

# EXAMINING WAYS TO IMPROVE VEHICLE AND ROADWAY SAFETY

---

## HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

OCTOBER 21, 2015

**Serial No. 114–87**



Printed for the use of the Committee on Energy and Commerce  
*energycommerce.house.gov*

U.S. GOVERNMENT PUBLISHING OFFICE

98–780

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800  
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON ENERGY AND COMMERCE

FRED UPTON, Michigan  
*Chairman*

JOE BARTON, Texas  
*Chairman Emeritus*  
ED WHITFIELD, Kentucky  
JOHN SHIMKUS, Illinois  
JOSEPH R. PITTS, Pennsylvania  
GREG WALDEN, Oregon  
TIM MURPHY, Pennsylvania  
MICHAEL C. BURGESS, Texas  
MARSHA BLACKBURN, Tennessee

*Vice Chairman*  
STEVE SCALISE, Louisiana  
ROBERT E. LATTA, Ohio  
CATHY McMORRIS RODGERS, Washington  
GREGG HARPER, Mississippi  
LEONARD LANCE, New Jersey  
BRETT GUTHRIE, Kentucky  
PETE OLSON, Texas  
DAVID B. MCKINLEY, West Virginia  
MIKE POMPEO, Kansas  
ADAM KINZINGER, Illinois  
H. MORGAN GRIFFITH, Virginia  
GUS M. BILIRAKIS, Florida  
BILL JOHNSON, Missouri  
BILLY LONG, Missouri  
RENEE L. ELLMERS, North Carolina  
LARRY BUCSHON, Indiana  
BILL FLORES, Texas  
SUSAN W. BROOKS, Indiana  
MARKWAYNE MULLIN, Oklahoma  
RICHARD HUDSON, North Carolina  
CHRIS COLLINS, New York  
KEVIN CRAMER, North Dakota

FRANK PALLONE, JR., New Jersey  
*Ranking Member*  
BOBBY L. RUSH, Illinois  
ANNA G. ESHOO, California  
ELIOT L. ENGEL, New York  
GENE GREEN, Texas  
DIANA DeGETTE, Colorado  
LOIS CAPPS, California  
MICHAEL F. DOYLE, Pennsylvania  
JANICE D. SCHAKOWSKY, Illinois  
G.K. BUTTERFIELD, North Carolina  
DORIS O. MATSUI, California  
KATHY CASTOR, Florida  
JOHN P. SARBANES, Maryland  
JERRY McNERNEY, California  
PETER WELCH, Vermont  
BEN RAY LUJAN, New Mexico  
PAUL TONKO, New York  
JOHN A. YARMUTH, Kentucky  
YVETTE D. CLARKE, New York  
DAVID LOEBSACK, Iowa  
KURT SCHRADER, Oregon  
JOSEPH P. KENNEDY, III, Massachusetts  
TONY CARDENAS, California

## SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

MICHAEL C. BURGESS, Texas  
*Chairman*

LEONARD LANCE, New Jersey  
*Vice Chairman*  
MARSHA BLACKBURN, Tennessee  
GREGG HARPER, Mississippi  
BRETT GUTHRIE, Kentucky  
PETE OLSON, Texas  
MIKE POMPEO, Kansas  
ADAM KINZINGER, Illinois  
GUS M. BILIRAKIS, Florida  
SUSAN W. BROOKS, Indiana  
MARKWAYNE MULLIN, Oklahoma  
FRED UPTON, Michigan (*ex officio*)

JANICE D. SCHAKOWSKY, Illinois  
*Ranking Member*  
YVETTE D. CLARKE, New York  
JOSEPH P. KENNEDY, III, Massachusetts  
TONY CARDENAS, California  
BOBBY L. RUSH, Illinois  
G.K. BUTTERFIELD, North Carolina  
PETER WELCH, Vermont  
FRANK PALLONE, JR., New Jersey (*ex officio*)

## CONTENTS

	Page
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement .....	1
Prepared statement .....	2
Hon. Janice D. Schakowsky, a Representative in Congress from the State of Illinois, opening statement .....	3
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement .....	5
Prepared statement .....	5
Hon. Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, opening statement .....	7

### WITNESSES

Mark Rosekind, Administrator, National Highway Traffic Safety Administration .....	8
Prepared statement .....	11
Answers to submitted questions .....	170
Maneesh Mithal, Associate Director, Division of Privacy And Identity Protection, Federal Trade Commission .....	14
Prepared statement .....	16
Answers to submitted questions .....	184
Mitch Bainwol, President and CEO, Alliance of Automobile Manufacturers .....	43
Prepared statement .....	46
Answers to submitted questions .....	188
John Bozzella, President and CEO, Global Automakers .....	51
Prepared statement .....	53
Answers to submitted questions .....	196
Ann Wilson, Senior Vice President, Motor & Equipment Manufacturers Association .....	59
Prepared statement .....	61
Answers to submitted questions .....	205
Greg Dotson, Vice President for Energy Policy, Center for American Progress .....	67
Prepared statement .....	69
Answers to submitted questions .....	212
Joan Claybrook, Former Administrator, National Highway Traffic Safety Administration .....	76
Prepared statement .....	78
Answers to submitted questions .....	105
Peter Welch, President, National Automobile Dealers Association .....	107
Prepared statement .....	107
Answers to submitted questions .....	216
Michael Wilson, CEO, Automotive Recyclers Association .....	114
Prepared statement .....	117
Answers to submitted questions .....	221

### SUBMITTED MATERIAL

Statement of the National Highway Traffic Safety Administration, submitted by Mrs. Capps .....	138
Statement of Carol Houck in support of H.R. 2198, submitted by Mrs. Capps .....	141
Statements of GM in support of H.R. 2198, submitted by Mr. Pitts .....	143
Statement of environmental, science, and safety organizations, submitted by Ms. Schakowsky .....	146
Statement of the American Car Rental Association, submitted by Mr. Burgess .....	148

#### IV

	Page
Statement of the Auto Care Association <sup>8</sup> , submitted by Mr. Burgess .....	153
Statement of the American Chemistry Council, submitted by Mr. Burgess .....	155
Statement of the American Association of Motor Vehicle Administrators, submitted by Mr. Burgess .....	157
Statement of the Motor & Equipment Manufacturers Association, submitted by Mr. Burgess <sup>1</sup> .....	
Statement of the Environmental Protection Agency, submitted by Mr. Burgess .....	162
Statement of auto recyclers, submitted by Mr. Harper .....	168

<sup>1</sup> Available at: <http://docs.house.gov/meetings/if/if17/20151021/104070/hhrg-114-if17-20151021-sd006.pdf>.

## **EXAMINING WAYS TO IMPROVE VEHICLE AND ROADWAY SAFETY**

**WEDNESDAY, OCTOBER 21, 2015**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND  
TRADE,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2123 Rayburn House Office Building, Hon. Michael Burgess (chairman of the subcommittee) presiding.

Members present: Representatives Burgess, Lance, Blackburn, Guthrie, Olson, Bilirakis, Brooks, Upton (ex officio), Schakowsky, Kennedy, Cárdenas, Butterfield, Welch, and Pallone (ex officio).

Also present: Representative Capps.

Staff present: Leighton Brown, Press Assistant; James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Andy Duberstein, Deputy Press Secretary; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Olivia Trusty, Professional Staff, Commerce, Manufacturing, and Trade; Dylan Vorbach, Legislative Clerk, Commerce, Manufacturing, and Trade; Michelle Ash, Chief Counsel, Commerce, Manufacturing, and Trade; Jeff Carroll, Staff Director; Lisa Goldman, Counsel; Rick Kessler, Senior Advisor and Staff Director, Energy and Environment; and Josh Lewis, EPA Detailee.

### **OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BURGESS. The committee will come to order. And good morning. I want to welcome everyone to our hearing today: "Examining Ways to Improve Vehicle and Roadway Safety."

I will recognize myself for 5 minutes for the purpose of an opening statement.

Certainly, lives depend on the safety of cars, safety of trucks, and on the roads themselves in the United States. And on the whole, the data is good around the decrease in fatalities against miles driven. But the hearings over the last 2 years have certainly underlined the severity of problems that do exist, and there is no room for going slow when it comes to safety. And certainly, deception cannot and will not be tolerated.

So it is incumbent upon us in the Congress, us on the committee, the National Highway Traffic Safety Administration, vehicle manu-

facturers, and others in the automotive industry to ensure absolute compliance with current federal motor vehicle safety standards and processes. Lives depend on it.

It is also our responsibility to revisit the adequacy of safety standards and the processes that determine whether they provide sufficient protections to our nation's motorists. This past year, I think it has been clear to many of us on the committee and certainly clear to me that this is not always the case and that there is room for improvement.

To that end, the discussion draft that we will examine today includes modifications to certain federal motor vehicle safety standards and their processes that will enhance safety practices amongst automakers, the National Highway Traffic Safety Administration itself, and provide more information to motorists and consumers about vehicle safety, and foster the development of new automotive technologies that will save lives.

Some of these modifications include updating how the National Highway Traffic Safety Administration publicizes and makes recall information available to consumers. The discussion draft will address how NHTSA coordinates with automakers before publicizing recall notices to consumers as well. These changes are intended to improve overall recall awareness by providing drivers with more complete information about a safety recall, and giving them the means to take immediate action to get their vehicles fixed once the defect notice is received.

The discussion draft also contains proposals intended to improve how the National Highway Traffic Safety Administration collects and analyzes vehicle safety information, and directs the agency to research the lifesaving potential of crashworthiness features that could provide additional protections to the driving public.

To increase accountability and improve safety practices among vehicle manufacturers, the discussion draft extends their remedy and their repair obligations under recalls, and increases the time that they must maintain safety records to facilitate the identification of potential defects, and institutes safety incentives that encourage investment into next-generation safety technologies.

After a record year for recalls, the draft we will examine today also discusses roadway safety, vehicle safety, and is a continuation of this subcommittee's efforts to restore confidence in American motorists that the cars that they are driving are safe, that the recall process works, and that automakers and the National Highway Traffic Safety Administration are capable of keeping pace with the technology and the complexity of cars of the future.

I certainly want to thank all of our witnesses for their testimonies. I look forward to an engaging and lively discussion on these issues as we seek to improve auto safety, save more lives, and ultimately benefit the driving public.

[The prepared statement of Mr. Burgess follows:]

#### PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

Lives depend on the safety of cars and trucks on the road in the United States. And on the whole, the data is good around the decrease in fatalities against miles driven. But the hearings over the last two years have been sobering in their sever-

ity. There is no room for slow when it comes to safety and deception cannot be tolerated.

It is incumbent upon Congress, the National Highway Traffic Safety Administration, vehicle manufacturers and others in the automotive industry to ensure absolute compliance with current federal motor vehicle safety standards and processes. Again, lives depend on it. It is also our responsibility to revisit the adequacy of current safety standards and processes and determine whether they provide sufficient protections to our nation's motorists. This past year, it has been clear to me that they do not and that there are areas ripe for improvement.

To that end, the discussion draft that we will examine today includes modifications to certain federal motor vehicle safety standards and processes that will: enhance safety practices among automakers and NHTSA; provide more information to motorists about vehicle safety; and foster the development of new automotive technologies that will help save lives.

Some of these modifications include updating how NHTSA publicizes and makes recall information available to consumers. The discussion draft addresses how NHTSA coordinates with automakers before publicizing recall notices to consumers as well. These changes are intended to improve recall awareness by providing drivers with more complete information about a safety recall and giving them the means to take immediate action to get their vehicles fixed once a defect notice is received. The discussion draft also contains proposals intended to improve how NHTSA collects and analyzes vehicle safety information, and directs the agency to research the life-saving potential of crashworthiness features that could provide additional protections to the driving public.

To increase accountability and improve safety practices among vehicle manufacturers, the discussion draft extends their remedy and repair obligations under recalls, increases the time that they must maintain safety records to facilitate the identification of potential defects, and institutes safety incentives that encourage investment into next-generation safety technologies.

The staff discussion draft that we will examine today on vehicle and roadway safety is a continuation of this subcommittee's efforts to, after a year of record recalls, restore confidence in American motorists that the cars they are driving are safe, that the recall process works, and that automakers and NHTSA are capable of keeping pace with the technology and complexity of cars of the future.

[The discussion draft of the proposed bill follows:]

Mr. BURGESS. With that, I will yield back the balance of my time and recognize the ranking member of the subcommittee, Ms. Schakowsky, 5 minutes for the purpose of an opening statement, please.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for holding today's hearing on a legislative effort to enhance auto safety and improve the recall process.

I would like to mention at the outset that I think it is a mistake to hold this hearing without a non-government data security witness. This draft legislation includes provisions related to privacy and data protection, and it would benefit all of us to better understand the implication of those provisions.

I would also like to mention that victims of the GM ignition switch failure are here today in the audience. It has been 20 months since the initial GM recall, and you would think this committee would have acted sooner. As we see again today with the Toyota recall of 6.5 million vehicles, these safety issues aren't going away.

As a sponsor of legislation to achieve the goals this bill attempts to address, I am happy we are finally having a legislative hearing. Unfortunately, I believe we are having it on the wrong bill. This

discussion draft includes some ideas from H.R. 1181, the Vehicle Safety Improvement Act, the bill I introduced with Ranking Member Pallone and five other members of the subcommittee in March. Those policies include requirements that NHTSA undergo a rule-making to improve rear crashworthiness, and that every automaker has a U.S.-based senior executive responsible for certifying the accuracy and completeness of all responses to NHTSA's request for information relating to safety investigations.

