuntz of Economics and Science Planning, proclaimed the superior cost effectiveness of increasing belt use and suggested that Congress might even mandate their use. Moreover, they said that passive belts were more effective than airbags and called for more road testing to establish this fact.¹⁶

Several independent, and apparently disinterested, experts thought more data were still needed on airbags. Dr. John States, an orthopedic surgeon, was afraid they might cause injury in small cars and preferred immovable protection like knee bars and other energy-absorbing materials. Don Huelke, of the University of Michigan medical school, thought that airbags worked but should not be mandated on the basis of evidence not comparable to what would be needed to gain approval for a new drug, for example. Samuel W. Alderson, an engineer with Humanoid Systems and a pioneer in the development of test dummies, thought that airbag test results were still too variable to provide reliable evidence for the passive restraint standard.¹⁷

The formal comments filed after the hearings contained no revelations. General Motors documented its paradoxical claim that a combination of front seat airbags plus lap belts at current (20 percent) usage rates would save fewer lives than current belt usage alone.¹⁸ IIHS explained this paradox by noting that GM used all airbag crashes in its analysis, rather than the frontal crashes for which airbags were designed, and ignored both the severity of the crash and the effect of multiple injuries. When these factors were accounted for, airbags retained their superiority although statistical significance was still not achieved. IIHS also refuted a claim by AAA that occupants of cars with airbags were not better protected than the occupants of other cars with which they had head-on crashes.¹⁹

15. *Ibid.*, pp. 32-36 for Rocket Research, pp. 106-114 for Eaton, pp. 198-201 for Allied Chemical. Public Hearing on FMVSS 208, April 28, 1977, pp. 4-13 for Thiokol. Claybrook's comment was in her interview, September 13, 1993.

16. *Public Hearing on FMVSS 208*, April 27, 1977, pp. 75-79 and April 28, 1977, pp. 67-72.

17. *Public Hearing on FMVSS 208*, April 27, 1977, pp. 71-75 for States; April 28, 1977, pp. 55-59 for Huelke and pp. 117-122 for Alderson.

18. General Motors Corporation, "Response to Proposal to Amend Standard No. 208, Occupant Crash Protection," (Docket No. 74-14, Notice 08) Transmitted by letter dated 5/27/77 from David E. Martin, Director, Automotive Safety Engineering to Brock Adams.

19. Insurance Institute for Highway Safety Submissions to docket 74-14, no. 8, May 13-May 27, 1977, in IIHS files.

A “Final” Passive Restraint Standard

On June 30, 1977, Brock Adams issued his “Final Rule” on passive restraints. The text, with an elaborate explanation of “considerations underlying the standard,” was transmitted to Congress and published on July 5 in the *Federal Register*.²⁰ Adams accepted Coleman’s December 1976 findings about “the technological feasibility, practicability, reasonable cost and life-saving potential of passive restraints.” The final rule emphasized the need for increased protection arising from the smaller automobiles that would predominate given the President’s new energy policy and the end of a cheap energy society.

The option involving promotion of mandatory belt use laws was rejected because “(t)he prospects for passage... by more than a few states appear to be poor,” public opinion was unfavorable, and no state had enacted such a bill. Adams said he would favor state belt use laws, but did not expect Congress to encourage them with incentives after it had removed DOT’s authority to encourage state motorcycle helmet use laws through safety funding. The decision rejected the option of “driver-side only” passive protection, because it would offer one occupant better protection than the other in the same vehicle. On balance, there seemed to be little cost or lead-time advantage to this approach.

In accepting DOT’s estimate of the effectiveness of passenger restraints, Adams rejected, as lacking in objectivity, the General Motors study’s conclusion that airbags would be less effective than 20 percent use of lap/shoulder belts, noting that “its foundation is a long series of qualitative judgments made by employees of the party itself.” The underlying data had not been made available to opposing parties. On the other hand, the Insurance Institute for Highway Safety’s study was rejected as too narrow, even though it showed that airbags performed better than three-point belts in frontal accidents. The three estimates of airbag effectiveness submitted by Economic and Science Planning were dismissed because of their wide variations. The decision took comfort from an analysis comparing injuries experienced in all airbag cars with those that would have occurred, after adjusting for vehicle size and years. Expected injuries of AIS-2 severity and above would have been 91, but only 38 were reported, for an effectiveness estimate of 0.58. For frontal accidents only, the effectiveness was 0.52. These figures substantially exceeded the effectiveness estimates in the earlier Coleman decision, but they were still not statistically significant. The decision denied that statistically significant “real world data” were needed before a standard could be issued, contending that both legislative history and the Chrysler decision made it clear that DOT was not supposed to wait for widespread use of a technology before mandating it.

DOT raised its estimate of the initial costs of full front airbags to \$112 from the \$97 it had used the previous October. But the higher figure was still substantially lower than the \$193 estimate from GM

20. Vol. 42, pp.34289-34299. The section titled “The Considerations Underlying the Standard” are explained at somewhat greater length in NHTSA, “Standard No. 208—Passive Restraint Amendment, Explanation of Rule Making Action,” undated, but apparently July 26, 1977.

and the \$235 from Ford. DOT went to some lengths to explain the differences, because it wanted a figure to compare with the insurance savings companies like Nationwide said would occur if all cars were equipped with airbags. The savings — \$32.50 per car — would, after appropriate discounting and taking operating costs into account, be more than enough to cover the initial cost of the airbags.²¹

The decision argued that while injuries might be caused by airbag deployments, field experience indicated that they would be in the minor to moderate categories, far less serious than many injuries being prevented. The danger to out-of-position occupants would be minimized by pyrotechnic inflation systems that allowed slower initial inflation to push occupants out of the way before maximum force was deployed. The sodium azide used in pyrotechnic designs posed no real danger. Inadvertent deployment of airbags on the road might occur once in every 200 occupant lifetimes based on experience to date, which in all likelihood overstated the probability since early inadvertent deployments were due to GM design defects that were later remedied. Reliability of airbag and other passive restraint systems was the manufacturers' responsibility, but to make sure that manufacturers avoided performance problems, the ruling allowed a phase-in that provided opportunity for pilot production. DOT intended to monitor the quality and reliability of passive restraints developed and sold during the phase-in. The manufacturers' fears of product liability risk were offset by insurers' doubts that this would occur, especially by Allstate's willingness to sell product liability insurance to GM for cars with airbags at a rate no higher than for cars without them.

