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July 13, 2021

BY OVERNIGHT DELIVERY

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dr. Steven Cliff
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg and Acting Administrator Cliff:

We write on behalf of parents and children in our respective states to express concern and disappointment about the failure of the National Highway Traffic Safety Administration (“NHTSA”) to adopt effective labeling standards for child car seats and follow through on a 20-year-old Congressional mandate to protect the safety of American children in side-impact crashes. In an effort to increase child passenger safety, we offer the following common-sense recommendations for changes to Federal Motor Vehicle Safety Standard (“FMVSS”) 213, the NHTSA regulation that applies to child car seats.¹

First, we urge NHTSA to require all child car seat labels and the boxes containing those seats to include clear, concise language that reflects a well-established premise endorsed by all experts in child car seat safety – that every child should remain in his or her current car seat (and if applicable, the stage of that car seat) until they exceed its height or weight maximum. This letter will refer to this concept as the “Delayed Transition Rule.” Adding this guidance to child car seats and the boxes they come in will decrease parent confusion about when to graduate a child to the next seat or stage. It will, thereby, encourage use of size-appropriate car seats for a longer period of time, increase the safety of child passengers, and lessen the likelihood of serious injury.

¹ 49 C.F.R. § 571.213.

Second, we urge NHTSA to expeditiously create and implement side-impact standards for child car seats. We are concerned about NHTSA’s failure to implement such standards, despite a mandate to do so from Congress over 20 years ago. As a result of NHTSA’s inaction, ***there currently is no government standard for side-impact testing in the United States for any child restraint system.*** The failure to promulgate side-impact testing standards unnecessarily endangers children on the road and does a huge disservice to families. Though we recognize that NHTSA would benefit from more funding dedicated to research and rulemaking concerning child safety, the decades of delay in developing a side-impact standard appear difficult to justify. We ask NHTSA to create and implement side-impact standards for child car seats without further delay. As explained below, having standard side-impact testing protocols will greatly improve parents’ ability to make informed decisions about which child car seat to purchase and also save children from avoidable injury.

Labeling Requirements to Reflect the Delayed Transition Rule

NHTSA is the federal agency within the U.S. Department of Transportation that is responsible for saving lives, preventing injuries, and reducing economic costs due to road traffic crashes.² Among other functions, NHTSA is tasked with issuing regulations that implement laws passed by Congress concerning child safety in cars, including child car seats.

Motor vehicle crashes are the leading cause of death for children aged 1 to 13.³ Almost 5,000 children under 15 have died in car crashes from 2015 to 2019, which equates to about 19 children each week over that time period.⁴ Since their introduction in the 1970s, child car seats have significantly reduced the risk of injury to children, and numerous technological advances have made them safer over the years. NHTSA shares credit in this success, but as the data shows, there is still room for improvement. And one such area in need of improvement is making sure that parents use the most appropriate car seat given their child’s weight, height, and age.⁵

In today’s market, there are three major categories of child car seats: (1) rear-facing seats with five-point harnesses (which include infant seats as well as convertible and all-in-one seats in the rear-facing mode or stage), (2) forward-facing seats with five-point harnesses (which include convertible seats, combination seats, and all-in-one seats in the appropriate mode or stage), and

² NHTSA’s Core Values, <https://www.nhtsa.gov/about-nhtsa/nhtsas-core-values> (last visited June 16, 2021).

³ NHTSA Car Seats and Booster Seats, <https://www.nhtsa.gov/equipment/car-seats-and-booster-seats> (last visited June 16, 2021).

⁴ See Query of NHTSA Motor Vehicle Crash Data, <https://cdan.dot.gov/query> (select the “Occupants” tab: under “Select Fatality and/or Injury” choose “All Occupants Involved in Motor Vehicle Crashes”; under “Select Time Frame,” choose 2015-19; under “Filter Your Selection,” under “Person,” choose 0-15 years of age and check the box to the right to apply the filter; and under “Person Injury Type,” choose “Fatal”).

⁵ See L. Dunn *et al.*, NHTSA, Report No. DOT HS 812 251, *Motor Vehicle Occupant Protection Facts: Children, Youth, Young Adults 6-7* (March 2016), <https://www.nhtsa.gov/sites/nhtsa.gov/files/812251-youthfactsbook2016.pdf>; J. Enriquez, NHTSA, Report No. DOT HS 813 033, *The 2019 National Survey of the Use of Booster Seats 10-16* (May 2021), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813033>; see also Dennis R. Durbin, American Academy of Pediatrics, Technical report—Child passenger safety, 142:5 *Pediatrics* 2-3 (2018), available at <https://pediatrics.aappublications.org/content/pediatrics/142/5/e20182461.full.pdf> (hereinafter “AAP 2018 Technical Report”).