And I am glad those provisions were included, but it would have been much better and more useful for the majority to have engaged in a bipartisan consultation during the drafting of this bill, as I have repeatedly asked, rather than dumping this bill in our laps. Had that dialogue taken place, many of the weaknesses in the bill could have been addressed prior to this hearing.

The Vehicle Safety Improvement Act includes several provisions that would enhance safety and improve the efficacy of recalls, none of which are included in this draft legislation. The VSIA would more than double NHTSA's funding for vehicle safety programs. This bill provides no explicit additional funding for the agency. The VSIA would increase the quantity and quality of information shared by automakers with NHTSA, the public, and Congress.

While there is a nod to those priorities in this draft legislation, there is little meaningful change from the status quo. The bill would require manufacturers to fix all recalled vehicles free of charge rather than just those that were purchased within the past 10 years. This discussion draft would not.

Under VSIA, NHTSA would have new imminent hazard authority to expedite recalls related to dangerous defects that would eliminate the regional recall program ensuring that all cars subject to a recall are repaired regardless of their location. Neither of those changes are part of this discussion draft.

But beyond those missteps, the Republican draft legislation takes egregious steps in the wrong direction. To take one example, the bill would give automakers a break from health-based carbon emissions requirements in exchange for adding safety features that are readily available.

In the wake of Volkswagen's deliberate cheating on EPA emissions standards, it makes no sense that we give carmakers a free pass to pollute beyond standards needed to maintain public health. This provision is a big win for the Volkswagens of the world but does nothing to benefit the public.

It is about time we had a hearing in enhancing auto safety. The safety of American drivers, passengers, and pedestrians should be above partisan politics. I urge my colleagues to engage in a bipartisan legislative process that will yield a stronger and more comprehensive bill. I am anxious to participate in that kind of dialogue. We still have an opportunity to deal that.

And unless there is someone else who would want some time, I yield back my time.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

The chair recognizes the chairman of the full committee, Mr. Upton, 5 minutes for an opening statement, please.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Well, thank you, Mr. Chairman.

You know, a car isn't just how you get around when you are from Michigan. It is a neighbor's job, it is a fiber that connects our communities, and the backbone of our state's economy, and we take great pride in the industry's inventiveness, resilience, and creativity. It is what has helped the industry become what it is today, a global leader in vehicle safety, comfort, and superior driving experiences.

But over the past couple years, we have seen the best of what the auto industry has to offer. It is no secret that I am an optimist and believe that the future is bright for the auto industry, for Michigan, and for the country. But unfortunately, we have also seen safety shortcomings and flat-out dishonesty along the way. I am glad we are here today to start talking about making fixes to the National Highway Traffic Safety Administration and to the industry to ensure that cars are as safe as humanly possible.

We are in the midst of an exciting time of automotive ingenuity. What was once science fiction is now becoming reality. This innovation is to be applauded, not only because it will revolutionize driving, but because of what it means for vehicle safety, the environment, and most importantly, saved lives.

The staff discussion draft that we are going to review today is a starting point to achieve those ends. It includes proposals intended to foster greater vehicle and roadway safety for motorists now and for years to come. Some pieces, like having a corporate officer responsible for safety compliance, certainly isn't new. Other ideas, like how to best ensure cybersecurity, may need to further evolve. It is encouraging that the industry is setting up an Information Sharing and Analysis Center. There is also good talk about forming a working group to address cybersecurity best practices.

The draft seeks to address concerns around recall awareness and incentivizes automakers to invest in new safety technologies that will indeed save more lives. It also includes plans that will help modernize the work and mission of the NHTSA to ensure that the agency is fully capable of keeping pace with the innovation and progress of the industry in the 21st century.

This is a lifesaving endeavor. I look forward to a thoughtful and engaging dialogue on the merits of each proposal and what additional considerations should be made by this committee. While we have a ton of witnesses today, I also want to invite everyone with an interest to give us feedback on how we can improve the legislation.

This committee is unwavering in its commitment to ensure that the auto industry and the government are doing everything that they can to make cars safer and protect the lives of the driving public and their passengers. Our work continues to improve safety for drivers.

[The prepared statement of Mr. Upton follows:]

**PREPARED STATEMENT OF HON. FRED UPTON**

A car isn't just how you get around when you are from Michigan. It's a neighbor's job, it's a fiber that connects our communities, and the backbone of our state's econ-

omy. We take great pride in the industry's inventiveness, resilience, and creativity. It is what has helped the industry become what it is today—a global leader in vehicle safety, comfort, and superior driving experiences.

Over the past few years, we have seen the best of what the auto industry has to offer. It's no secret that I am an optimist and believe that the future is bright for the auto industry, for Michigan, and this country. Unfortunately, we have also seen safety shortcomings and dishonesty along the way. I am glad we are here today to start talking about making fixes to the National Highway Traffic Safety Administration and to the industry to ensure that cars are as safe as humanly possible.

We are in the midst of an exciting time of automotive ingenuity. What was once science fiction is now becoming a reality. This innovation is to be applauded, not only because it will revolutionize driving, but because of what it means for vehicle safety, the environment, and most importantly saved lives.

The staff discussion draft that we will review today is a starting point to achieve those ends. It includes proposals intended to foster greater vehicle and roadway safety for motorists now and in the years to come. Some pieces, like having a corporate officer responsible for safety compliance, aren't new. Other ideas, like how to best ensure cybersecurity, may need to further evolve. It is encouraging that the industry is setting up an Information Sharing and Analysis Center. There is also talk of forming a working group to address cybersecurity best practices.

The draft seeks to address concerns around recall awareness and incentivizes automakers to invest in new safety technologies that will save more lives. It also includes plans that help modernize the work and mission of the National Highway Traffic Safety Administration to ensure that the agency is fully capable of keeping pace with the innovation and progress of the industry in the 21st century.

This is a life-saving endeavor. I look forward to a thoughtful and engaging dialogue on the merits of each proposal, and what additional considerations should be made by this committee. While we have many witnesses today, I also want to invite everyone with an interest to give us feedback on how we can improve the legislation. The Energy and Commerce Committee is unwavering in its commitment to ensure that the auto industry and the government are doing everything they can to make cars safer and protect the lives of the driving public. Our work continues to improve safety for drivers.

Mr. UPTON. And I yield the balance of my time to the vice chair of the full committee, Marsha Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and I want to thank our witnesses for being here today, and Chairman Burgess, just to thank you for this hearing. I think you have chosen the perfect day to do this hearing as we go back to the future, and it is October 21st, 2015, and we all remember that movie and the significance of that date. And here we are talking about interconnected cars and using tablets and using this data. So perfect day to have this discussion. And, Chairman Burgess, I thank you for the draft that you have brought forward.

My constituents are truly interested in this issue. Whether they work with Toyota or GM or Nissan or in the aftermarket auto parts industry with AutoZone, everybody has an interest in what we are doing. And here is the reason why: When you look at the stats that we are going to have a quarter-billion interconnected cars on the roadway by 2020, by 2020, and the significance of that, as automobiles have become more computerized, it is important for us to look at these technological advances such as the vehicle-to-vehicle communication. There is a lot of curiosity about that. We look forward to getting some answers as to how this is going to work.

And I thank the gentleman from Texas for initiating the conversation and yield back.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

The chair recognizes the ranking member of the full committee, Mr. Pallone, 5 minutes for an opening statement, please.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. The title of today's hearing refers to vehicle and roadway safety, but it is clear from the draft before us that safety is not the focus. Instead of improving auto safety, this draft weakens current environmental and consumer protections.

Auto safety is a pressing topic that deserves our utmost attention. Traffic fatalities in the U.S. grew by 14 percent in the first 6 months of 2015. That increase comes after years of declining traffic deaths. And injuries are also up. The National Safety Council reports that medically related motor vehicle injuries grew by 30 percent since 2014, and these increases should concern everyone.

Earlier this year, Ranking Member Schakowsky and I introduced the Vehicle Safety Improvement Act of 2015 as a starting point for bipartisan negotiations with an eye towards comprehensive auto safety legislation. Our bill would make real improvements to ensure that the millions of drivers and passengers across this country are kept safe. It gets NHTSA the information, resources, and authorities needed to protect consumers, and our bill also empowers consumers with more information and ensures used cars are fixed before they are resold.

Instead of those safety measures, this draft would give automakers credits towards greenhouse gas emissions and fuel economy requirements for incorporating crash avoidance and vehicle-to-vehicle or V2V technologies in new cars even though there is no apparent link between these technologies and lower emissions. Manufacturers would get these credits for things they are already doing, not as an incentive to improve safety.

Not only are manufacturers continuously touting their cars as including the latest in crash-avoidance technologies, NHTSA has already released its proposal to require V2V-enabled cars. NHTSA also secured commitments from several automakers to include automatic emergency braking on all new cars, and furthermore, many crash-avoidance technologies are currently part of a prominent safety rating from the Insurance Institute for Highway Safety, meaning that automakers already have considerable incentive to add those features to cars.

In the wake of the Volkswagen emissions fraud scandal, I am alarmed that Congress would even consider giving automakers a way around environmental regulations. In effect, auto companies would receive a pass on pollution because they installed communication devices in their vehicles. Just as Volkswagen's technologies did not prevent NOx emissions, communication devices will not prevent greenhouse gases. And this bill essentially creates a congressionally sanctioned defeat device.

I am also concerned about the privacy and cybersecurity provisions in this draft. As more high-tech vehicle safety equipment is integrated into cars, strong consumer privacy and data protections are more important than ever. But instead of improving privacy or cybersecurity protections, this draft gives automakers liability protection for simply submitting a privacy policy or cybersecurity plan, even if that policy or plan provides no real protections for consumers, and even if those policies are not followed.

Because my time is limited, I want to turn to process for a moment. I am disappointed by the unilateral approach taken by the majority in drafting this legislation. For months we have been trying to work with our Republican colleagues to draft auto safety legislation that would meaningfully reduce deaths and injuries on the roads. But instead of pursuing a bipartisan approach, the majority chose to prepare this legislation behind closed doors.

In addition, I am troubled that the Environmental Protection Agency could not find a way to attend today. Regardless, if the majority wants to open up the Clean Air Act, then this bill must be the subject of a hearing and markup by the Energy and Power Subcommittee, which has the jurisdiction and expertise to evaluate these proposals.

So, Mr. Chairman, this draft in my opinion fails to increase auto safety, it harms the environment, and relieves automakers from responsibility regarding consumer data. This is a weak bill that I can't support. Yet again, I can only express my hope that in the near future we can work together to make real progress towards improving auto safety.

And unless someone else wants time, I yield back. Thank you, Mr. Chairman.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman. This concludes opening statements.

The chair would like to remind Members that, pursuant to committee rules, all Members' opening statements will be made part of the record.

And again, we want to thank our witnesses for being here today, taking time to testify before the subcommittee. Today's hearing will consist of two panels. Each panel of witnesses will have the opportunity to give an opening statement followed by a round of questions. And once we conclude with questions on the first panel, we will take a brief—underscore brief—recess to set up for the second panel.

Our first witness panel for today's hearing is to include Dr. Mark Rosekind, the Administrator of the National Highway Traffic Safety Administration; and Mrs. Maneesha Mithal, the Associate Director of the Division of Privacy and Identify Protection at the Federal Trade Commission. We appreciate both of you being here today and sharing your time with us. We will begin the panel with you, Dr. Rosekind, and you are recognized for 5 minutes for an opening statement.

**STATEMENTS OF MARK ROSEKIND, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; AND MANEESHA MITHAL, ASSOCIATE DIRECTOR, DIVISION OF PRIVACY AND IDENTITY PROTECTION, FEDERAL TRADE COMMISSION**

**STATEMENT OF MARK ROSEKIND**

Mr. ROSEKIND. Chairman Burgess, Ranking Member Schakowsky, it is a privilege to represent the men and woman of the National Highway Traffic Safety Administration in offering the agency's perspective on how to strengthen our safety mission. Our mission is focused on saving the 32,719 lives lost, preventing the

2.1 million injuries, and reducing the 5.4 million crashes that occurred on American roadways in 2013.

NHTSA will continue to use every tool available in pursuit of public safety, and in just the last 10 months the agency has done the following:

Strengthened our oversight and enforcement on vehicle safety, issuing record civil penalties for recall and safety reporting failures and making innovative use of consent orders to improve safety performance in the auto industry.

Secured the first cybersecurity-related safety defect recall in automotive history, and made unprecedented use of our authority to explore measures to speed the most complex safety recall in American history, involving Takata airbag inflators.

We have embraced Secretary Foxx's call to accelerate technology innovations that can save lives—accelerating proposed rulemaking on vehicle-to-vehicle technology; undertaking a review of our regulatory structure to find and address obstacles to safety innovations; announcing our intent to add automatic emergency braking to our New Car Assessment Program; and securing voluntary commitments from 10 major automakers to make AEB systems standard equipment on new vehicles.

And we have answered the call of this committee and the American public to improve our own performance in identifying and addressing safety defects, pledging to fully implement recommendations of a recent DOT inspector general report on an expedited schedule and to undertake dozens of additional improvements to our screening, investigation, and analysis processes.

These efforts underscore NHTSA's commitment to safety. Whatever decisions this committee or the Congress make, NHTSA will seek to do all we can for safety within available authorities and resources. And with your help, we can do even more.

DOT and the Administration have identified actions Congress can take to strengthen NHTSA's safety mission. In the GROW AMERICA Act, Secretary Foxx proposed significant enhancements to NHTSA safety authorities, including imminent hazard authority similar to that already held by other safety regulators, criminal penalties for vehicle hacking, authority to prevent rentals or used-car sales of vehicles under safety recall, and significantly enhanced civil penalty authority to provide meaningful deterrence against violations of the Safety Act. GROW AMERICA and the fiscal year 2016 budget request would provide significant funding to enhance our Office of Defects Investigation and to more vigorously address emerging issues such as cybersecurity.