The decision acknowledged that small cars required more occupant protection and presented more difficult problems for airbag designers because of the shorter time available for deployment in a crash. Some small cars might require passive belts rather than airbags, but studies done for DOT had shown no insuperable difficulty in meeting the 30 mph standard for cars as light as 2,000 pounds gross vehicle weight. The solutions would be left up to the manufacturers.

Lead time for requiring the installation of passive restraints in front seats of passenger cars was extended to four years, from the three years called for in earlier versions of FMVSS 208. This gave GM the time it said it needed for producing passive restraints for all product lines, and it allowed the manufacturers to familiarize consumers with passive restraints by selling them in limited quantities during the four years. There would be a three-year schedule for the requirements: September 1, 1981 for cars with wheelbases more than 114 inches, September 1, 1982 for cars with wheelbases over 100 inches, and all cars by September 1, 1983. This schedule recognized that there were already airbag designs for large

21. The text of the decision did not include an analysis of the effect of the cost of airbags on the sale of cars, which was included in NHTSA's "Explanation" of the decision. It used a Wharton School econometric model that related a 1.52 percent drop in sales to a 1 percent increase in price, assuming no perceived change in the quality of the car. A cost of \$112 per car would mean a decline of sales in the order of 220,000-430,000 cars in the first year, with a return to normal in succeeding years. Underlying this estimate is an assumption of 12 million sales. NHTSA, "Standard No. 208—Passive Restraint Amendment, Explanation of Rule Making Action," July 26, 1977.

cars and gave makers of the smallest cars the longest lead time to solve the problems of passive design. Carmakers still could choose to provide passive protection only for frontal crashes, in which case lap belts had to be provided in all positions to protect against side or rollover crashes. If there was passive protection against side, rollover, and frontal crashes, seat belts could be omitted from the front seats.

Joan Claybrook felt that she had acceded to the manufacturers' need for lead time when she recommended to Adams that requirements be phased in over three model years starting with 1981 models (September 1, 1980). Four major airbag suppliers had urged NHTSA to start a phase-in of the standard in 1980. But Adams' staff, she said later, was concerned about the ramifications for his planned race for the Senate in 1980 if the phase-in started during the campaign, and Adams himself was influenced by Cole's testimony about the need for longer lead times. So Adams decided to delay the effective date of the standard by one year. Other senior members of the NHTSA staff, like Mike Finkelstein and Frank Berndt, felt that the delay was justified by the manufacturers' design and tooling needs.²²

At the press conference announcing his decision, and in letters sent on that date, Adams asked the auto manufacturers not to abandon the passive restraint agreement they had signed with Coleman. It was important to have passive restraints available before they were mandatory, and he even wanted the companies that had not signed the agreement to get some airbags into production at an early date. Volkswagen noted that it was continuing to make passive belts available in Rabbits. Henry Ford II replied that Ford would not follow through with its plans since DOT had already decided the issue; also its agreement with Coleman had called for driver-side airbags in compacts, rather than the full frontal protection in large cars that was called for first in the initial mandate under FMVSS 208. Thomas Murphy, the chairman of General Motors, said that GM had been concentrating on meeting its commitment to Coleman by designing a new ACRS for midsize cars rather than large cars. Now GM was planning a broad market test of passive restraints that included making passive belts available in a representative model in each size category and ACRS available in all large cars. If Congress struck down the passive restraint standard, Murphy said, he was willing to discuss continuing this voluntary program or reinstating the Coleman agreement.²³

Murphy was referring to the 1974 law that allowed Congress sixty days to review and disapprove any occupant restraint standard. Seven minutes after Adams concluded his June 30 press conference on his passive restraint decision, Rep. E. G. Shuster of Pennsylvania introduced a bill to reject it. A short

22. Interviews with Claybrook, Finkelstein, and Berndt, cited above. For the views of the suppliers see *Status Report*, July 26, 1977, p. 9.

23. Letter from T.A. Murphy, Chairman, General Motors to Secretary Adams, August 24, 1977 [74-14-N10-052-A]. The letter from Henry Ford II and Adams' answer are both in the docket and reproduced in a court filing—Center for Auto Safety and Ralph Nader, Before the United States Department of Transportation in the Matter of Federal Motor Vehicle Safety Standard 208, Occupant Crash Protection, August 4, 1977. Adams told Ford, on July 22, 1977, that the latter's lack of cooperation "suggests to me that we were too generous in our expectations of industry cooperation and in the provision of lead time for the standard."

while later, Sen. Robert Griffin of Michigan introduced a similar measure. To defend the standard, insurers, medical organizations, and public interest groups formed a National Committee for Automobile Crash Protection. The United Automobile Workers, whose president, Douglas A. Fraser, had already written Adams in support of a passive restraint standard, also joined the group. The American Automobile Association separately issued a statement supporting the new rule and reversing its previous opposition.²⁴

In early August 1977 the domestic automobile manufacturers filed petitions with DOT for reconsideration of FMVSS 208. General Motors said that DOT's evaluation of GM's studies and its cost/benefit analysis were incorrect; there should be an independent review of the two evaluations. Ford attacked the rule on many detailed points, including its underestimation of the potential for seat belt use, both with and without use laws, and the nonpassivity of a standard that combined active lap belts with airbags. Ford asked for a return to the *status quo ante* — the previous standard and the Coleman agreement. Chrysler emphasized the expense of airbags versus the efficiency of higher belt use, which could be attained by a combination of legislation and education. The most unusual petition was from Howard Goldmuntz and his firm, Economics and Science Planning, presumably acting for the American Seat Belt Council. It cited fatality data for Volkswagen Rabbits to support the effectiveness of passive belts and requested that passive restraint standards be keyed to passive belts. In other words, the passive restraint standard should be for the outboard front seats but not for the middle seat. The Center for Auto Safety and Ralph Nader both petitioned DOT and filed suit to have all new cars equipped with passive restraints by September 1, 1980. After waiting 120 days, DOT denied all the petitions.²⁵

Hearings on the passive restraint rule began almost simultaneously in both the House of Representatives and the Senate the second week of September 1977.²⁶ The arguments and the interests represented were a reprise of the Adams hearings, and the secretary defended his decision. Esther Peterson, the President's special assistant for consumer affairs, confirmed in the House hearings that Mr. Carter supported Adams. But there were a few new developments. Possibly to keep in step with the commitment made by the General Motors CEO to make passive restraints optional before they were mandatory, a Ford spokesman, Herbert Misch, said that Ford was planning to make passive belts an option on one midsize car line in the 1980 model year and on a subcompact in the 1981 model year, when

24. *Status Report*, July 26, 1977, pp. 1,3-5.