(3) booster seats used in conjunction with traditional lap and shoulder seat belts (which include booster seats as well as combination seats and all-in-one seats in booster mode or stage).⁶ Determining which seat is appropriate for a child depends on their height and weight limits (which are determined by the manufacturer⁷), as well as the child’s development and maturity level.⁸ In addition to height requirements, some seats also have other size-related requirements; for example, some require that a child’s head be at least one inch from the top of the seat.

Rear-facing seats are safest for the youngest children because they distribute the force from a crash across the largest surface area, which makes that force more manageable for a young child’s still-developing skeleton and organs to withstand.⁹ Similarly, once a child has outgrown his or her rear-facing car seat, forward-facing seats with five-point harnesses are safest because they distribute any force from a crash across a larger surface area than a traditional lap and shoulder seat belt. Booster seats provide critical protection for young elementary school-age children; but they should only be used for children who are of appropriate height and weight, and who possess the emotional maturity to refrain from unbuckling and moving too much in the seat while the car is in motion.¹⁰

Experts universally agree (and NHTSA recommends¹¹) that children should delay transition to the next seat among the three choices as long as possible, consistent with each seat’s height and weight limitations.¹² Similarly, they also agree that for seats that operate in multiple modes or stages (*e.g.*, convertible, combination, and all-in-one seats), children should delay transition to the next mode or stage for as long as possible, again consistent with the height and

⁶ See NHTSA Car Seats and Booster Seats, <https://www.nhtsa.gov/equipment/car-seats-and-booster-seats> (last visited June 16, 2021).

⁷ See 49 C.F.R. § 571.213 S5.5.2(f) (requiring labels to include “the *manufacturer’s* recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg [or 30 lbs].”) (emphasis added).

⁸ Weight and height provide helpful guidelines for determining when a child is ready for each seat, but each child develops at a different rate so maturity also needs to be considered, especially for booster seats. Booster seats restrict the occupant’s movement less than other types of car seats, so they should only be used for children mature enough to sit relatively still for a long car ride. See *e.g.*, Heather Corley, *Should You Move Your Toddler to a Booster Seat*, Verywell Family (Oct. 30, 2020), <https://www.verywellfamily.com/move-toddler-to-booster-seat-293728>.

⁹ See AAP 2018 Technical Report, *supra* n.5, at 5.

¹⁰ See *supra* n.8.

¹¹ NHTSA Car Seat Recommendations, <https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#age-size-rec> (“To maximize safety, keep your child in the car seat for as long as possible, as long as the child fits within the manufacturer’s height and weight requirements.”) (last visited June 16, 2021).

¹² See *e.g.*, Dennis R. Durbin *et al.*, American Academy of Pediatrics, Policy Statement Child Passenger Safety 142:5 *Pediatrics* 1 (2018), available at <https://pediatrics.aappublications.org/content/pediatrics/142/5/e20182460.full.pdf> (hereinafter “2018 AAP Policy Statement”) (“[E]very transition is associated with some decrease in protection; therefore, parents should be encouraged to delay these transitions for as long as possible.”); Consumer Reports, *New Rear-Facing Car Seat Recommendations Removes Age Guideline for Children* (Aug. 31, 2018), <https://www.consumerreports.org/car-seats/new-rear-facing-car-seat-recommendations-remove-age-milestone/> (“Parents and caregivers should never be in a rush to move kids along to the next seat type or orientation. . . Each move to the next step can actually be a step down in terms of a child’s overall safety.”); Cleveland Clinic, *When to Switch Your Child’s Car Seat* (Feb. 18, 2021), <https://health.clevelandclinic.org/when-to-switch-your-childs-car-seat/> (“The key is staying in the current car seat for as long as possible.”).

weight limitations of each mode or stage. In other words, children should remain in the seat or seat mode or stage that they are in until they exceed the height or weight limits, which means they should: (a) remain rear-facing as long as possible, and (b) stay in a seat with a five-point harness as long as possible.