These proposals are essential to enhance our safety mission. And as I told your Senate colleagues in June, in my judgment as a safety professional, failure to address gaps in our available authority, personnel, and resources are a known risk to safety.

NHTSA has been able to spend only a few days on our detailed technical analysis of the staff discussion of this draft legislative proposal that was released late last week. And I would like to thank the committee members and staff for their initial engagement with NHTSA and hope productive conversations can and will continue. However, even our initial examination has identified examples of significant concerns.

The discussion draft proposal includes a provision that would provide fuel economy and emission credits to automakers for deploying advanced crash technologies. I would just raise two general points here: First, there should not be a tradeoff between safety and public health. The American public expects vehicles that address both safety concerns and public health and environmental concerns. Second, the automakers already have ample incentive to deploy advanced safety technologies—the lives they can save and the injuries that they can prevent.

The discussion draft would require a system to notify owners of recalled vehicles when they register or re-register their vehicle with state motor vehicle agencies. State agencies are one potential touch-point for owners, especially second or third owners of used vehicles. But the costs to establish or maintain such a system are unknown and the technology is not yet in place, which is why GROW AMERICA proposed a pilot program to work through these issues. Under the draft proposal, States that do not meet the requirement would be kicked out of the National Driver Register, an important tool that took over a decade to get 100 percent participation that identifies habitual traffic offenders and ensures that commercial drivers have clean records.

The committee's discussion draft includes an important focus on cybersecurity, privacy, and technology innovations, but the current proposals may have the opposite of their intended effect. By providing regulated entities majority representation on committees to establish appropriate practices and standards, and then enshrining those practices as de facto regulations, the proposals could seriously undermine NHTSA's efforts to ensure safety. Ultimately, the public expects NHTSA, not industry, to set safety standards.

The draft legislative proposal would require NHTSA to prepare certain recall notices in coordination with the manufacturer and would prevent NHTSA from making them public until manufacturers have made available complete lists of vehicle identification numbers for affected vehicles. This proposal would require NHTSA to withhold safety defect information from the public and give the manufacturers responsible for the defect control over the time line and release of NHTSA-initiated recall actions. This proposal weakens the agency's enforcement authority and is in direct conflict with other congressional interests to increase the transparency of safety information.

It would be very hard to argue that the best response to recent events affecting auto safety is to erode NHTSA's ability to regulate and oversee safety. What is required is to strengthen NHTSA's ability to achieve its mission by working together to address gaps in our authorities and resources. Discussion of these and other issues is essential to our shared goal of greater safety on America's roads.

I thank you, and I look forward to your questions.  
[The prepared statement of Mr. Rosekind follows:]

Statement of National Highway Traffic Safety Administrator

Mark R. Rosekind, Ph.D.

Before the House Energy and Commerce

Subcommittee on Commerce, Manufacturing and Trade

October 21, 2015

Chairman Burgess, Ranking Member Schakowsky, it is an honor to represent the men and women of the National Highway Traffic Safety Administration (NHTSA) in offering the Agency's perspective on how to strengthen our safety mission. Our mission is focused on saving the 32,719 lives lost, preventing the 2.1 million injuries, and reducing the 5.4 million crashes that occurred on American roadways in 2013.

NHTSA will continue to use every tool available in pursuit of public safety and in just the last 10 months the Agency has done the following:

- Strengthened our oversight and enforcement on vehicle safety, issuing record civil penalties for recall and safety reporting failures and making innovative use of consent orders to improve safety performance in the auto industry.
- Secured the first cybersecurity-related safety defect recall in automotive history, and made unprecedented use of our authority to explore measures to speed the most complex safety recall in American history, involving Takata air bag inflators.
- Embraced Secretary Foxx's call to accelerate technology innovations that can save lives -- accelerating proposed rulemaking on vehicle-to-vehicle technology; undertaking a review of our regulatory structure to find and address obstacles to safety innovations; announcing our intent to add Automatic Emergency Braking to our New Car Assessment Program; and securing voluntary commitments from 10 major automakers to make AEB systems standard equipment on new vehicles.
- And answered the call of this Committee and the American public to improve our own performance in identifying and addressing safety defects, pledging to fully implement recommendations of a recent DOT Inspector General Report on an expedited schedule and to undertake dozens of additional improvements to our screening, investigation and analysis processes.

These efforts underscore NHTSA's commitment to safety. Whatever decisions this Committee or the Congress make, NHTSA will seek to do all we can for safety within available authorities and resources.

And with your help, we can do even more. DOT and the Administration have identified actions Congress can take to strengthen NHTSA's safety mission.

In the GROW AMERICA Act, Secretary Foxx proposed significant enhancements to NHTSA safety authorities, including imminent hazard authority similar to that already held by other safety regulators; criminal penalties for vehicle hacking; authority to prevent rentals or used-car sales of vehicles under safety recall; and significantly enhanced civil penalty authority to provide meaningful deterrence against violations of the Safety Act. GROW AMERICA and the Fiscal Year 2016 Budget Request would provide significant additional funding to enhance our Office of Defects Investigation and to more vigorously address emerging issues such as cybersecurity.

These proposals are essential enhancements of our safety mission. As I told your Senate colleagues in June: In my judgment as a safety professional, failure to address gaps in our available authority, personnel, and resources are a known risk to safety.

NHTSA has been able to spend only a few days on our detailed technical analysis of the staff discussion draft legislative proposal released late last week. I would like to thank the Committee members and staff for their initial engagement with NHTSA and hope productive conversations can continue. Even our initial examination has identified examples of significant concerns.

The discussion draft would require a system to notify owners of recalled vehicles when they register or re-register their vehicle with State motor vehicle agencies. State agencies are one potential touch-point for owners, especially second or third owners of used vehicles. But the costs to establish or maintain such a system are unknown and the technology is not yet in place, which is why GROW AMERICA proposed a pilot program to work through these issues. Under the draft proposal, States that do not meet the requirement would get kicked out of the National Driver Register, an important tool for identifying habitual traffic offenders and ensuring that commercial drivers have clean records.

The Committee's discussion draft includes an important focus on cybersecurity, privacy and technology innovations, but the current proposals may have the opposite of their intended effect. By providing regulated entities majority representation on committees to establish appropriate practices and standards, then enshrining those practices as de facto regulations, the proposals could seriously undermine NHTSA's efforts to ensure safety. Ultimately, the public expects NHTSA, not industry, to set safety standards.

The draft legislative proposal would require NHTSA to prepare our recall notices in coordination with the manufacturer and prevent NHTSA from making them public until manufacturers have made available complete lists of Vehicle Identification Numbers for affected vehicles. This

proposal would require NHTSA to withhold safety defect information from the public, and give the manufacturers responsible for the defect control over the timeline and release of NHTSA-initiated recall actions. This proposal impinges on the agency's enforcement authority and is in direct conflict with other Congressional interests to increase the transparency of safety information.

Discussion on these and other issues is essential to our shared goal of greater safety on America's roads. Thank you, and I look forward to your questions.

Mr. BURGESS. The chair thanks the gentleman, and the gentleman yields back.

Ms. Mithal, you are recognized for 5 minutes for an opening statement, please.

#### **STATEMENT OF MANEESHA MITHAL**

Ms. MITHAL. Thank you. Dr. Burgess, Ranking Member Schakowsky, and members of the subcommittee, I am Maneesha Mithal from the Federal Trade Commission. I appreciate the opportunity to present the Commission's testimony on the privacy- and security-related provisions of the discussion draft to provide greater transparency, accountability, and safety authority for the NHTSA.

The FTC has served as the primary federal agency charged with protecting consumer privacy and security for the past 45 years. We have brought hundreds of privacy and data security cases targeting violations of the Federal Trade Commission Act and other laws.

In addition to enforcing a wide range of privacy and security laws, the FTC also educates consumers and businesses. Most recently, the FTC launched its Start With Security business education initiative that includes new guidance for businesses, as well as a series of conferences across the country designed to educate small businesses on security. The next conference will take place on November 5 in Austin, Texas.

On the policy front, we conducted a workshop on the Internet of Things where we specifically hosted a panel on connected cars. We released a report on the workshop earlier this year.

With this background, we are pleased to offer our views on Title III of the discussion draft. We have serious concerns about the privacy, hacking, and security provisions of Title III.

First, as to privacy, we are concerned that the safe harbor from FTC action is too broad. A manufacturer who submits a privacy policy that meets specific requirements but does not follow them may not be subject to any enforcement mechanisms. Furthermore, even though the privacy policy is only required to describe protections for vehicle data collected from owners, renters, and lessees, the Commission could be precluded from bringing a Section 5 action based on any privacy-related misrepresentation on a manufacturer's Web site, even if the misrepresentation is unrelated to vehicle data.

Second, as to hacking, Section 302 of the discussion draft would prohibit unauthorized access to vehicle data systems. Security researchers, however, have uncovered security vulnerabilities in connected cars by accessing such systems. Responsible researchers often contact companies to inform them of these vulnerabilities so that the companies can voluntarily make their cars safer. By prohibiting such access even for research purposes, this provision would likely discourage such research to the detriment of consumers' privacy, security, and safety.

Finally, as to security, the bill creates an advisory council to develop best practices. Manufacturers that implement these best practices will have a safe harbor under Section 5 of the FTC Act. However, the current draft may not result in best practices robust enough to protect consumers for several reasons:

First, at least 50 percent of the council's membership must consist of representatives of automobile manufacturers. Because any best practices approved by the council will be by a simple majority of members, manufacturers alone could decide what best practices would be adopted.

Second, the discussion draft contains eight areas the best practices may, but not must, cover. In this respect, the draft does not even create a minimum standard of best practices.

Third, there is no requirement to update practices in light of emerging risks and technologies.

Fourth, by creating a clear and convincing evidence standard for disapproving best practices submitted by companies, the bill gives NHTSA too little discretion and would likely result in the approval of plans that may meet the bare minimum best practices on paper but are in practice not appropriately tailored to foreseeable evolving threats.

Finally, the proposed safe harbor is so broad that it would immunize manufacturers from liability even as to deceptive statements. For example, false claims on a manufacturer's Web site about its use of firewalls or other specific security features would not be actionable if these subjects were also covered by the best practices.

In sum, the Commission understands the desire to provide businesses with certainty and incentives in the form of safe harbors to implement best practices. However, the security provisions of the discussion draft would allow manufacturers to receive substantial liability protections in exchange for potentially weak best practices instituted by a council that they control. The proposed legislation as drafted could substantially weaken the security and privacy protections that consumers have today.

Thank you for the opportunity to provide the Commission's views on the privacy and security provisions of the discussion draft. We look forward to continuing to work with the subcommittee, Congress, and our partners at NHTSA on this critical issue.

[The prepared statement of Ms. Mithal follows:]

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION  
on  
Examining Ways to Improve Vehicle and Roadway Safety  
Before the  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE  
UNITED STATES HOUSE OF REPRESENTATIVES  
Washington, D.C.  
October 21, 2015**

Doctor Burgess, Ranking Member Schakowsky, and members of the Subcommittee, I am Maneesha Mithal, Associate Director of the Division of Privacy and Identity Protection of the Bureau of Consumer Protection at the Federal Trade Commission (“FTC” or “Commission”).<sup>1</sup> I appreciate the opportunity to present the Commission’s testimony on the privacy- and security-related provisions of the discussion draft to provide greater transparency, accountability, and safety authority for the National Highway Traffic Safety Administration (“NHTSA”). While the Commission supports the Subcommittee’s goal of protecting the privacy and security of consumers’ information, we have concerns about the provisions as drafted.

## **I. BACKGROUND**

The FTC has served as the primary federal agency charged with protecting consumer privacy and data security dating back to the 1970 enactment of the Fair Credit Reporting Act (“FCRA”).<sup>2</sup> Beginning with the development of the Internet as a commercial medium in the mid-1990s, the FTC expanded its focus on privacy to reflect the growing collection, use, and sharing of consumer data in the commercial marketplace. Since then, using its enforcement authority, the Commission has brought hundreds of privacy and data security cases targeting violations of the Federal Trade Commission Act,<sup>3</sup> the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act,<sup>4</sup> the Do Not Call provisions of the Telemarketing Sales Rule,<sup>5</sup> the CAN

---

<sup>1</sup> This written statement presents the views of the Federal Trade Commission. My oral statements and responses to questions are my own and do not necessarily reflect the views of the Commission or of any Commissioner.

<sup>2</sup> 15 U.S.C. §§ 1681-1681x.

<sup>3</sup> 15 U.S.C. § 45(a).

<sup>4</sup> 16 C.F.R. Part 314, implementing 15 U.S.C. § 6801(b).

<sup>5</sup> 16 C.F.R. Part 310.

SPAM Act,<sup>6</sup> and the Children's Online Privacy Protection Act (COPPA).<sup>7</sup> These actions have addressed practices offline, online, and in the mobile and connected device environments.

In addition to enforcing a wide range of privacy and security laws, the FTC has distributed millions of copies of educational materials for consumers and businesses to improve their understanding of ongoing threats to security and privacy. Most recently, the FTC launched its "Start With Security" business education initiative that includes new guidance for businesses as well as a series of conferences across the country.<sup>8</sup> The business guidance lays out ten key steps to effective data security, drawn from the FTC's data security cases. It is designed to provide an easy way for companies to understand the lessons learned from our cases. It includes references to the cases, as well as plain-language explanations of the security principles that companies should implement.<sup>9</sup> In addition to the new guidance, the FTC also has introduced a one-stop website that consolidates the Commission's data security information for businesses.<sup>10</sup>

On the policy front, the Commission regularly holds seminars and workshops to examine the implications of new technologies and business models on consumer privacy and security. For example, at its Internet of Things workshop in November 2013, the Commission specifically examined privacy and security issues relating to the different technologies in connected cars, including Event Data Recorders ("EDRs") and other vehicle telematics.<sup>11</sup> Workshop participants

---

<sup>6</sup> 15 U.S.C. §§ 7701-7713.