25. David E. Martin, Director, Automotive Safety Engineering, General Motors Corporation, Letter to Administrator Claybrook, August 4, 1977, submitting GM's Petition for Reconsideration. [74-14-N10-024]; J.C. Eckhold, Director, Automotive Safety Office, Ford Motor Company, Letter to Administrator Claybrook with Petition of Reconsideration of Notice 10. August 4, 1977 [74-14-N10-022]; Chrysler Corporation, Petition for Reconsideration, Docket No. 74-14, Notice 10, Occupant Restraint System, August 3, 1977 [74-14-N10-025]; Lawrence A. Goldmuntz and Howard P. Gates, jr., Economics and Science Planning, Inc., "Petition for Reconsideration," Docket No. 74-14, August 4, 1977, [74-14-N10-023].

26. Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, *Installation of Passive Restraints in Automobiles*, Hearings, Ninety-Fifth Congress, First Session, September 9 and 12, 1977; *Passive Restraint Rule*, Hearings Before the Subcommittee for Consumers of the Committee on Commerce, Science, and Transportation, United States Senate, First Session, on Department of Transportation's June 30, 1977 Passive Restraint Rule, September 8, 9, 14, and 21, 1977. Serial No. 95-126.

airbags would also be an option on one full-size car model. Misch said that Ford would take these steps even if Congress rejected the passive restraint standard.²⁷

Shortly before the hearings CALSPAN performed some airbag tests with cadavers. In two cases, the results indicated possible injuries. Congressman John Dingell of Michigan accused NHTSA of covering up these findings, which he thought supported his doubts about the safety of airbags. IIHS' Dr. Haddon called upon his medical training to point out that pre-existing conditions might have affected the performance of the cadavers.²⁸

The leaders of the House drive to reject the passive restraint rule — Shuster and Dingell — attacked in committee hearings and on the floor, but they did not succeed in bringing the issue to a floor vote. The House Subcommittee on Consumer Protection and Finance, chaired by Bob Eckhardt, an Adams supporter, defeated the proposal to reject the standard. But the resolution did not die there because it had 162 co-sponsors. It was forwarded to the full committee with a thoroughly negative report.²⁹ The full House Committee on Interstate and Foreign Commerce tabled the resolution by a close vote on October 12, two days before the 60-calendar-day deadline for Congressional action. The Senate subcommittee defeated Senator Griffin's resolution to kill the rule by a 5-0 vote. In the full committee, Griffin managed to get his resolution referred to the floor with a 9-7 recommendation to reject it. Senator Magnuson, the committee chairman, managed a 65-31 defeat of the Griffin resolution by the full Senate on the same day the House committee took its final action.³⁰ The passive restraint rule could now take effect. Two months later Adams issued his "final" rule. It rejected all petitions for reconsideration, but implemented some changes related to the positions of test dummies.³¹

Adams' decision was challenged in the federal court by two appeals, from opposite points of view. Ralph Nader and the Center for Auto Safety attacked both the four-year delay in implementing the standard as well as the three-year phase-in. Nader also called for the resignation of Joan Claybrook as administrator of NHTSA because his former associate supported these timetables. The Pacific Legal Foundation attacked the passive restraint requirement itself on the ground that there were insufficient data showing the effectiveness of airbags and that the decision ignored both public opinion and the safety

27. *Passive Restraint Rule*, pp. 66-67.

28. *Installation of Passive Restraints in Automobiles*, pp. 342-343, and p. 187, where Dingell also says that he suspects that once its rule is in place DOT will drop passive belts and insist on the more expensive airbags. The House Subcommittee on Consumer Protection and Commerce accepted Haddon's argument in its report, *The Department of Transportation Automobile Occupant Passive Restraint Rule*, 95th Congress, 1st Session, [House] Committee Print No. 95-23, October 1977, Pp. 36-38.

29. Subcommittee on Consumer Protection and Finance, Committee on Interstate and Foreign Commerce, House of Representatives, *The Department of Transportation Passive Restraint Rule*, Ninety-Fifth Congress, First Session. October 1977.

30. *Automobile Crash Protection*, Report together with Minority and Supplemental Views of the Committee on Commerce, Science, and Transportation on S.Con. Res. 31, to Disapprove FMVSS 208, Transmitted on June 30, 1977, 95th Congress, 1st Session, Report No. 95-481, October 7, 1977. *Congress and the Nation*, vol. V, p. 296; *Status Report*, November 8, 1977, pp. 3-4.

31 *Status Report*, December 23, 1977, p. 4.

hazards of airbags. The two petitions were consolidated into one case in the District of Columbia Court of Appeals, which ruled unanimously in Adams' favor in February 1979. Nader's arguments against delay were dismissed because the court said the secretary had "good cause" to be concerned about manufacturers' ability to produce passive restraints and about the public's reaction. Using wheelbase as a criterion for the phase-in was justified because size was related to airbag fit. The court accepted Adams' assessments of both airbag effectiveness and hazards. But it also agreed with the Pacific Legal Foundation's argument about the importance of public acceptance.

We believe that the agency cannot fulfill its statutory responsibility unless it considers public reaction. Without public cooperation there can be no assurance that a safety system "can meet the need for motor vehicle safety." And it would be difficult to term "practicable" a system, like the ignition interlock, that so annoyed motorists that they deactivated it.

But the court went on to say: "Despite the Secretary's claim that he need not consider the response to the new standard, he adequately justified his action in terms of the anticipated public reaction."