Encouraged by marketing from child car seat manufacturers, parents and children are understandably excited about moving up to the next seat in the progression. But experts all agree that to best protect child passengers from injury, they should wait and not rush the transition. Moving out of a rear-facing seat too soon increases the risk of more severe head and spine injuries during a crash.¹³ And moving out of a forward-facing seat too soon increases the overall risk of a child getting injured in a crash.¹⁴

Given the fact that the Delayed Transition Rule and the risks attendant with children transitioning from one car seat or car seat mode to another too soon are so well established, we are concerned by NHTSA's failure to require this important principle on car seat labels and boxes. NHTSA does require manufacturers to put the seat's minimum and maximum height and weight restrictions on a seat's label (which again, generally are determined by the manufacturer¹⁵). But that information alone does not provide parents with adequate guidance to make the best decision about when a child should graduate to the next stage or seat.

For example, almost all forward-facing seats with five-point harnesses on the market today safely accommodate children who weigh up to 65 pounds.¹⁶ But the NHTSA-mandated minimum weight for the next type of seat, booster seats, is currently 30 pounds¹⁷ (and if finalized, a proposed rule will make it 40 pounds).¹⁸ As a result, parents who are not aware of the Delayed Transition Rule may choose to move their child to a booster seat when he or she weighs just 30 pounds, when in fact, *all* experts agree the child should have stayed in the

¹³ See e.g., AAP 2018 Technical Report, *supra* n.5, at 5; 2018 AAP Policy Statement, *supra* n.12, at 4.

¹⁴ See e.g., Robert Sivinski, NHTSA, Report No. DOT HS 811 338, *Booster Seat Effectiveness Estimates Based on CDS and State Data 9-11* (July 2010), <http://www-nrd.nhtsa.dot.gov/Pubs/811338.pdf>; see also e.g., Jen Stockburger & Jon Linkov, *When Is the Right Time for a Booster Seat* (Feb. 6, 2020), <https://www.consumerreports.org/booster-seats/when-is-the-right-time-for-a-booster-seat/> (“[a]llowing your child to stay harnessed up to the height or weight limit of their forward-facing harnessed car seat can help ensure that their body is strong enough to transition to a booster.”).

¹⁵ 49 C.F.R. § 571.213 S5.5.2(f), *supra* n.7.

¹⁶ See [healthychildren.org](https://www.healthychildren.org/English/safety-prevention/on-the-go/Pages/Car-Safety-Seats-Product-Listing.aspx), Car Seats Product Listing for 2021, <https://www.healthychildren.org/English/safety-prevention/on-the-go/Pages/Car-Safety-Seats-Product-Listing.aspx> (last visited June 16, 2021).

¹⁷ See 49 C.F.R. § 571.213 S5.5.2(f), *supra* n.7.

¹⁸ Federal Motor Vehicle Safety Standards: Child Restraint Systems, Incorporation by Reference, 85 Fed. Reg. 69388 (proposed Nov. 2, 2020) (to be codified 49 C.F.R. § 571.213), available at <https://www.regulations.gov/document/NHTSA-2020-0093-0001>. The new proposed rule states that NHTSA “tentatively believes” the minimum weight for booster seats should be 40 pounds and that labels should be updated accordingly. *Id.* at 69390. This rule is a step in the right direction but falls short of what is needed to fully inform parents because it gives “flexibility” to manufacturers to determine how they present the information. *Id.* This discretion will inevitably lead to great variety of how height and weight limits are displayed, further and unnecessarily complicating the way the information is presented to parents.

forward-facing seat for several more years.¹⁹ Adding the Delayed Transition Rule, stated in a simple, clear way, to a conspicuous location on child car seats and their boxes would help alert parents to this simple, well-accepted premise (especially if months or even years have passed since the purchase of a car seat).²⁰

NHTSA’s Inaction on Side-Impact Standard

Congress first asked NHTSA to create a side-impact standard for child car seats in the year 2000.²¹ Today, over twenty years later, NHTSA has failed to implement any side-impact standard for child car seats.²² In contrast, numerous countries around the world (including countries in the European Union, Australia, and New Zealand) implemented a side-impact standard for child car seats almost ten years ago.²³

As NHTSA has acknowledged, side-impact crashes cause almost as many child injuries and deaths as frontal-impact crashes.²⁴ And side-impact crashes are of particular concern because they are more likely than other types of crashes to cause serious or fatal injuries.²⁵