<sup>7</sup> 15 U.S.C. §§ 6501-6506; *see also* 16 C.F.R. Part 312.

<sup>8</sup> *See* FTC Press Release, *FTC Kicks Off "Start With Security" Business Education Initiative* (June 30, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/06/ftc-kicks-start-security-business-education-initiative>.

<sup>9</sup> *See* FTC, *Start With Security: Lessons Learned From FTC Cases* (2015), available at <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>.

<sup>10</sup> *See* [www.ftc.gov/datasecurity](http://www.ftc.gov/datasecurity).

<sup>11</sup> FTC Workshop, *Internet of Things - Privacy and Security in a Connected World* (Nov. 19, 2013), available at <https://www.ftc.gov/news-events/events-calendar/2013/11/internet-things-privacy-security-connected-world>. The workshop's panel on connected car technologies is on pages 235-291 of the workshop transcript available at [http://www.ftc.gov/sites/default/files/documents/public\\_events/internet-](http://www.ftc.gov/sites/default/files/documents/public_events/internet-)

described the many safety and convenience benefits that connected cars offer. At the same time, participants described the potential privacy and security risks arising from this connectivity, including concerns about the ability of connected car technology to track consumers' precise geolocation over time; concerns that information about driving habits could be used to price insurance premiums or set prices for other auto-related products, without drivers' knowledge or consent; and concerns related to the security of connected cars. The Commission staff issued a report summarizing the workshop and outlining policy recommendations on the Internet of Things earlier this year.<sup>12</sup>

Finally, the FTC has provided advocacy statements to other government agencies considering regulatory actions in this area. In October 2014, the Commission filed a comment on NHTSA's advance notice of proposed rulemaking related to vehicle-to-vehicle (V2V) communications.<sup>13</sup> In its comment, the FTC expressed support for NHTSA's deliberative, process-based approach to addressing privacy and security risks and commended it for designing a V2V system to limit the data collected and stored to only that which serves its intended safety purpose. The Commission also has engaged in discussions with industry representatives and others on these very important issues.

---

[things-privacy-security-connected-world/final\\_transcript.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things).

<sup>12</sup> See *FTC Staff Report on the Workshop "Internet of Things: Privacy and Security in a Connected World"* (Jan. 27, 2015), available at <https://www.ftc.gov/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things>.

<sup>13</sup> See *Federal Trade Commission Comment Before the National Highway Traffic Safety Administration Regarding the NHTSA Proposed Rule Entitled "Federal Motor Vehicle Safety Standards: Vehicle-to-Vehicle (V2V) Communications," and the Accompanying Report, and Addressing Privacy and Security Issues Raised in the V2V Report and the Proposed Rule* (Oct. 20, 2014), available at [https://www.ftc.gov/system/files/documents/advocacy\\_documents/federal-trade-commission-comment-national-highway-traffic-safety-administration-regarding-nhtsa/141020nhtsa-2014-0022.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/federal-trade-commission-comment-national-highway-traffic-safety-administration-regarding-nhtsa/141020nhtsa-2014-0022.pdf).

## **II. Discussion Draft**

The Commission is pleased to offer its views on Title III of the discussion draft, which focuses on privacy and security for connected vehicles. We appreciate that one of the goals of the discussion draft is to improve privacy protections for consumers and to provide incentives for vehicle manufacturers to adopt and implement best practices for vehicle security and safety. However, we have concerns about several aspects of the provisions of Title III.

### **A. Privacy Provisions**

The draft would amend title 49 of the U.S. Code to add Section 32402(e), which grants a broad safe harbor from FTC law enforcement actions to any vehicle manufacturer who submits a privacy policy to the Secretary of Transportation that explains the notice, choices, and privacy-related commitments the manufacturer will make. Under this proposal, manufacturers can satisfy the requirements of this section without providing any substantive protections for consumer data. For example, a manufacturer's policy could qualify for a safe harbor even if it states that the manufacturer collects numerous types of personal information, sells the information to third parties, and offers no choices to opt out of such collection or sale. Moreover, because the safe harbor exempts a manufacturer from FTC oversight, and Section 32402(d)(2) provides a separate exemption from civil penalties, a manufacturer that submits a privacy policy that meets the requirements of Section 32402(b) but does not follow it would not be subject to any enforcement mechanism. Furthermore, although the privacy policy requirements only apply to information collected from vehicle "owners, renters, or lessees," the safe harbor would immunize manufacturers for privacy practices related to other types of consumers – such as collecting information from vehicle shoppers through manufacturers' websites. Thus, for example, the Commission could be precluded from bringing a Section 5

action<sup>14</sup> based on any privacy-related misrepresentation on a manufacturer's website, even if the misrepresentation is unrelated to vehicle data. Precluding the Commission from taking action against such misrepresentations goes well beyond Title III's focus on vehicle data, particularly in light of the Commission's extensive experience in consumer privacy enforcement.<sup>15</sup>

Section 32402(c) would authorize manufacturers to update privacy policies' terms simply by submitting an updated policy to the Secretary of Transportation. This provision would enable a manufacturer to make a material change to its privacy policy and then unilaterally apply the new policy to consumer data collected under its earlier policy. By contrast, the Commission has acted in a number of instances to ensure that consumers can rely on the terms of privacy policies in effect at the time information is collected by prohibiting a company from making material changes to those terms without first obtaining consumers' affirmative express consent.<sup>16</sup>

#### **B. Hacking Provisions**

Section 302 of the discussion draft would prohibit unauthorized access to an electronic control unit, critical system, or other system containing driving data. We support the goal of deterring criminals from accessing vehicle data. Security researchers have, however, uncovered security vulnerabilities in connected cars by accessing such systems.<sup>17</sup> Responsible researchers often contact companies to inform them of these vulnerabilities so that the companies can voluntarily make their cars safer. By prohibiting such access even for research purposes, this

---

<sup>14</sup> Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a).

<sup>15</sup> See *supra* pp. 1-3.

<sup>16</sup> See, e.g., *Facebook, Inc.*, No. C-4365 (F.T.C. July 27, 2012), available at <https://www.ftc.gov/enforcement/cases-proceedings/092-3184/facebook-inc>; *Gateway Learning Corp.*, No. C-4120 (F.T.C. Sept. 10, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/042-3047/gateway-learning-corp-matter>.

<sup>17</sup> See, e.g., Remarks of Professor Tadayoshi Kohno, Transcript of Internet of Things Workshop at 245-47, *supra* n.7; Charlie Miller & Chris Valasek, *Remote Exploitation of an Unaltered Passenger Vehicle* (2015), available at <http://llnatics.com/Remote%20Car%20Hacking.pdf>.

provision would likely disincentivize such research, to the detriment of consumers' privacy, security, and safety.<sup>18</sup>

### C. Security Provisions

Section 303 of the draft amends title 49 of the U.S. Code Section 30701 to establish an "Automotive Cybersecurity Advisory Council" to "develop best practices for cybersecurity for manufacturers of automobiles offered for sale in the United States." Section 30701(a)(4)(B). Manufacturers that implement these best practices will be immunized from liability under Section 5 of the FTC Act with respect to any unfair or deceptive conduct "relating to" these best practices. Section 30701(g). We appreciate that the drafters intend to spur the development of best practices in security. However, we are concerned that the current draft will not encourage best practices robust enough to protect consumers.

First, at least fifty percent of the Council's membership must consist of representatives of automobile manufacturers. Although NHTSA, the Department of Defense, and the National Institute of Standards and Technology would have seats on the Council, it appears that all other stakeholders, including consumer advocates, security researchers, other automotive industry members, and others would be limited to one member.<sup>19</sup> Because any best practices approved by the Council will be "by a simple majority of members," manufacturers alone could decide what best practices would be adopted.

---

<sup>18</sup> Arguably, such a move would be out of step with direction of other industries, in which many companies pay "bug bounties" to researchers who discover software vulnerabilities, to encourage researchers to report the vulnerabilities in a manner that allows companies to fix them. *See, e.g.*, AT&T, AT&T Bug Bounty Program, *available at* <https://bugbounty.att.com/> (last visited Oct. 18, 2015); Microsoft TechNext, Microsoft Bounty Programs, *available at* <https://technet.microsoft.com/en-us/library/dn425036.aspx> (last visited Oct. 18, 2015); Mozilla, Bug Bounty Program, *available at* <https://www.mozilla.org/en-US/security/bug-bounty/> (last visited Oct. 18, 2015); United, United Airlines Bug Bounty Program, *available at* <https://www.united.com/web/en-US/content/Contact/bugbounty.aspx> (last visited Oct. 18, 2015).

<sup>19</sup> Notably, despite the fact that a company will enjoy immunity from FTC Act liability if its plan is approved by the NHTSA Administrator, the FTC does not have a seat on the Council.

Second, the discussion draft contains eight areas the best practices “*may*” – not must – cover. If the discussion draft required each of the eight areas to be addressed, it would at least create a minimum standard that the best practices would have to meet. However, the discussion draft does not do that. The Council – the majority of members of which are auto manufacturers – will decide the appropriate areas for best practices.

Third, a key component of data security is the need to update practices in light of emerging risks and technologies. The discussion draft requires the Council to meet annually to review the best practices, but leaves it up to the Council to adopt additional best practices “as necessary” in subsequent years, which could mean that risks are not addressed in a timely fashion. The discussion draft allows, but does not require, manufacturers to submit updated plans if they choose to modify their plans.

Fourth, although the statute requires NHTSA Administrator approval of a plan submitted by a manufacturer, NHTSA has little discretion in this regard. The Administrator may only reject a plan if he or she “demonstrates by clear and convincing evidence” that the plan is not consistent with the best practices adopted by the Council. This is too high a review standard, and would likely result in the approval of plans that may meet the bare minimum best practices on paper, but are in practice not appropriately tailored to foreseeable, evolving threats.

Finally, the proposed safe harbor is so broad that it would immunize manufacturers from liability even as to deceptive statements made by manufacturers relating to the best practices that they implement and maintain. For example, false claims on a manufacturer’s website about its use of firewalls, encryption, or other specific security features would not be actionable if these subjects were also covered by the best practices.

In sum, the Commission understands the desire to provide businesses with certainty and incentives, in the form of safe harbors, to implement best practices. However, the security provisions of the discussion draft would allow manufacturers to receive substantial liability protections in exchange for potentially weak best practices instituted by a Council that they control. The proposed legislation, as drafted, could substantially weaken the security and privacy protections that consumers have today.

### **III. CONCLUSION**

Thank you for the opportunity to provide the Commission's views on the privacy and cybersecurity provisions of the discussion draft. We look forward to continuing to work with the Subcommittee and Congress on this critical issue.

Mr. BURGESS. The gentlelady yields back. The chair thanks the gentlelady. I thank you both for your testimony, and we will move to the question-and-answer portion of the hearing. And to begin, I will recognize myself for 5 minutes.

Ms. Mithal, let me just ask you to clarify because I don't think it was in the written statement that I had available to me last night. You mentioned that there would be one of your Start With Security business education initiatives in Austin, Texas. Is that correct?

Ms. MITHAL. That is correct.

Mr. BURGESS. And what was the date that you gave for that?

Ms. MITHAL. November 5.

Mr. BURGESS. Very well. So for the benefit of our C-SPAN audience, I just wanted to repeat that because, although my congressional district is a little north of Austin, it obviously will affect people in my State.

Dr. Rosekind, thank you for being here. Thank you for always being very generous with your time and very forthcoming whenever there are questions. Thank you for opening up the doors of the National Highway Traffic Safety Administration to committee members to come and visit with you and see the good work that you and the men and women employed there, the good work that you are doing.

I do have a copy of the inspector general's audit report. I am sure you are familiar with it. The inspector general's report was issued in June of this year. Can you take just a moment and go through which recommendations have been implemented?

Mr. ROSEKIND. Certainly. And just as context I will be clear that one of the things we did was actually commit to fulfilling all 17 recommendations within a year, of which the inspector general made sure I understood that is never done, to actually make that kind of commitment. And we actually gave a schedule. I mention that because the first one has been completed 2 weeks ahead of schedule and we are on schedule for all the other 16 at this point.

Mr. BURGESS. Very well. Can you briefly describe the operations for the council of vehicle electronics, vehicle software, and emerging technologies, that council that is being set up at NHTSA?

Mr. ROSEKIND. The current—I am sorry. I am just trying to clarify—

Mr. BURGESS. Is there a council for vehicle electronics at NHTSA?

Mr. ROSEKIND. We have an office.

Mr. BURGESS. An office?

Mr. ROSEKIND. Yes. Right.

Mr. BURGESS. OK.

Mr. ROSEKIND. And I am just trying to get my bearings here. So in 2015 actually—and we can send it to you—we published NHTSA and Vehicle Cybersecurity, and what that did was talk about what we have been doing in this arena. And so it actually describes how, starting in 2012, we reorganized our offices to have a specific office that addresses that with specific people looking at the cybersecurity issues related to electronic controls in vehicles.

Mr. BURGESS. And is there a separate office for vehicle software?

Mr. ROSEKIND. That is in that electronic vehicles—

Mr. BURGESS. Contained?