This refers to Adams' claim that restraints were different from the ignition interlock because they did not require independent action.³²

Restraint Developments Following Adams' Decision

A NHTSA-supported study released late in 1977 showed that 18.5 percent of car drivers were using safety belts, slightly less than the 20 percent assumed for all front seat occupants in that year's rulemaking.³³ This study included 16 major cities, between August 1976 and March 1977. It was a high point for belt use rates during the Carter Administration. A series of surveys by the Opinion Research Corporation in 19 major cities reported driver safety belt use of 14.1 percent between November 1977 and June 1978, of 13 percent for all of 1978 and of 10.9 percent for January through November 1979.³⁴ Domestic auto manufacturers made several attempts to increase belt use during 1977. In April and May they sponsored a media campaign by Motorists Information, Inc., in Grand Rapids, Michigan. A random sample of drivers was interviewed by telephone. Those saying they used belts "always" or "most of the time" increased from 29 percent to 41 percent during the campaign. The Insurance Institute for Highway Safety later checked the findings, basing its on review on seat belt use observations rather than claims and comparing Grand Rapids with Milwaukee, a small city where there had been no such campaign. Drivers were seen to wear seat belts in 12 percent of the observations in Milwaukee and 13 percent in Grand

32. Pacific Legal Foundation, Ralph Nader, and Public Citizen, et. al. vs. Brock Adams, Secretary of Transportation, 593 *Federal Reporter*, 2d Series, pp.1338-1349. For Nader asking Claybrook to resign, see *The New York Times*, December 1, 1977, p. 18.

33. Kirchner Associates, *Safety Belt Usage: Survey of the Traffic Population*, (August, 1976-March 1977), Prepared for NHTSA, December 1977.

34. Benjamin M. Phillips, Opinion Research Corporation, *Safety Belt Usage Among Drivers*, DOT HS-805-398, May 1980.

Rapids, a statistically insignificant difference.³⁵ In October, midway through another Motorists Information advertising campaign in Detroit — this time budgeted at \$1.75 million — IIHS measured driver belt usage there at 13 percent, “even lower than safety belt use levels observed by us in Detroit at the same sites in the spring of 1976.”³⁶ But Motorists Information, Inc., claimed that its observations of 40,000 drivers in southeastern Michigan showed that belt use increased from 14.7 percent before to 21 percent after its campaign. This conflicted not only with IIHS’ findings but also with a NHTSA before-after study in three Michigan cities in the campaign. In both Detroit and Marquette use was not affected by the campaign, remaining at 15 percent in the former and 12 percent in the latter. In Traverse City it declined from 17 percent to 16 percent. Dr. Haddon commented that even the auto industry claim — 21 percent driver belt use — was discouraging.³⁷

The continuing failure to increase belt use through persuasion caused belt use laws to become a recurring issue. Advocates pointed to data showing that belt laws in other countries produced 65-70 percent or even higher usage among drivers and right front seat passengers. An international conference in February 1977 reported a 10-20 percent reduction in occupant deaths and serious injuries as a result of these laws, far less than would have been expected from the known effectiveness of seat belts.³⁸ Brian O’Neill, of IIHS, noted that these findings showed that NHTSA was wrong in assuming that the benefits of 70 percent seat belt use were equivalent to the benefit of an airbag plus lap belt.³⁹

Pressure for laws to encourage seat belt use reached a high point when a House subcommittee held hearings on seat belt usage in June 1978. The chairman, Bo Ginn (D-GA), professed to be a supporter of the passive restraint standard, but said he was concerned that promoting seat belt use not be neglected during the long transition period. The ranking minority member, James C. Cleveland (R-NH), shared this concern, but concentrated on using economic incentives like insurance rebates to encourage use or reductions in liability recoveries to penalize nonuse.⁴⁰ Ben Kelley and Leon Robertson testified on the Insurance Institute for Highway Safety’s research about the ineffectiveness of educational campaigns to raise belt usage, but also noted that belt laws, when enforced, could be effective in raising usage, although with a disproportionately low effect on deaths and disability. This led Congressman Ginn to ask whether IIHS’ view of seat belt laws was negative or positive. Kelley insisted that it was positive because

35. *Status Report*, August 15, 1977, pp.1-2.

36. Dr. William Haddon quoted in *Status Report*, October 13, 1977, p. 8.

37. *Status Report*, December 23, 1977, p. 6.

38. *Status Report*, May 9, 1977, p. 8, reporting on the Sixth International Conference of the International Association for Accident and Traffic Medicine in Melbourne, Australia during February 1977.

39. *Passive Restraint Rule*, Hearings Before the Subcommittee for Consumers of the Committee on Commerce, Science, and Transportation, United States Senate, First Session, on Department of Transportation’s June 30, 1977 Passive Restraint Rule, September 8, 9, 14, and 21, 1977. Serial No. 95-126, p. 139.

40. *Safety Belt Usage*, Hearings Before the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation, House of Representatives, Ninety-Fifth Congress, Second Session, 95-39. San Juan Puerto Rico, January 4, 5, 1978; Washington, D.C., June 6-8, 1978, pp. 131-132.

laws were the only known way of predictably raising belt use.⁴¹ In her testimony, Joan Claybrook emphasized the failure of states to pass any belt use laws after DOT had held a conference to encourage them. Since the House deleted funds to encourage these laws, DOT had made no effort to do so. Claybrook was pessimistic about the chances of passing state laws because surveys sponsored by the Highway Users Federation and the Motor Vehicle Manufacturers in 1975 and 1976 showed that more people opposed the laws than favored them.

Our belief at this point is that unless there is some change in the attitude of Congress or the public, efforts by the department to encourage belt use laws are unlikely to succeed. However, we still may be able to pursue belt use laws for specific groups such as children.⁴²

But a couple of days later Mr. Ginn asked Claybrook to respond to his citation of a report by the Senate Appropriations Committee, that the House deletion of funds for encouraging state belt use laws was not a prohibition of such a program.⁴³ In reply, Claybrook noted that Congress had, in fact, appropriated no such funds and that DOT's budget experts thought it was useless to ask for them. Ginn closed the hearings saying: "To your chairman, there has been a disturbing overtone to much of what we have heard, an aura of defeatism and resignation."⁴⁴ There was no discussion about the possibility of including a requirement for seat belt use regulations in the standards that could be promulgated under the Highway Safety Act of 1966. This might not have been very effective, since the Highway Safety Act had been amended in 1976 to eliminate the requirement that states comply with every standard or with each element of a standard.⁴⁵ But Representative Cleveland did ask about the possibility of not applying the airbag mandate if any state reached 65 percent usage of shoulder/lap belts.⁴⁶

Largely in reaction to congressional pressure, Claybrook wrote to all state governors on August 21, 1978, urging them to consider support of mandatory seat belt use laws. Although she realized that passing such laws would be difficult, the success of these laws in other countries and their life-saving potential made the attempt worth the effort. Claybrook followed the advice of IIHS president Haddon to ask the governors to tell her about the chances of passing mandatory belt use laws in their states. By December, 27 states had replied, with a uniformly pessimistic view of the chances for passing such laws, although some governors said they would continue to promote belt use.⁴⁷ Claybrook said that she had already concluded that the best chance for changing public and legislative opinion in favor of mandatory use laws was to target children. She had already alluded in her congressional testimony to the role that

41. *Ibid.*, pp. 249-277.