Moreover, because NHTSA has failed to implement a side-impact standard specifically for child seats, the topic of side-impact testing generates significant confusion among consumers when shopping for child car seats. Many car seat manufacturers prominently advertise that their seats have been side-impact tested. However, because there is no government standard, the side-

¹⁹ According to the CDC growth chart for boys, a boy will not reach 65 pounds until he is at least 6 years old, and a 50th percentile 3-year-old boy weighs about 30 pounds. See CDC, 2 to 20 Years: Boys Stature-for-age and Weight-for-age percentiles, available at <https://www.cdc.gov/growthcharts/data/set1clinical/cj41c021.pdf> (last visited June 16, 2021).

²⁰ NHTSA should also consider requiring manufacturers to include a QR code with the Delayed Transition Rule language, so that parents can easily review this principle and access height and weight information for their seat.

²¹ Transportation Recall Enhancement, Accountability, and Documentation (“TREAD”) Act, Pub. L. 106-414 § 14(a) (requiring the Secretary of Transportation to “initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.”)

²² NHTSA did issue a proposed rule in 2014 but has never finalized it. Federal Motor Vehicle Safety Standards: Child Restraint Systems – Side Impact Protection, Incorporation by Reference, 79 Fed. Reg. 4570-01 (proposed Jan. 28, 2014) (to be codified at 49 C.F.R. § 571.213) available at <https://www.regulations.gov/document/NHTSA-2014-0012-0001>. This proposed rulemaking is a step in the right direction but has some shortcomings that NHTSA should address before finalizing. See e.g., Emily A. Mathews, More Change Needed for Car Seat Side-Impact Protection (Sept. 29, 2015), <https://www.consumerreports.org/cro/carseats/child-seat-side-impact-protection> (noting that the side-impact test relies on the use of a single test dummy, called the Q3, that is too tall to obtain helpful information for infant seats).

²³ United Nations Regulation 129: Uniform provisions concerning the approval of enhanced Child Restraint Systems used on board of motor vehicles (ECRS) 36 (Aug. 7, 2013), available at <http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2013/R129e.pdf>; United Nations Regulation No. 129 (Dec. 13, 2012), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XI-B-16-129&chapter=11&clang=en (listing the countries who have adopted UN Regulation 129); see also Australian Competition & Consumer Commission, Child restraints for use in motor vehicles, <https://www.productsafety.gov.au/standards/child-restraints-for-use-in-motor-vehicles> (last visited June 16, 2021) (summarizing the requirements of Australian/New Zealand Standard 1754).

²⁴ Federal Motor Vehicle Safety Standards: Child Restraint Systems – Side Impact Protection, Incorporation by Reference, 79 Fed. Reg. at 4570.

²⁵ See Kristy B. Arbogast et al., *Factors Influencing Pediatric Injury in Side Impact Collisions*, 44 Association for the Advancement of Automotive Medicine 407 (2000), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217391/pdf/aam44_p407.pdf.

impact testing conducted varies for each manufacturer and is, in essence, whatever those manufacturers decide it should be.

Public perception is that child car seats are highly regulated products. Indeed, parents heavily rely upon NHTSA's standards. Most consumers do not realize that the government does not regulate side-impact testing for child car seats. As a result, they may misplace their trust in manufacturers' claims about side-impact testing, incorrectly believing that government regulators have imposed minimum requirements on such testing when they have not done so. Moreover, consumers are not in a good position to assess the different side-impact testing conducted by manufacturers. Testing is highly technical and difficult for the average person to evaluate. Consumers who are told that a child car seat has been side-impact tested should be able to rely on government-regulated testing and safety standards to protect their children. And pursuant to its authority from Congress, NHTSA should provide those standards.

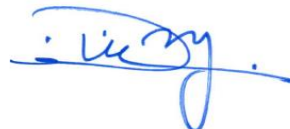
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For the reasons set forth above, we call upon NHTSA to take swift action to implement a rule or rules that include: (a) instructions to manufacturers to incorporate guidance for parents on child car seats and their boxes concerning the importance of delaying transition to the next car seat (or if applicable, the next mode or stage of the car seat), and (b) a side-impact testing standard for child car seats.

Sincerely,



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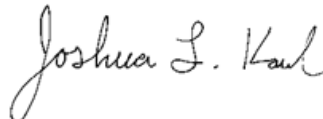
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