Mr. ROSEKIND [continuing]. control, correct. And we have seven people in D.C. and three at our Ohio Vehicle Research and Testing Center that is there.

Mr. BURGESS. And who leads that office or that council?

Mr. ROSEKIND. Well, right now, the Associate Administrator Nat Beuse is the technical lead on that.

Mr. BURGESS. And that also includes the Center for Emerging Technologies at NHTSA?

Mr. ROSEKIND. Correct.

Mr. BURGESS. Is there a mission statement that has been published for that office or that council?

Mr. ROSEKIND. I don't know if there is a specific mission statement for that office, but all of that would be in the 2015 NHTSA and Vehicle Cybersecurity that we will send you.

Mr. BURGESS. If you were to give us a thumbnail of what the mission of that office is, could you do that?

Mr. ROSEKIND. Sure. You know, in 2012 I think this was trying to look ahead. What has been interesting for me is everyone saying this is an issue now. NHTSA has been on this for at least 3 years, starting with a structural change to the agency that would at least have focused people looking at this.

And they are looking at policy, testing, research, and having continual interactions with the industry to make sure that we are up on whatever the latest things are people are thinking about.

Mr. BURGESS. Now, Ms. Mithal, let me just ask you. Does the Federal Trade Commission currently coordinate with the National Highway Traffic Safety Administration on data privacy and security?

Ms. MITHAL. We do, yes. So, for example, we have had several meetings with NHTSA staff. We also commented on their report on vehicle-to-vehicle communications last year.

Mr. BURGESS. Let me just take a minute. Dr. Rosekind, this may not be entirely within your area, but I mean you are aware that another subcommittee held a hearing on the Volkswagen emission problem and the defeat device. Do you know, what are the standard allowable nitrous oxide emissions under current EPA guidelines? We were told in the other subcommittee that 10 to 20 to 40 percent more than was allowable. Can you actually give me a figure in grams or liters what is allowable under nitrous oxide emissions?

Mr. ROSEKIND. I can make sure we send you a technical report so I can give you a specific number.

Mr. BURGESS. That would be great. And I would also like the information as to what that was in calendar year 2000 just as a reference point. Would that be possible?

Mr. ROSEKIND. You bet.

Mr. BURGESS. All right. Thank you very much. I will yield back and recognize the ranking member of the subcommittee Ms. Schakowsky 5 minutes for questions, please.

Ms. SCHAKOWSKY. Thank you.

I would actually like the victims or the families of the GM switch failure to at least raise their hands so we know where you are. I

want to thank you very much for coming today. I know this is of great interest to you.

I have a question for Dr. Rosekind. So this draft would require NHTSA to coordinate with auto manufacturers before publishing notice of any vehicle defect or noncompliance. I am concerned about how this would affect NHTSA's ability to independently determine that a recall is necessary and notify the public if the affected manufacturer disagrees. It seems as though a manufacturer could obstruct the notification process at least temporarily by failing to submit the affected vehicle identification numbers.

So let me ask you, Dr. Rosekind. How would requiring NHTSA to coordinate with manufacturers before publishing a notice of a defect present a risk to NHTSA's ability to issue recalls when necessary?

Mr. ROSEKIND. And I would like to handle this actually from two angles. One is what you are highlighting. This actually addresses NHTSA-initiated actions. Why that is important is because many of the recalls that occur are initiated by the automakers. They identify something; they move forward. A NHTSA-initiated recall is because they have denied the need to do that, and we have had to have the action. And so the concern is, as at least currently drafted, basically the time line and control of that would be basically under the control of the person who created the defect.

But I think the other part really has to do with withholding the safety information. I mean this committee, we have heard you. It is really frustrating to put the information out and not have the supply of parts ready, et cetera. But I can't imagine any of us sitting here knowing that we had safety defect information, holding it back, and then having somebody lose their lives due to that defect when we had the information. I mean that has been part of what we have done from the beginning is make sure people get to make that choice, not the government, that if they have that information, they get to choose what they would like to do, including park their car or get a rental or do whatever else.

So one has to do with the control and time line; that would be the manufacturer. But the other I think is for us just to think about the potential delay in providing information which clearly we would rather do as soon as we have it.

Ms. SCHAKOWSKY. Thank you. It is clear that the ability to move quickly, then, in situations in which a vehicle defect poses a serious public safety risk, perhaps even the life of someone is essential, but NHTSA currently has no authority to take emergency action. That is why in the legislation that Mr. Pallone and I have introduced, the Vehicle Safety Improvement Act, includes imminent hazard authority, which gives the Administration the ability to step in and issue a recall in cases where a defect substantially increases the likelihood of serious injury or death.

So how would this imminent hazard authority be helpful to NHTSA in carrying out its mission to reduce deaths, injuries, and economic loss resulting from motor vehicle crashes?

Mr. ROSEKIND. And thank you, Congresswoman, for identifying—we don't want to go from withholding information. We actually think we need to be in the other direction, which is what you have highlighted. There is a gap. Other safety regulators have it. Immi-

nent hazard would have allowed us to get the Takata airbag inflators off years before. And that authority, which, again, others already have, it not available currently to NHTSA.

Ms. SCHAKOWSKY. Some of my colleagues have noted today traffic deaths rose by 14 percent in the first 6 months of 2015. Injuries have risen by 30 percent since 2014. I am concerned that this draft bill would put more strain on NHTSA and its already over-stressed resources without actually improving safety. According to one estimate, the number of vehicles on U.S. roads grew by nearly 4 million vehicles from 2013 to 2014.

Meanwhile, NHTSA's budget has remained relatively flat over the past few years. Appropriations for fiscal year 2016 continue that trend, coming in more than \$70 million short of NHTSA's request.

So, Dr. Rosekind, do you believe that stagnant funding for NHTSA has made it harder for the Administration to do its job of keeping unsafe vehicles off the road?

Mr. ROSEKIND. There is no question. The last time I appeared before you I made the comment, "give us more resources; we will give you more safety." The equation is very straightforward. If you give us more requirements at the same resources, you will get less safety.

Ms. SCHAKOWSKY. This draft calls on NHTSA to conduct at least eight new reports and studies without providing any additional funding. Would you expect additional reports and studies to require a diversion of resources from other NHTSA programs?

Mr. ROSEKIND. Absolutely. We need the technical and other resources to produce these kinds of reports.

Ms. SCHAKOWSKY. Thank you. I yield back.

Mr. BURGESS. The gentlelady yields back. The chair thanks the gentlelady.

The chair recognizes the vice chair of the subcommittee, Mr. Lance, 5 minutes for questions, please.

Mr. LANCE. Thank you, Mr. Chairman.

Good morning to you both.

The state motor vehicle agency in New Jersey has contacted me, and I think this is a concern of various state agencies. There is a section directing motor vehicle agencies to notify drivers of open recalls on their vehicles when they are renewing registration, and in New Jersey, that is once a year and I presume that is true in other states as well. And there is some concern at the state level that this would put an undue burden on the various states.

I certainly understand the benefit in increasing notification and recall remedy rates, and we all favor that. However, I do share some of the concerns of the agency in New Jersey. And could you please, Dr. Rosekind, comment on the feasibility of your agency's coordinating with state agencies to ensure they are able to have the information necessary to inform drivers of open recalls on vehicles within their states.

Mr. ROSEKIND. And, Congressman, you just used the word, which is the feasibility. And NHTSA held a Retooling Recalls day event to see how do we increase to 100 percent? Automakers have been doing research to understand not just about recalls, how do we get remedies. But you have hit on the concern. There is no technology.

Nobody knows the cost. Nobody knows the procedures to use DMVs to get this information out.

It is a great concept. There is super touchpoint to get to people. The question is how to do it. And that is why in GROW AMERICA the suggestion was for a pilot study to figure it out and make sure that it would actually be effective.

Mr. LANCE. And I presume the pilot study would be with one or several of the various jurisdictions. And is there anticipation as to how that pilot study would occur, Dr. Rosekind?

Mr. ROSEKIND. Yes. Some of that is outlined in GROW America, and it involves two states. And just the things that I mentioned, which is we need to figure out the technology, what would be the procedures, what would be the cost. You do a pilot and a couple studies obviously with your view to how you would scale it for the country, with does it even work that way or not?

Mr. LANCE. Is it typical in the states that a vehicle registration is once a year or are there multiyear registrations in some of the states?

Mr. ROSEKIND. I believe it is annual. If there is an exception, I can find that out for you.

Mr. LANCE. Thank you very much.

Under the legislation, automakers would be required to take reasonable steps to ensure that other entities adhere to the automakers' privacy policies. And the automakers' privacy policies, as applied to automakers, would not be subject to FTC jurisdiction. What about the privacy policies of other entities that would potentially have to adhere to the automakers' privacy policy? So I request any comments you might have on that.

Ms. MITHAL. Sure. So it appears from a read of the bill that the safe-harbor-from-FTC action would apply to the manufacturers. So I would believe that we would still have the authority to go after other entities under Section 5 of the FTC Act.

Mr. LANCE. Thank you very much. I yield back the balance of my time, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back. The chair recognizes the gentleman from New Jersey, Mr. Pallone, 5 minutes for questions, please.

Mr. PALLONE. Thank you, Mr. Chairman.

High-tech vehicle safety technologies are expected to save thousands of lives per year once they are in broad use, and a NHTSA report estimates that two types of V2V technology alone could prevent more than 300,000 crashes. I am concerned, however, that in spite of the benefits of these technologies, Title V of this bill is based on a false tradeoff: vehicle safety instead of environmental safety. Sections 502 and 503 would exchange greenhouse gas emissions and fuel economy credits for manufacturers installing advanced safety technology and V2V in new cars. Particularly in light of the shocking emission fraud scandal surrounding Volkswagen, I am worried of any opportunity for automakers to avoid complying with environmental regulations.

So let me start, Dr. Rosekind, I understand that NHTSA is already working with auto manufacturers on including advanced safety technology in more vehicles, is that correct?

Mr. ROSEKIND. Yes. And if I could just—two things. One is Secretary Foxx has asked us to accelerate anything that is a new life-saving technology. And so the vehicle-to-vehicle proposed rule for 2016 will actually get out at the end of this year. And, yes, I think we need to acknowledge 10 manufacturers came forward and made a commitment to make automatic emergency braking standard on all their vehicles. That was without any mandates.

Mr. PALLONE. So the proposed rule you mentioned would require all manufacturers to make their vehicles V2V-enabled?

Mr. ROSEKIND. Correct.

Mr. PALLONE. And that you said by the end of the year?

Mr. ROSEKIND. The proposal will be out by the end of the year.

Mr. PALLONE. And then you said manufacturers are already installing these advanced technologies in their cars. Are there other incentives such as revising NCAP that you are considering to get these technologies deployed to all cars and not just the luxury cars?

Mr. ROSEKIND. There are three tools. We like to use all of them. Rulemaking is one of them. NCAP, the New Car Assessment Program, which is under review right now, more to talk about that in the near future. But I am also highlighting these 10 auto manufacturers who came together basically with IIHS, the Insurance Institute for Highway Safety, and NHTSA to do this on their own. These are three different tools. And I really have been pushing collaboration and the opportunity to expedite and expand safety beyond the minimums that we get from rulemaking.

Mr. PALLONE. So again, a requirement that V2V be installed in every new vehicle is already in the pipeline, and you said that the Insurance Institute for Highway Safety already requires—I don't know if you mentioned this—requires the vehicle to be equipped with certain advanced safety technologies to qualify for its top safety ratings. Is that correct?

Mr. ROSEKIND. That is correct.

Mr. PALLONE. And then you said you worked with IIHS to get certain commitments on technologies for manufacturers?

Mr. ROSEKIND. Correct. And in January we announced that automatic emergency braking is being added to NCAP, and there are further changes that are coming soon.

Mr. PALLONE. OK. I think most consumers would like to have a car that is both fuel efficient and safe. That makes sense. Do you support giving automakers CAFE credits for installing advanced automotive technologies?

Mr. ROSEKIND. I think the general principles that I stated are pretty important here. The American public expects both safety and public health. And the second part is I really hope that the manufacturers have enough incentive for lifesaving technologies. Those are going to be the lives they save and the injuries they prevent by putting those advanced technologies in their vehicles.

Mr. PALLONE. So do you want to give me an opinion, though, whether you like or support this idea of giving the automakers the CAFE credits because they install these advanced auto technologies?

Mr. ROSEKIND. And we will provide sort of detailed technical analysis on that, but we don't think there should be a compromise. You should be able to get safety and public health and environ-

mental concerns addressed because I think the incentives are already there: save lives, prevent injuries. That should be the highest incentive that anybody needs to add advanced technologies.

Mr. PALLONE. All right. I appreciate that.

What impact would the Corporate Average Fuel Economy, or CAFE, credit provision in this draft have on vehicle fuel economy? And how might that affect consumers who buy these new cars? Do you want to comment on that? In other words, what impact would the CAFE credit provision have on vehicle fuel economy?

Mr. ROSEKIND. The credit?

Mr. PALLONE. Yes.

Mr. ROSEKIND. I am not sure it would change the levels of what are actually covered under fuel efficiency may not change. It is more really the incentivizing, I think, that is part of that proposal.

Mr. PALLONE. And so do you want to venture a guess as to how it would affect consumers who buy these new cars?

Mr. ROSEKIND. Yes. That is the sort of thing I think we need a little bit more time to technically—these are very good questions, but I think we would want to get a little more detailed before taking a specific position on them.

Mr. PALLONE. Yes. All right. Well, thanks a lot. I appreciate it. Thank you, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentleman from Kentucky, Mr. Guthrie, 5 minutes for your questions, please.

Mr. GUTHRIE. Thank you, Mr. Chairman. I appreciate it.