42. *Ibid.*, p. 144.

43. *Ibid.*, p. 378.

44. *Ibid.*, p. 489.

45. The legislative history is cited in Department of Transportation, National Highway Traffic Administration and Federal Highway Administration, [NHTSA Docket No. 93-55, Notice 5] "Uniform Procedures for State Highway Safety Programs," *Federal Register*, June 26, 1997, p. 34397.

46. *Ibid.*, p. 369.

47. Interview with Joan Claybrook, September 13, 1993; *Status Report*, September 20, 1978, pp.5-6 and December 14, 1978, pp. 1-3.

NHTSA had played in encouraging the child restraint use law that had gone into effect in Tennessee at the beginning of 1978. Although the law was flawed because it exempted from restraints children held in their parents' laps, it showed that such laws could be passed. One person within NHTSA was assigned full-time to work on organizing conferences and getting information to the medical community and PTAs. NHTSA published a standard upgrading the requirements for child safety seats at the end of 1979.⁴⁸ These efforts began to pay off in 1980. IIHS did a study showing that use of child seats increased from 8 to 29 percent after the Tennessee law was passed. More than 30 states considered similar action. Rhode Island passed a law requiring all children in front seats to be properly restrained, and California passed a weaker law calling for a one-year information campaign on child restraints, followed by the issuance of warnings to drivers carrying unrestrained children.⁴⁹

The Battle of the Passives

Before Adams affirmed the passive restraint standard, American automobile manufacturers were clearly skeptical about passive belts. There was no design that could work for the center front seat. Advocates of passive restraints, in and out of NHTSA, barely hid their own preferences for airbags.⁵⁰ There were few NHTSA research and development projects on automatic belts, little testing, and very little on-the-road experience. But as early plans for compliance with the new standard began to emerge, passive belts suddenly grew in prominence.

During 1977 and 1978 data began to appear on the effectiveness of Volkswagen Rabbit passive belts. Using insurance company data, the Highway Loss Data Institute, an affiliate of the Insurance Institute for Highway Safety, reported in July 1977 that Rabbits with passive belts had a 24 percent lower frequency of personal injury (PIP) claims and a 19 percent lower frequency of Medical Payment claims than those with active belts. HLDI said this was only a preliminary finding because of the relatively small exposure.⁵¹ Later in the year Volkswagen itself announced another preliminary study, based on 58 accidents with more than \$750 in physical damage to the car — there were no deaths or very serious injuries.⁵² The next year, NHTSA analysts using the Fatal Accident Reporting System (FARS) database found that passive-belt-equipped Rabbits had a 0.78 fatality rate in front seats compared with 2.34 for other Rabbits, a decrease of two-thirds.⁵³ A few months later, the same methodology showed that passive

48. Claybrook Interview; NHTSA, DOT, "Occupant Protection Program: Progress Report," August 30, 1978, p. 20; NHTSA, DOT, "Occupant Protection Program Progress Report No. 2," April 1979, pp. 17-20; NHTSA, "Automobile Occupant Crash Protection: Progress Report No.3," July, 1980, pp. 63-78.

49. *Status Report*, May 20, 1978, pp. 6-7, June 25, 1978, p.8, November 5, 1978, pp. 3-4.

50. Their preferences were made clear in the interviews, cited above, with Nader, Claybrook, Finkelstein and Schaffer, and in my conversations with Haddon during this period.

51. Highway Loss Data Institute, *A Preliminary Comparison of Volkswagen Rabbits With Passive and Active Seat Belts, 1975 and 1976 Models* (HLDI A-8), Washington, D.C.

52. J.D. States, S.R. Miller, and U.W. Seiffert, "Volkswagen's Passive Seat Belt/Knee Bolster Restraint, VWRA: A Preliminary Field Performance Evaluation," *21st Stapp Car Crash Conference*, October 19-21, 1977.

53. NHTSA, DOT, "Occupant Protection Program: Progress Report," August 30, 1978; *Status Report*, July 29, 1978, p.7.

belts reduced fatalities by about half.⁵⁴ Another HLDI report on VW Rabbits published in August 1979 was more ambiguous. No-fault personal injury claims were only slightly lower for automatic-belt cars and there was no real difference for medical payments.⁵⁵ That year Volkswagen aired a prime-time television commercial promoting its passive belts, but the advertising was withdrawn after a complaint of deceptive advertising to the Federal Trade Commission (FTC). The complaint was later dismissed.⁵⁶

In February 1978 General Motors announced that starting in May Chevette buyers would have the option of an automatic seat belt similar to the Rabbit's — stretching across the body when the door closed, with a knee bar to contain forward movement and a manual lap belt and ignition interlock.⁵⁷ GM's interest in automatic belts was also demonstrated by its petition for methods, besides a simple push button, to release the belt in an emergency. To minimize disconnections of the belts, GM wanted to try a spool release that would “play out” in an emergency. Its president, Peter Estes, convinced Claybrook of his good intentions, and NHTSA embodied the GM proposal in a notice of proposed rulemaking on May 22, 1978. All the comments on the proposal were positive; a final rule was issued on November 13, 1978, allowing a single emergency release mechanism, without any further design specifications.⁵⁸

NHTSA's 1979 seat belt usage study found that drivers of VW Rabbits with automatic belts had the highest belt use rate, 81 percent, compared with 13 percent for all drivers. There were no cases of Chevettes with automatic belts in the analysis.⁵⁹ But a separate study of automatic-belt cars found that 89 percent of Rabbit owners said they used their belts “always” or “almost always” compared with 72 percent of Chevette owners. Eighty-four percent of Rabbit owners and 41 percent of Chevette owners said they would prefer an automatic system in a new car. Chevette owners were significantly more likely to cite inconvenience and discomfort in evaluating their cars.⁶⁰ By 1980 VW engineers were proclaiming that the Rabbit's experience made it clear that airbags were not needed to meet the requirements of standard 208.⁶¹

During the Carter administration no new airbag-equipped cars were put on the road. NHTSA continued to track their fatality experience. A 1979 report showed that all airbag-equipped cars had about

54. DOT, NHTSA, “Occupant Protection Program Progress Report No. 2,” April 1979, pp. 13-14.

55. Highway Loss Data Institute, *Comparisons of Claim Frequencies of Volkswagen Rabbits with Automatic and Manual Seat Belts*, Report A-10, August 1979, Washington, D.C.

56. Statement of Richard Peet, Department of Transportation, *Hearing on Notice of Proposed Rulemaking, Re Passive Restraints for Unrestrained Persons* (sic!), December 7, 1983, morning session, pp.132-134. Peet, the head of Citizens for Highway Safety, had lobbied for the commercial and appeared in it.

57. *New York Times*, February 14, 1978, p. 20; Status Report, March 2, 1978, p. 7.

58. NHTSA [49 CFR Part 571][Docket 74-14; Notice 13] Occupant Crash Protection. *Federal Register*, vol. 43, no. 99, May 22, 1978, pp. 21912-21915, and [Docket 74-14; Notice 14] *Federal Register*, vol. 43, No. 219, November 13, 1978, pp. 52493-52494. Claybrook's account of the matter is from her interview, September 13, 1993.

59. Phillips, op. cit., pp. 25, 30.

60. Opinion Research Corporation, *Highlights of Four Research Studies: I. Safety Belt Usage Among Drivers, II. Use of Child Restraint Devices, Passenger Safety Belts, and Seat Position Data, III. Motorcycle Helmet Usage, IV. Automatic Safety Belt Systems*. Prepared for NHTSA, U.S. D.O.T., March, 1980.

61. Wolfgang Rosenau and George M. Welkey, [VW], “Field Performance of Volkswagen Automatic Restraint System,” D.O.T., N.H.T.S.A., *Eighth International Technical Conference on Experimental Safety Vehicles*, October 21-24, 1980, pp.369-378.

a third fewer fatalities than seat-belt-equipped cars.⁶² Admittedly, there were still not enough cases to be statistically significant, and the General Accounting Office (GAO) argued that standard 208 was based almost entirely on laboratory tests. The GAO report, which originated in its Detroit office, also concentrated on some of the key issues that critics were still raising about airbags — out-of-position occupant problems and sodium azide. Appended to the report was a response by NHTSA that amounted to a vigorous defense of airbags.⁶³ The year before, Claybrook had tried to stimulate commercial demand for airbags by asking 875 fleet owners to send her an indication of their interest in buying 1980 or 1981 model-year cars equipped with airbags. The replies showed a potential fleet demand for 39,000 such cars, even before the passive restraint standard would be in effect.⁶⁴

In August 1978, DOT and NHTSA held a press conference to highlight the findings that both seat belts and airbags were saving lives on the road and that the public favored the passive restraint standard. The material was summarized in NHTSA's first progress report on the occupant restraint program. A Gallup poll had already reported in the summer of 1977 that the public supported the airbag requirement by a margin of 46-37 percent. Now a DOT-sponsored survey by Peter D. Hart Research Associates found that support for the passive restraint standard exceeded opposition by about two to one. Preference for airbags or automatic belts was somewhat dependent on price — especially if the difference exceeded \$200. DOT believed that the public would be served best if it had a choice of airbags or passive belts in a full selection of car sizes and styles. So far, manufacturers seemed inclined to offer airbags only in their most expensive cars. Nevertheless, at the press conference Adams seemed to be saying that choice would be available:

General Motors, Ford, Chrysler and Volvo intend to offer airbags one year before they are required to do so; Volkswagen and General Motors currently are selling cars with automatic belts; and Ford and Toyota have announced that they also will offer automatic belts in advance of the requirement.⁶⁵

GM and Ford were about to complete negotiations with airbag suppliers. Although Eaton had withdrawn from airbag production earlier in the year, DOT listed a number of other suppliers and concluded that competition should be strong. There was only a slight hint of the difficulties Japanese carmakers had told Claybrook they were having in designing airbags for their small cars.⁶⁶

In its second "Occupant Restraint Progress Report," issued in April 1979, NHTSA reported that the three large American automakers were still planning airbags as optional equipment in some 1981

62. Conrad Cooke, NHTSA, "Fatality Rate Comparison, With and Without Airbags," February 14, 1979, Amended November 9, 1979. Submitted July 17, 1980 to docket 74-14-GR-375.

63. Comptroller General of the United States, *Passive Restraints for Automobile Occupants—A Closer Look*, July 27, 1979. The sodium azide issue had recently been reviewed by three studies, two sponsored by the MVMA and the third by a group that included potential airbag suppliers. They found no evidence of cancer-causing effects from sodium azide in airbags. *Status Report*, June 21, 1979, pp. 6-9.

64. *Status Report*, March 2, 1978, pp. 1,2-4.

65. U.S. Department of Transportation "News: August 30, 1978". Nothing in the paragraph was new news.

66. NHTSA, DOT, "Occupant Protection Program: Progress Report, August 30, 1978;" Minutes of meetings between Claybrook, other NHTSA officials and Japanese auto officials in Japan, May 22-26, 1978.

model cars — all GM large cars, the Ford Lincoln and Mark lines, and the Chrysler Le Baron and Dodge Diplomat. Allied Chemical had withdrawn as an airbag producer in December 1978, after concluding that the great majority of cars would be made with passive belts. Still, several airbag suppliers had received letters of intent from the car companies, and supplies of the components seemed adequate. NHTSA now estimated that airbags would cost about \$200 more than current belt systems.⁶⁷ When GM raised its estimates of the cost of ACRS units, making them almost double those of other manufacturers at various levels of production, Michael Finkelstein, NHTSA associate administrator for rulemaking, challenged the basis of the estimates. He also questioned why airbags would apparently be offered as options while automatic belts would be standard, a surprising outcome given GM's recent market study showing consumers preferred airbags over other systems (about which more later). But in July Ford also raised its airbag cost estimates, to a level closer to GM's.⁶⁸

Toward the end of September 1979, General Motors must have shattered what optimism NHTSA had left about its intentions by announcing that it would not provide airbags in any 1980 models because tests had revealed risks to out-of-position children. NHTSA was asked to hold a seminar to explore the issue while GM continued tests that might allow the option in full-sized 1982 models.⁶⁹ Claybrook told a press conference on October 1 that based on:

a preliminary look at the limited evidence GM presented to us... (t)he scope of the problems raised by GM, even if it is valid, is very narrow and does not in any way detract from the large number of lives that will be saved by this system, including the lives of many children...