Dr. Rosekind, did NHTSA or the Department of Transportation participate in the development of the NIST cybersecurity framework, and will it participate in future iterations of that framework?

Mr. ROSEKIND. We have ongoing interactions with all kinds of government agencies, including NIST and DOD, et cetera. So we are always involved pretty much in at least participating, as well as having them participate in our activities.

Mr. GUTHRIE. OK. Are there ways that NHTSA could currently participate or facilitate industry efforts to develop best practices for automotive cybersecurity?

Mr. ROSEKIND. Yes. And in fact, if you look at the model of having the 10 manufacturers come together to work on AEB as standard, it is a model to be applied across all kinds of issues, including cybersecurity. And so everybody has already read the Secretary is planning on having a meeting with the CEOs about the safety concerns that we have all been reading about, and he has specifically identified both safety and cybersecurity to talk to those CEOs about.

Mr. GUTHRIE. OK. And then another question kind of follows what you just said. Has NHTSA and the auto industry had discussion on best how to apply the NIST cybersecurity risk-management framework to the development of automotive security?

Mr. ROSEKIND. Yes, those discussions have begun.

Mr. GUTHRIE. Thank you.

And then, Ms. Mithal, by what standard does the FTC determine if auto manufacturers have tested the security of cars appropriately before putting them on the market?

Ms. MITHAL. Sure. So our standard is Section 5 of the FTC Act, which prohibits unfair or deceptive practices. So if a company makes a misrepresentation about a security practice, then we can take action.

An unfair practice is one that causes or is likely to cause substantial consumer injury not outweighed by the benefits to competition and not reasonably avoidable by consumers. So, in essence, it is a cost-benefit analysis. So there is no such thing as perfect security, but what we do require is reasonable security.

Mr. GUTHRIE. Reasonable security, thank you. And then in your testimony you discuss the FTC's Start With Security, a business initiative. Can you discuss how that should be applied to car companies and others involved in the connected car space?

Ms. MITHAL. Sure. So I can give a couple of examples. So one example that we give in the Start With Security business guidance is that companies should test products before they launch them as opposed to launching the products first and then seeing about problems later. So it is something that we call security by design.

Another thing we talk about in our Start With Security guidance is having a vehicle to accept vulnerability reports so that companies can have their ears to the ground and know of security research that is out there and evolving threats and emerging issues in their devices—

Mr. GUTHRIE. OK. Thank you.

Ms. MITHAL [continuing]. Including cars.

Mr. GUTHRIE. I appreciate it. I appreciate your answer.

That is all I have, Mr. Chairman. I yield back.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentleman from Massachusetts 5 minutes for questions, please.

Mr. KENNEDY. Chairman, Doctor, thank you very much. To the panelists, thank you very much for your testimony here today. And I want to thank the chairman for calling the hearing.

Many of today's cars contain a range of navigation, telematics, and event data recording systems, among others, that all have the ability to record driving history information. Auto manufacturers, other third parties also have access to this wealth of information. It is a bit concerning to me, candidly, and I am sure it concerns a number of other consumers as well. People want to know that their data is being kept safe and being kept private, and at least when it is used, being used with their consent.

So, Dr. Rosekind, I was hoping that you might be able to start the discussion. The data privacy provision in this discussion draft would require that car companies submit privacy policies to NHTSA, but it does not give NHTSA any authority to recommend changes or to set a standard for acceptable policies. Is that how you read the legislation as well?

Mr. ROSEKIND. That is how we read it, yes.

Mr. KENNEDY. So do you think consumers could be or should be concerned that there is no ability for NHTSA to recommend any changes?

Mr. ROSEKIND. I think the public expects and wants NHTSA both to regulate and set guidelines, not the manufacturers, to what the standards are that protect the traveling public.

Mr. KENNEDY. And, Ms. Mithal?

Ms. MITHAL. Yes, I think there are concerns that, although the bill prescribes certain requirements to be placed in privacy policies, it may not require the companies to follow them or it may not provide enforcement mechanisms to require the companies to follow those guidelines.

Mr. KENNEDY. So that is where we are going. It is my understanding that under the draft bill, an automaker will receive protection from civil penalties and FTC enforcement simply by providing NHTSA with a privacy policy that addresses the required items in the draft such as whether or not the automaker collects, uses, or shares data, and whether the consumer has any choice regarding the collection or use. It will not matter how a given company chooses to address those items, though.

So, as I read Section 301, a carmaker can hypothetically submit a privacy policy to NHTSA, violate that policy, and still be protected from FTC enforcement. It means that a carmaker can make promises to consumers about protecting their data, break those promises, and suffer no consequences under Section 5 of the FTC Act. So, Ms. Mithal, is that your understanding of how this system is set up under the draft legislation?

Ms. MITHAL. That is our understanding and it is a real concern.

Mr. KENNEDY. Do you think the bill provides sufficient incentives for automakers to create and adhere to the strong data privacy provisions for consumers?

Ms. MITHAL. No. Unfortunately, no.

Mr. KENNEDY. So if we have a situation where a car company claims to have expansive privacy policies to protect consumer data and then violates those policies, isn't that an unfair incentive practice?

Ms. MITHAL. Yes, it would be, and that would be something that the bill would strip the FTC's authority over.

Mr. KENNEDY. Thank you. I also have some additional questions about the anti-hacking provision, which would create a civil penalty from gaining unauthorized access into a vehicle's data or critical system. While we can all agree that we would like to prevent bad actors from accessing our car's control systems, some observers have expressed concerns about penalizing independent researchers, or so-called white-hat hackers, who hack into vehicles' systems to draw attention to vulnerabilities or to conduct tests. In the past 6 months alone, these types of researchers made headlines by uncovering massive vehicle emissions fraud in Volkswagen and exposing vulnerabilities in a Jeep by controlling it remotely via the internet.

We also heard from several small local auto repair shops that they think they could be precluded from accessing important information they needed to effectively repair cars. They suggest that non-auto dealers repair up to 80 percent of all cars that are not still under warranty.

So, Ms. Mithal, do you have any thoughts on that provision? In particular, from your expertise in reviewing data security cases, could you envision a scenario where information could be siloed so

that repair shops could get enough information to repair cars but not fiddle with, say, emergency brakes?

Ms. MITHAL. So let me be clear. We agree that there should be civil penalties for malicious hackers, but we are concerned that this bill would disincentive legitimate security researchers who responsibly contact companies, suggest that they fix those vulnerabilities, and companies fix those vulnerabilities to help consumers. And so we believe that the bill would create an impediment to that. On the auto repair issue, I would defer to NHTSA on that issue.

Mr. KENNEDY. So you mentioned this a little bit. Can you discuss the importance of those researchers to your data security work?

Ms. MITHAL. It is very important. Often, it is the white-hat hackers and security researchers that are bringing these problems to the attention of both the car manufacturers and regulators like the FTC.

Mr. KENNEDY. And do you have any idea on how to make that distinction between white-hat and black-hat so to speak?

Ms. MITHAL. I think that is something that will require very careful drafting, and we look forward to working with this subcommittee on that.

Mr. KENNEDY. Great. Thank you. I yield back.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentlelady from Tennessee, Mrs. Blackburn, for 5 minutes for questions, please.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

OK. Let's stay with this regulation issue. And one of our concerns is a dual regulation, because as you all may or may not be aware, we have kind of grappled with this. And, Ms. Mithal, I know that you are with privacy in the internet space with the FCC trying to get in on top of the FTC jurisdiction. And that has caused a tremendous amount of confusion.

So let me go right where Mr. Kennedy was and let's talk about the way you have got a manufacturer that can get the safe harbor and then avoid that Section 5 enforcement if the manufacturer is meeting those requirements that are listed.

Now, NHTSA already handles the issue of privacy in the automotive space, and so what we want to do is avoid this confusion and this dual regulation. So is the FTC going to honor the recognition that NHTSA has this lead, and are they going to honor the safe harbor provision and act in good faith when they are reviewing these manufacturers' privacy policies and making certain that they meet those requirements?

Ms. MITHAL. So if I can make two points in response to your question?

Mrs. BLACKBURN. Sure.

Ms. MITHAL. First, the concern is that the safe harbor is too broad in many respects. One example is that the privacy policy requirements only apply to vehicle data collected from owners, renters, or lessees. So, for example, if a manufacturer makes a misrepresentation on a Web site that applies to shoppers about how they are collecting shoppers' data, that wouldn't be covered by the privacy policy but the FTC couldn't bring action. So we have concerns about the breadth of the safe harbor.

Putting aside that, we work very well with NHTSA and we support the goal of avoiding overlapping and duplicative requirements. But at the same time, I think NHTSA and the FTC have different focuses. So, for example, NHTSA does recalls and we defer to their expertise in car safety issues. At the same time, we have the ability to get equitable relief against companies that don't maintain privacy and security of consumers in the form of, for example, implementing a security program, getting outside audits, in some cases disgorgement and redress. So we think that both agencies bring particular expertise to bear and can bring different remedies to the issue.

Mrs. BLACKBURN. And you are committed to making certain that we draw the lines here so that we don't end up with a dual regulation or with confusion—

Ms. MITHAL. Exactly.

Mrs. BLACKBURN [continuing]. Much of which exists—you all have borne the brunt of this if you will.

Ms. MITHAL. That is exactly right. I think—

Mrs. BLACKBURN. And consumers have been quite confused about the reach of the FCC and the FTC and is it diminishing your jurisdiction.

So as we look at this issue and knowing that cars are going to be more interconnected, not less, that they are going to be more computerized, not less, that you are going to have more data and people are going to say what are you doing with the data? How do you turn that into usable information? Then, this is something that should be cleaned up and handled appropriately on the front end.

Administrator Rosekind, I want to come to you for a couple things. How is NHTSA addressing the data collection practices of automakers and others in the automotive space? What kind of formal guidance are you currently giving? Have you laid that out? And what do you intend to do? Because we all know you can't be technology-specific if you will. You are going to have to umbrella this. So speak for just a moment before we run out of time. Speak to that.

Mr. ROSEKIND. And I can just very quickly tell you some of those are already clearly outlined, things like the electronic data recorders that exist. There are privacy concerns there. They, for example, don't actually collect anything about the drivers. So that is just more a communications issue.

I think what we are now talking about is a lot of new areas that we are just understanding because our cars are computers. And I think you have highlighted something really important. It is going to actually require increased collaboration between our agencies for us to be able to apply our expertise so we make sure we protect people, and when there are malicious attempts to go after that data, we have ways to keep people protected.

Mrs. BLACKBURN. Well, I appreciate that. And we know that the data collection practices from the automakers and others in the industry can be used to provide some increased safety protocols. And I think consumers are interested in that, but they want to guard their privacy and they want to make certain that the data that is there is useful information, it is utilized in an appropriate way.

I yield back.

Mr. BURGESS. The gentlelady yields back. The chair thanks the gentlelady.

The chair recognizes the gentleman from North Carolina, Mr. Butterfield, 5 minutes for questions.

Mr. BUTTERFIELD. Thank you, Mr. Chairman, and let me thank the two witnesses for their testimony. I have been watching you intermittently on television, and both of you look good on television. So thank you very much.

Mr. Chairman, I would like to focus my questions on the rental car safety bill that I introduced with the support of Ranking member Schakowsky and Congresswoman Capps, H.R. 2198. The companion legislation passed the Senate with bipartisan support as part of the Senate's highway bill, and it is supported by the rental car industry. Many of them are here today, consumer organizations and General Motors and Honda and others. It would ensure that rental car companies fix recalled vehicles in their fleets before renting or selling them.

And so let me ask you, Mr. Administrator—thank you for coming today. Some opponents of the rental car safety legislation have said that rental car companies should be allowed to rent or sell unrepaired defective recalled cars unless the manufacturer has specifically issued a do-not-drive warning. Is there any federal standard for when a do-not-drive warning must be issued?

Mr. ROSEKIND. Thank you for pointing that out because that do-not-drive is issued by the manufacturer, not NHTSA. So they are determining whether or not the criteria would be to allow that to occur under rental or used car. So that happens extremely rarely.

Mr. BUTTERFIELD. So state again for the record who decides when such a warning is issued?

Mr. ROSEKIND. The manufacturer who has the defect that has been created in the vehicle is the one who determines the do-not-drive.

Mr. BUTTERFIELD. OK. Can you give us some examples of defects where a do-not-drive warning was not issued by the manufacturer? For example, has any manufacturer issued a do-not-drive warning for Takata airbags?

Mr. ROSEKIND. That would be the example that I would give, given that that is the largest recall in auto history for sure and maybe the United States. There is no do-not-drive out on any Takata airbag inflator recall.

Mr. BUTTERFIELD. Thank you. That is what I needed to get into the record, Mr. Chairman. Thank you. I yield back.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentleman from Houston, Texas, Mr. Olson, 5 minutes for questions, please.

Mr. OLSON. I thank the chair.

Welcome, Dr. Rosekind and Ms. Mithal.

When I started driving in 1978, vehicle safety depended upon turning wrenches and sockets, and now it is all about keyboards and electronics.

My first question is for you, Dr. Rosekind. In NHTSA's view, should cybersecurity weaknesses be treated the same way as traditional vehicle safety defects? If so, what federal motor safety stand-

ards is NHTSA using to make that determination? If not, how is this addressing cybersecurity weaknesses in vehicles?

Mr. ROSEKIND. So there are actually a few questions in there and I will try to go to the core. You are right—things have changed dramatically. And the Secretary and NHTSA are really excited about seeing technology innovations accelerate our work in safety. But cybersecurity is one of the areas that is going to take a collaboration across government to manufacturers and others who understand cybersecurity to figure out what needs to get done.