In the real world, airbag equipped cars built by General Motors have performed well... The Department of Transportation does not believe that the problems GM now alleges may arise have in fact occurred.

Nevertheless, Claybrook announced that she was setting up a team of NHTSA experts to deal with the issue.⁷⁰ In a mid-November trip to Detroit with Neil Goldschmidt, who had recently replaced Adams at DOT, Claybrook learned that GM felt that it now had the problem under control and was ready to make airbags optional in some 1982, models. This was made public in December.⁷¹

While General Motors was switching signals about its willingness to sell airbags, Rep. John L. Burton (D-CA) released the results of some GM surveys that he had gotten, along with a request for

67. NHTSA, DOT, "Occupant Protection Program Progress Report No. 2," April 1979, pp. 43-49.

68. Letter from David E. Martin, Director, Automotive Safety Engineering, Environmental Activities Staff, General Motors Corporation, to Joan Claybrook, NHTSA, March 5, 1979. [74-14-N10-273]; Finkelstein's reply is quoted at length in *Status Report*, June 21, p. 3; Letter from J.C. Eckhold, Director, Automotive Safety Office, Ford Motor Co., to Joan Claybrook, July 5, 1979.

69. Betsy Anker-Johnson, Vice President, Environmental Activities Staff, General Motors Corporation, Letter to Joan Claybrook, NHTSA, September 27, 1979. [74-14-GR-305]

70. Claybrook's statement is reproduced in *Status Report*, October 9, 1979, pp. 3-5.

71. *Status Report*, December 21, 1979, p. 1; New York Times, December 9, 1979, p. 26.

confidentiality, from GM Vice President David Potter.⁷² The 1971 market study in which GM customers said they preferred ACRS to passive belts, already summarized in a previous chapter, was included. But there were two more recent studies. In a Midwestern city in 1978, 1,014 GM owners rated active belts, airbags and passive belts. Airbags “received the highest rating on all operation, comfort and appearance items evaluated.” In the second study, in 1979, 195 GM large car owners in Chicago were asked to choose among airbags and three types of automatic belts. Seventy percent preferred the airbags, costing \$360, to the passive belts that ranged between \$80 and \$150.⁷³ An earlier GM-sponsored survey of ACRS owners, which was in the 208 docket, said in its summary:

As indicated by comments on the returned postcards, many respondents had a favorable attitude toward ACRS. Of those who commented, most felt safer with ACRS in the car and were willing to pay the extra cost or go to a lot of trouble to purchase the ACRS.⁷⁴

Despite its market research, during the first half of 1980 General Motors continued what seemed like a hesitant retreat from airbags. In March it told NHTSA it did not plan to put airbags into small or medium size cars in the 1982-86 model years, but might still offer them in full-size cars. GM President Estes said that it would have the capacity to equip 200,000 large cars with airbags in the 1982 model year; a GM memo circulating in Congress put it at 250,000. Then in early June General Motors announced that to save some \$20 million in capital investment during a period of poor sales, it had canceled all airbag plans for its 1982 models.⁷⁵ This was happening at a time when the auto industry was calling for a rollback of government safety and environmental regulations in response to the massive losses caused by the Iranian oil crisis. The Carter administration went no further than to promise that no major new safety regulations would be issued during 1980, but, as we shall see, there was more activity in Congress.⁷⁶

Ford and Chrysler made no announcements about their airbag plans during 1980. In its midyear progress report on occupant crash protection, NHTSA assumed that Ford was still planning to make airbags available in limited numbers in some 1981 models.⁷⁷ Roger Maugh recalled that about this time, to keep its hand in airbag research, Ford installed driver-side airbags in 100 Lincoln Town Cars that were used as police cars in Dearborn. Maugh recalls that they were in use about 18 months and that every car had an airbag sensor corrosion problem.⁷⁸

72. Graham, *op. cit.*, p. 124.

73. *Status Report*, December 21, 1979, pp. 1,16-18.

74. Livia K. Li, and B.B. Campbell, *Air Cushion Restraint System (ACRS): A Survey of Owners' Opinions*, Highway Safety Research Center, University of North Carolina, May, 1978, p. 15-16.

75. *Status Report*, March 25, 1980, pp. 1-2; June 10, 1980, pp. 1, 10; June 25, 1980, pp. 1, 10-13. *New York Times*, June 4, 1980, p. 16.

76. *Status Report*, July 21, 1980, pp. 1-3.

77. NHTSA, “Automobile Occupant Crash Protection: Progress Report No.3,” July, 1980, p. 6.

78. Interview with Roger Maugh, April 22, 1996.

Mercedes-Benz told NHTSA in May that it was planning to put an airbag system in all 1982 model year cars it would sell in the United States.⁷⁹ Later in the year Volvo said that it was planning airbags for 4,000 of its 1982 cars.⁸⁰ Still, NHTSA was concerned that only automatic belts would be available in the kinds of cars most Americans would buy. According to Michael Finkelstein, NHTSA thought its proposed rule to improve the “comfort and convenience” of seat belts would make automatic belt installation more difficult.⁸¹ This was not spelled out in the notice of proposed rulemaking, which emphasized that a key aim was to discourage use of the detachment mechanism for automatic belts.⁸² But Volkswagen, at least, was aware of the implication; it told the White House that the NHTSA proposal would “eliminate VW’s passive belt system.”⁸³ The comfort and convenience standard was never issued, and NHTSA was still searching for a way to make airbags more available when Congress offered an opportunity.

Congressional Interventions

Led by Congressmen Shuster and Dingell, Congress voted to prohibit the use of funds in the 1979 and 1980 fiscal years to enforce any occupant protection standard other than seat belts. Since standard 208 was not yet in effect, the action was symbolic, but President Caldwell of Ford still congratulated Dingell when the bill was passed in 1979.⁸⁴ Toward the end of 1979 David Stockman, then a Republican congressman from Michigan, introduced an amendment to the 1980 and 1981 fiscal year appropriations that he said would guarantee “consumer choice” in occupant restraints — apparently referring to airbags, automatic, and manual belts. How this would have worked in practice was far from clear, and because it was attached to a one-year appropriations bill, its significance was also symbolic. But if it remained in effect during the period of standard 208 enforcement, manufacturers could conceivably have been forced to have three different restraint designs for each model. The amendment was adopted by the House. The Senate bill had already passed without Stockman’s proposal, and it was not until the middle of 1980 that serious negotiations to reconcile the two bills began in the conference committee.

Claybrook and her allies used the opportunity of the reconciliation negotiations to try to revive the prospects for airbags. With the help of Senator John Warner (R-VA), a newly recruited airbag supporter, Claybrook negotiated a compromise that incorporated some GM proposals. In July GM President Estes had offered Secretary Goldschmidt a deal. GM would make airbags optional in their B-C large cars during the 1983-85 model years; in return, GM wanted standard 208 to be delayed until the

79. Heinz W. Gerth, Mercedes-Benz of North America, Inc., Letter to Michael Finkelstein, Assoc. Dir, NHTSA, May 27, 1980.

80. *Status Report*, November 5, 1980, pp. 1,6,7.

81. Interview with Michael Finkelstein, July 7, 1995.

82. A preliminary notice had been issued at the end of 1979. NHTSA [Docket 74-14, Notice 17] Federal Motor Vehicle Safety Standards; Improvement of Seat Belt Assemblies. NPRM. *Federal Register*, Vol.44, No.251, December 31, 1979, pp. 77210-77224.

83. *Status Report*, August 6, 1980, p. 7.

84. *Congress and the Nation*, vol V, p. 296; *Status Report*, June 15, 1978, pp. 7-8; July 14, 1978, p. 5; August 21, 1979, pp. 1, 9, 10; October 9, 1979, pp. 1-3.

1983 model year and then applied first to small cars, a market dominated by the Japanese manufacturers and Volkswagen. The compromise reached in conference would have rolled back standard 208 to the 1983 model year, when the large manufacturers — GM, Ford, Toyota, Datsun, and VW — would have had to start meeting the standard in small cars, but also to provide airbags as an option on at least one car line in model years 1982-85. Other manufacturers would be required to meet the standards beginning with midsize cars. The bumper standard would also be rolled back.

Support for mandating airbags was provided by a survey commissioned by *The New York Times*. Answering the question: “Would you favor or oppose requiring car manufacturers to equip all new cars with air safety bags?”, 45 percent of licensed drivers were in favor, and 32 percent were opposed. But 93 percent of retail car dealers were opposed, one third of them giving “damage to sales” as the reason for opposition.

Although Ford and GM had participated in drafting the language, their support for the Warner proposal wavered. The compromise was adopted in the Senate on September 25, but very narrowly defeated in the House on October 1 and again on December 4, the second time by a three-vote margin. With the Reagan administration already elected and Stockman a key figure in it, Warner and Claybrook made one last effort to pass the compromise. They drafted another slightly revised bill which might have attracted a few more votes and convinced Dingell to allow another House vote if the Senate passed it. But Senator Metzenbaum blocked the Senate vote. When Claybrook brought Nader in to try to overcome Metzenbaum’s opposition, Nader refused to support her. He felt the compromise was not worth the rollback of the bumper standard.⁸⁵ So by the end of 1980 the passive restraint standard was still in place for 1982 models, but its future in the Reagan administration was uncertain.

Summary

The Carter administration had provided the friendliest political environment for consumer protection since the previous Democratic presidency, Johnson’s. The team of Brock Adams at DOT and Joan Claybrook at NHTSA seemed to put in place all the pieces for the successful initiation of the passive restraint standard. For all the leading advocates of the standard, the best way to fulfill it was with airbags — or at least by giving consumers the real option of choosing airbags. Although American manufacturers seemed at first to feel that airbags were the only feasible passive restraint, they gradually turned to automatic belts as Volkswagen’s sales and road experience accumulated.

General Motors led the reaction against airbags, claiming that its statistical analysis showed that they were no more effective than manual belts at the current use rate. But GM’s real motivation may have

85. *Congress and the Nation*, vol. V, p. 335; Interview with Joan Claybrook, September 13, 1993; Interview with Ralph Nader, July 27, 1993; *Status Report*, January 11, 1980, pp. 1-4, June 10, 1980, pp. 1,8, August 6, 1980, pp. 1, 3-6, December 31, 1980, pp. 1-4; Graham, *op. cit.*, pp. 129-135.

been a fear of the product liability risk of the technology, and the effect of airbag costs on sales. As the Iranian energy crisis assaulted the auto market, the deterioration in sales and income led American carmakers to demand, especially during the 1980 election, relief from all kinds of government regulations. Preferring automatic belts over airbags was consistent with this posture. Ford, however, did not go as far as GM in abandoning airbags, and it is possible that Ford would have offered them on some models if the standard had actually taken effect as scheduled.

Belt use laws within the United States seemed further from reality than ever. Claybrook reacted to Congressional pressure by asking state governors about the possibility of passing such laws, and got a uniformly negative response. Instead she invested NHTSA's resources in promoting state child restraint laws.

The performance standard requirement in the 1966 motor vehicle standards statute seemed to make it virtually impossible to dictate technology to the manufacturers. It was not absolutely impossible; comfort and convenience standards, or the requirement that there be an automatic reattachment after an emergency release, could have made automatic belts a more expensive choice, or even technologically unfeasible. But airbag advocates chose a more direct approach, the exception to the performance standard embodied in the Warner amendment. The exception was justified not by a direct attack on the principle of performance standards, but by the desirability of giving consumers a choice between airbags and automatic belts. The rhetoric of consumer choice had a powerful appeal. Stockman had used it to try to undermine the mandatory aspect of the passive restraint standard. Claybrook and Warner almost succeeded in requiring airbags in some of the models produced by large carmakers.