We have all kinds of tools from rulemaking to all kinds of voluntary efforts that manufacturers want to do, so we have to absolutely acknowledge that the Information Sharing and Analysis Center, or ISAC, was created by the automakers to make sure that they could get together and identify and share information, a critical element.

I keep pointing out that you can ask for all the regulation you want, but in cybersecurity, nimble and flexible is critical. By the time your regulations come out, it is probably 10 versions too late of what needs to get done. We are going to have to identify current and new tools to deal with this issue going into the future.

Mr. OLSON. Is this using the NIST cybersecurity framework to guide its work in keeping vehicles safe?

Mr. ROSEKIND. That is one source, but we have been in contact with a full range, DOD, Homeland Security, DARPA, anybody that has expertise, including private technology companies of course that have done protection for our mobile phones and other elements. So we are in contact with the full range of trying to learn from them and how we can apply it to cybersecurity in the auto industry.

Mr. OLSON. And about data collection, Dr. Rosekind, Section 4109(a) of the GROW AMERICA Act would prohibit the rental of a vehicle by a rental company if there is an open recall. I have a few questions regarding data collection attributed to this policy change in the highway bill. How many lives did NHTSA estimate will be saved if every rental vehicle under open recall is grounded by rental companies, as required by Section 4109(a) of the GROW AMERICA Act?

Mr. ROSEKIND. And I will get you that analysis. As part of our technical assistance in supporting your efforts here, we will get you that analysis for both used, as well as rental cars.

Mr. OLSON. How about injuries? How many injuries did NHTSA estimate will be prevented if the rental car grounding requirement in Section 4019(a) is enacted?

Mr. ROSEKIND. And we will include both fatalities and injuries and, if we can, crashes in that analysis for you.

Mr. OLSON. Thank you. And, Ms. Mithal, how many data security cases has the FTC brought against car companies in the last 5 years? Any idea?

Ms. MITHAL. We have not brought any connected-car cases. We have brought about 55 general data security cases in a variety of sectors from retail to healthcare to mobile apps to internet-connected cameras. I believe all the principles that those cases stand for apply equally to connected cars.

Mr. OLSON. So zero for cars so far?

Ms. MITHAL. Correct.

Mr. OLSON. OK. What is the Commission's expertise with respect to the security of critical safety systems in vehicles? Are there differences in how critical safety systems in vehicles and should be treated compared to other critical infrastructures?

Ms. MITHAL. So our focus has been on process, so all of our 55 cases stand for the lesson that companies need to implement processes upfront to make sure to protect against security violations. So, for example, companies, including car companies, need to hire people responsible for security. They need to conduct risk assessments. They need to oversee their service providers. They need to keep abreast of technologies surrounding them and emerging technologies that affect their areas. And that is very consistent with the NIST cybersecurity framework approach.

Mr. OLSON. And as Dr. Rosekind mentioned, we have to be very nimble because this changes like that, and we have to keep up with these changes.

I yield back, my friend. Thank you.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentlelady from California 5 minutes for questions, please.

Mrs. CAPPS. Thank you, Mr. Chairman, for holding this hearing and granting my request to participate.

The draft legislation before us, it touches on many issues, and I want to continue to explore the topic brought up by my colleague—well, actually, the two last questioners, Mr. Butterfield in particular—the critical issue that has been omitted from the draft: rental car safety.

In 2004, two young sisters, Raechel and Jacqueline Houck, were killed when their rented Chrysler PT cruiser caught fire and crashed. The sisters were returning home after visiting their parents just outside my district in Ojai, California, and had no idea that the car they were driving was subject to a safety recall that had not been fixed, nor acknowledged, before the rental company gave them this car. Despite receiving the safety recall notice a month before renting them the car, the rental company failed to get the free safety repairs done.

While federal law prohibits car dealers from selling new cars subject to recall, there is no similar law to stop rental car companies from running out dangerous recalled cars. This is a clear safety oversight and one that can and must be fixed, and that is why, as has been acknowledged, I introduced bipartisan legislation H.R. 2198 with my colleagues Walter Jones, Ms. Schakowsky, Mr. Butterfield to close this loophole. Our commonsense bill would simply fix federal law to prohibit rental car companies from renting or selling recalled cars.

The bill is strongly supported by the rental car industry, consumer safety groups, General Motors, Honda, and others. The bill did pass the Senate as part of the DRIVE Act. And a Change.org petition to pass the bill recently started by Raechel and Jackie's mother, Cally Houck, has been signed by nearly 150,000 consumers across the country, yet I am disappointed this issue is not even mentioned in the draft we are considering today.

Administrator Rosekind, I know NHTSA and the Administration have been working to address this important issue. Does NHTSA support legislation to prohibit the rental of recalled vehicles?

Mr. ROSEKIND. Yes.

Mrs. CAPPS. Opponents of the bill erroneously claim that H.R. 2198 legislation would not improve consumer safety. Given NHTSA's support for banning the rental of recalled vehicles, I think it is clear that you perhaps disagree with this assessment. Would you briefly elaborate? Thank you.

Mr. ROSEKIND. New, used, or rental vehicles that have a known defect should be remedied before they are on the road.

Mrs. CAPPS. Thank you. Despite the broad support behind H.R. 2198, the auto manufacturer and dealer groups are fighting against this commonsense effort. Under pressure, the Alliance of Automobile Manufacturers instead proposed a potentially very harmful alternative that only requires rental companies to disclose that the vehicle is under recall before renting it out. Their proposal only prohibits the rental of recalled cars with do-not-drive notices, as was referenced, despite the fact that such notices represent only a tiny fraction of safety recalls.

Administrator Rosekind, last year, NHTSA provided a letter to Senators Boxer and McCaskill expressing its opposition to the Alliance proposal. Would you elaborate on why NHTSA believes this proposal would fail to protect rental consumers?

Mr. ROSEKIND. I will repeat to be clear. New, used, rental, if it has a defect, it should be off the road. And as we were discussing, the do-not-drive is determined by the manufacturer of the defect—

Mrs. CAPPS. Exactly.

Mr. ROSEKIND [continuing]. Not NHTSA. And it is very rare.

Mrs. CAPPS. Thank you for clarifying that and really underscoring it.

Some opponents of H.R. 2198 have argued that many NHTSA recalls are frivolous because so few of them come with do-not-drive requirements. Does NHTSA issue frivolous recalls? By definition, aren't all safety recalls due to serious safety risk?

Mr. ROSEKIND. Yes. And we have a specific investigation process to determine those defects.

Mrs. CAPPS. Thank you. And I will yield back my time, but before doing so, I ask unanimous consent to enter into the record a November 2014 letter from NHTSA to Senator McCaskill outlining the agency's response to the auto alliance proposal.

[The information appears at the conclusion of the hearing.]

Mrs. CAPPS. And I yield back the balance of my time.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

Seeing no other Members present to ask questions, let me just ask the ranking member if she would like a second question or redirect?

Ms. SCHAKOWSKY. No, I am fine. Thank you. Thank you to the witnesses.

Mr. BURGESS. Dr. Rosekind, I just wanted to make sure that we offer once again the concept of people checking their vehicle identification numbers against the database that you provide, and per-

haps you could just detail how someone would do that if they wanted to check.

Mr. ROSEKIND. Chairman Burgess, every time I appear before you, you graciously make sure that we provide information for consumers to do something about recalls. I can't thank you enough for that because I don't think we are ever done getting the information out.

People can go to [SaferCar.gov](http://SaferCar.gov) and look up their vehicle identification number and see if there are any open recalls. What is most important is if they find something, they have to act on it. Call their dealer, get it fixed.

Mr. BURGESS. Now, what if, like me, they don't know their vehicle identification number off the top of their head? Is there a place where they can find that information?

Mr. ROSEKIND. And, good point, because I am not sure any of us would know that off the top of our head. You can find that at the bottom left of your windshield. It is usually on the insurance card. So there are multiple places you can go. We even have a mobile app you can look it up now.

Mr. BURGESS. And very good advice. And our trip out to your location, your fine people informed me that I had a problem with my vehicle, not the one I was expecting, but nevertheless, it was important information to have.

Now, unless people think that we just come here with assigned talking points and we never listen to each other, I also wanted to point out after your testimony here earlier in the year, that very time we were doing the appropriations bill for the Department of Transportation, and I did offer an amendment that night because of your testimony during the day that took \$4 million from the Secretary's general and accounting line item off the budget and moved it to your line item on the budget for additional safety work. I think afterwards when I discussed with you that the offer still stands and I will be happy to discuss with you or even go with you to the appropriate Appropriations Subcommittee when the budget request is made to the Appropriations Committee next year, because this is important.

Just one final observation and then I am going to go to Mr. Cárdenas. In the inspector general's audit report, your response that is in the appendix to the auto report, your response to the things that were brought up I just wanted to highlight. One of the bullet points is use of a safety-systems approach to look for possible relationships between a symptom in one vehicle's system and a possible critical failure in another system.

And this is prior to your tenure, but last year, we were going through on another subcommittee the ignition problems on the Cobalt vehicles and the non-deployment of airbags, that being such a critical finding. It was of concern to me that this would appear in accident reports, albeit over a 10-year time span. And there weren't a large number, but nevertheless, any time a vehicle airbag non-deployment occurred, it seemed like that should be a seminal event and something which must be investigated.

And you even outlined here to consider if it is possible defect theories that do not fit with previously held assumptions, in other words, look for another reason other than something where you

normally would. And I will never forget the accident report where there were two vehicles involved in a head-on collision. Unfortunately, it was not survivable in either vehicle, but in one vehicle the airbag goes off, the other it doesn't, and there you have got the perfect test case. There wasn't a curb that was hit; there wasn't a tree that was glanced that would perhaps jar the ignition switch. It was a straight up head-on collision. One airbag works, one doesn't. Why did the one not work?

So I am grateful to see that line item in your discussion of the points that were brought up by the IG's report, and I think that is of critical importance.

I am going to yield to Mr. Cárdenas 5 minutes for questions, please.

Mr. CÁRDENAS. Thank you very much, Mr. Chairman. I appreciate this opportunity and want to thank the witnesses for being here to answer our questions.

Keeping in mind the millions of cars on our roads, keeping them safe is complicated and expensive, the draft we are looking at today does not address increasing funding for NHTSA, though many of its provisions would certainly present significant additional costs and responsibilities to the agency.

Dr. Rosekind, in your testimony today you said the failure to address gaps in NHTSA's available personnel and resources are a known risk to safety. Can you explain how civil penalties for violations of motor vehicle safety standards and other violations affect those gaps?

Mr. ROSEKIND. All of the penalties that are collected go right to the U.S. Treasury, so we don't get any of those for our work.

Mr. CÁRDENAS. OK. So no matter how effective you are or even industry admits and/or forwards those penalties, there is no direct correlation between the amount of work that comes to your agency versus the amount of effective work that you are rendering?

Mr. ROSEKIND. That is correct. And the last time I appeared here I made this statement that if you gave us more resources, we could deliver more safety, and that equation is very clear. If you give us more demands without more resources, you get less safety.

Mr. CÁRDENAS. OK. Well, thank you.

This draft does not address raising the cap on civil penalties that NHTSA can seek for manufacturers for violation. The Vehicle Safety Improvement Act would eliminate that cap. In the past few years, there have been several widely publicized scandals surrounding the auto industry, and in 2014 alone, NHTSA issued more than 127 million in civil penalties.

Dr. Rosekind, 35 million sounds like a large amount of money, but we continue to hear about new egregious safety violations in the industry. In fact, NHTSA has had to be creative in finding ways to make penalties appropriate for the violations. And the current maximum penalty, is that enough to be an effective deterrent?

Mr. ROSEKIND. No, and that is why in GROW AMERICA we suggested a \$300 million cap. No cap is good with us, too, but at least 300 million is what is proposed in GROW AMERICA to have a meaningful deterrent.

Mr. CÁRDENAS. Now, if the \$35 million cap were significantly raised, what in your opinion would affect the expectation of how the behavior of automakers may or may not change?

Mr. ROSEKIND. I think our expectation would be, with appropriate deterrence like the civil penalties, that we would want to see a more proactive safety culture catch defects, conduct recalls earlier and faster.

Mr. CÁRDENAS. OK. Would raising the per-violation fine and eliminating the cap on civil penalties improve safety in your opinion?

Mr. ROSEKIND. That is the intent, and we think its current level is not the deterrent it should be.

Mr. CÁRDENAS. And when was the last time that level was raised?

Mr. ROSEKIND. Good question. I will make sure that is in our technical assistance when we provide that to you, but it has been a while so that the 35 million has basically been on the books for a long time.

Mr. CÁRDENAS. So for years now?

Mr. ROSEKIND. Yes.

Mr. CÁRDENAS. And the curve on activity or the volume of vehicles and the industry dollar amount value year to year, has been going up?

Mr. ROSEKIND. Absolutely. And if you are trying to make that distinction, yes, our authorities have stayed at a certain level while the number of vehicles—we are at about 265 million on our roadways now—the number of recalls, et cetera, is going this way while we have been staying this way. In fact, if you look at the budget, which we talked about last time I was here, really in real dollars, we are down from where we were 10 years ago.

Mr. CÁRDENAS. I constantly hear elected officials across the country talking about how we should run government more like a business. Does it seem like we are running your department like a business when you just described the amount of activity going up, the dollar amount in the industry going up, et cetera, yet your budget and your ability to create more safe activity is flat?

Mr. ROSEKIND. No. And I will make a personal comment, which I have a different unique background, having been in academics and as a scientist, had my own business, which consulted with top 100 companies all over the world. And so I bring that perspective for efficiencies, effectiveness, measure things, et cetera, and it is one of the major frustrations basically of wanting to do more with, you know, not enough resources, people, money.

Mr. CÁRDENAS. Well, I am of the opinion in this country that we are fortunate to take public safety for granted in so many ways. It is unfortunate that we are not fortifying you with the resources necessary to keep us as safe as you can.

Thank you so much. I yield back.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

And seeing there are no further Members wishing to ask questions for our first panel, I do want to sincerely thank both of our witnesses for being here today, for their time. This will conclude

our first panel, and we will take a 2-minute recess to set up for the second panel.

Ms. SCHAKOWSKY. Yes, thank you to both our witnesses.

Ms. MITHAL. Thank you.

[Recess.]

Mr. BURGESS. Welcome back. Thank you all for your patience and taking time to be with us here today. We will move into our second panel for today's hearing. We will follow the same format as during the first panel. Each witness will be given 5 minutes for an opening statement followed by a round of questions from Members.

For our second panel we have the following witnesses: Mr. Mitch Bainwol, the President and CEO of the Alliance of Automobile Manufacturers; Mr. John Bozzella, President and CEO of Global Automakers; Mrs. Ann Wilson, Senior Vice President at the Motor & Equipment Manufacturers Association; Mr. Greg Dotson, Vice President for Energy Policy at the Center for American Progress; Ms. Joan Claybrook, former Administrator of the National Highway Traffic Safety Administration; Mr. Peter Welch, President of the National Automobile Dealers Association; and Mr. Michael Wilson, the CEO of the Automotive Recyclers Association.

We do appreciate all of you being here with us this morning. We are grateful for your forbearance during the first panel. We will begin this panel with Mr. Bainwol, and you are recognized for 5 minutes for your opening statement, please.

**STATEMENTS OF MITCH BAINWOL, PRESIDENT AND CEO, ALLIANCE OF AUTOMOBILE MANUFACTURERS; JOHN BOZZELLA, PRESIDENT AND CEO, GLOBAL AUTOMAKERS; ANN WILSON, SENIOR VICE PRESIDENT, MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION; GREG DOTSON, VICE PRESIDENT FOR ENERGY POLICY, CENTER FOR AMERICAN PROGRESS; JOAN CLAYBROOK, FORMER ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; PETER WELCH, PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION; AND MICHAEL WILSON, CEO, AUTOMOTIVE RECYCLERS ASSOCIATION**

#### **STATEMENT OF MITCH BAINWOL**

Mr. BAINWOL. Thank you, Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee. Given the size of this panel, I am reminded of what former Senator John Warner said when he became Elizabeth Taylor's sixth husband. He said I know what to do; I am just not sure how to make it interesting. So here I go.

Thank you for the opportunity to testify today on behalf of 12 global OEMs based in the U.S. in Europe and in Asia. Our companies represent about 75 percent of the marketplace. Our industry will put about a billion new cars on the road over the next decade around the world with more than 15 percent of those here in the U.S. That is a lot of steel and a lot of aluminum and an astounding level of production with massive job and economic implications. But even more striking than scale is the game-changing innovation mobility that will generate enormous social benefits.

Our companies are investing about \$100 billion a year in research, including the development of the next generation of connected vehicle technologies. These technologies will save lives, save fuel, and enhance mobility.

Over the last decade, your House colleagues at T&I have invested substantial highway dollars to make smart vehicles and infrastructure a reality. The bill they mark up tomorrow includes an additional \$175 million over the next 6 years.

They are making this investment for an important reason, and that is because congestion wastes roughly 3 billion gallons of fuel, 27 million metric tons of CO<sub>2</sub> emissions every year. The Federal Highway Administration estimates that roughly 12.5 percent of congestion, 12.5 percent of congestion, 3 million metric tons is directly, directly attributable to crashes. Thus, there is a direct link between reducing crashes and reducing CO<sub>2</sub> emissions.

But for this subcommittee, the focus is the potential of this technology to save lives. Crash-avoidance and connected-vehicle technologies offer us the opportunity to address the 94 percent, if not more, of all accidents that NHTSA attributes to driver error. That is right, addressing driver error is absolutely crucial.

You know the statistics. More than 32,000 people died in car crashes last year, far too many. That number is 25 percent below what it was a decade ago, but it is still far too many.

NHTSA has said that connected vehicles have the potential to mitigate as much as 80 percent of non-impaired crashes. And just last week, the Boston Consulting Group released a study that Ann Wilson will talk about showing that advanced driver-assist systems could prevent almost 10,000 fatalities and 30 percent of all crashes occurring annually in the U.S.

We should all share the goal of deploying these technologies as soon as possible. How can we not? It is why the modest incentives included for advanced automotive technologies make sense. A connected car with crash-avoidance technologies is safer and cleaner. It is not a trade-off. It is a convergence of interest. This hominization of safety and environmental gains that these technologies offer changes the policy paradigm. It calls upon all of us to determine how we can accelerate the integration of these technologies into the fleet to improve safety, environmental, and productivity outcomes.

So we applaud this committee for introducing the notion of market incentives to save lives. If passed, the potential of this legislation to prevent tragedies is very real, and the impact on greenhouse gas emissions is also equally real.

While the benefits of the new technologies are profound, connectivity and data also introduce new challenges, including privacy and cybersecurity. We commend the committee for generating new proposals here as well.

Last year, the industry became the first non-internet sector, the first non-internet sector to issue consumer privacy protection principles that build off of the well-established FIPS and include heightened protection for the most sensitive consumer information: where and how you drive. And what we did was a floor for companies.

We are also moving aggressively on cybersecurity. As this committee knows, automakers will soon stand up the Information Sharing and Analysis Center, the ISAC, to facilitate sharing of potential cyber threats and countermeasures in real time in. Yet we hear you loud and clear. We do hear you loud and clear. Even before the introduction of this draft, we know that you wanted us to move further. So we are now moving forward with the best practices initiative as well so that we have a fully integrated approach to addressing hacking risks.

The future of mobility is extremely bright. We are on the precipice of a golden era of mobility. Technology will make all this happen. It will enable safety outcomes, more environmentally friendly travel, and an economy that is more productive because people and goods will be able to move much more efficiently around the country.

This committee has started this conversation about the future of mobility in earnest. We look forward to working with you to build this new reality.

[The prepared statement of Mr. Bainwol follows:]



**AUTO ALLIANCE**  
DRIVING INNOVATION®

STATEMENT  
OF  
*THE ALLIANCE OF AUTOMOBILE MANUFACTURERS*

BEFORE THE:  
ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE  
U.S. HOUSE OF REPRESENTATIVES

October 21, 2015

PRESENTED BY:

Mitch Bainwol  
President and CEO

On behalf of the Members of the Alliance of Automobile Manufacturers (Alliance), thank you for the opportunity to testify today on the discussion draft of the reauthorization of the National Highway Traffic Safety Administration (NHTSA). Alliance Members account for 75 percent of annual car and light truck sales by revenue in the United States. The Alliance includes amongst its diverse membership companies headquartered in the U.S., Europe and Asia, including the BMW Group, Fiat Chrysler Automobiles US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Car Group.

There is a lot of evidence that vehicles on the road today are the best they have ever been. We are living in the safest period in motor vehicle history. In the last decade (2003 – 2013) the U.S. has experienced major reductions in traffic fatalities – a nearly 25 percent overall reduction and a 34 percent reduction in passenger vehicle fatalities. In fact, our collective actions since 1990 have cut in half the fatality rate per 100 million miles of travel (1990: 2.08; 2013: 1.09). New cars are cleaner and more fuel-efficient, too. Today, there are more than 495 new car models that get 30 mpg – an increase of more than 600 percent since 2006. We are building safer vehicles that last longer and are better for the environment.

The next reauthorization could potentially take us into the next decade, and the Committee should be commended for thinking about how to help the transformation to the next generation vehicle technologies which is occurring now. This is an incredibly exciting time in our industry that promises enormous consumer, environmental and safety benefits that will require advanced policies and ways of thinking both for industry and government. While the draft legislation is comprehensive and covers a multitude of issues, my testimony will focus primarily on the two forward-looking Titles – Titles III and V.

#### **Title V: Advanced Automotive Technologies**

Traditionally, there has been little, if any, intersection between efforts to enhance automotive safety and efforts to improve automotive fuel economy. In fact, these goals have often worked at cross-purposes. To enhance safety, vehicles have been designed to minimize the injury to passengers in a crash, often through the addition of new equipment that adds weight to the vehicles. To reduce fuel consumption, manufacturers often try to reduce weight through the use of advanced materials and technologies. Moreover, the issue of traffic congestion, which contributes to increased fuel consumption and greenhouse gas emissions, has not been a primary focus of automotive technology—rather, it has been a matter of building more roads, or adding lanes to existing roads.

The next generation of innovative vehicle technologies offers the potential to further enable the goal of achieving increased levels of safety and reduction of fuel consumption. Crash avoidance and connectivity technologies will help prevent crashes from happening in the first place. When a crash is avoided, the potential traffic congestion resulting from the accident is eliminated. Reduction in traffic congestion means less fuel is wasted by vehicles idling in traffic, thereby cutting down on greenhouse gas emissions. We refer to these technologies collectively as “convergence” technologies because they represent the intersection of safety, mobility, and the environment.

Title V of the NHTSA reauthorization discussion draft prioritizes incorporating these advanced technologies into the fleet. It creates a process in Section 501 for developing performance metrics and test procedures that gives NHTSA the ability to accelerate the deployment of these advanced technologies and better inform safety conscious consumers through the NCAP program. It would also

incentivize the adoption of these advanced technologies in Section 502 by providing modest greenhouse gas and fuel economy credits for manufacturers that include them on new vehicles. These credits will incentivize the expeditious deployment of technologies that enhance safety and/or reduce congestions, and thereby reduce automotive greenhouse gas emissions.

Driver error remains the primary cause of 94 percent of crashes, according to the National Highway Traffic Safety Administration. Crash avoidance, or “driver assist,” technologies employ sophisticated software to interpret data from sensors, cameras, or radar-based technologies that allow vehicles to sense the environment around them and alert drivers of impending dangers. There are many different types of driver assists, including intervention technologies beginning with electronic stability control and warning technologies such as blind spot warnings, lane departure alerts, and automatic braking for pedestrians, cyclists and wild animals, and adaptive cruise control and automatic high beams that help drivers in specific situations.

The next phase of vehicle safety technology is vehicle to vehicle (V2V) and vehicle to infrastructure (V2X) communications. These technical communications systems are designed to allow vehicles to communicate with one other and the environment around them to avoid accidents and eliminate congestion in our cities and on our highways. According to NHTSA, connected vehicle technology could potentially mitigate or eliminate up to 80 percent of crash scenarios involving non-impaired drivers. That is why both automakers and the government have invested hundreds of millions of dollars in the development of connected vehicle technology.

Congress has a tremendous opportunity to help accelerate the deployment of these next-generation technologies to enhance safety, reduce traffic congestion and greenhouse gas emissions, improve personal mobility, and address our nation’s current and future infrastructure, environmental and economic challenges. We commend the Committee for offering a plan to encourage the development and deployment of these important technologies.

### **Title III: Privacy, Hacking Prohibition, and Cyber Security**

The bright future outlined above is premised on the development of increasingly sophisticated computer systems in automobiles. The potential benefits are enormous, but we also recognize that there are potential challenges, including data privacy and cyber security.

We recognize that consumers want to know how these vehicle technologies and services can deliver benefits to them while respecting their privacy. The Alliance supports the direction of Section 301, which would require an auto manufacturer to file its privacy policy with NHTSA, which, in turn, would post the policy on the web for consumers to review.

Privacy is important to consumers, and it is important to auto manufacturers. That is why last year the Alliance and Global Automakers came together to issue Consumer Privacy Protection Principles for Vehicle Technologies and Services (Privacy Principles) – a first of its kind industry-wide commitment to the protection of personal data.

In forming these principles, our Members worked with privacy advocates to incorporate renowned data collection and usage concepts. Using the widely-regarded Fair Information Practice Principles (FIPPs) as a baseline, the auto industry’s Privacy Principles go even further by incorporating robust guidance from the Federal Trade Commission, as well as the White House Consumer Privacy Bill of Rights. These

efforts, when applied to automobiles, help to reassure our customers that their privacy is taken seriously.

The Privacy Principles have three important hallmarks that are the touchstones of our Members' commitment to their customers.

First, consumers can expect transparency. Our Members have pledged to provide consumers with clear notices of their respective privacy practices, including through owner's manuals and company websites.

Second, the most sensitive types of consumer information receive heightened protections. Sensitive information includes where and how someone drives her car. Under the Privacy Principles, our Members pledge to provide protections and choice around the use of sensitive information that goes beyond the practices in virtually every other sector.

Third, our Members commit to inform customers of sharing, with third party entities, and they commit to provide sensitive data to government authorities only under specific and limited circumstances.

We believe that strong consumer data privacy protections are essential to maintaining the trust of our customers. Protecting privacy in today's world includes efforts to incorporate strong cyber security measures into design and production policies and architecture. But, as has recently become apparent, in the automotive sector, data security goes well beyond the protection of data. Data security also requires making vehicle control systems ever more resistant and resilient to cyber threats and vulnerabilities.

We recognize that we must constantly be vigilant that criminals and other malicious individuals and entities will seek to exploit network vulnerabilities in attempts to cause physical harm. Section 302 provides for enhanced penalties for individuals who hack into critical vehicle systems. We have heard repeatedly from members of Congress and the public that hacking into a vehicle is a far more serious proposition than hacking into a fitness device or a home thermostat or even a personal computer. It makes sense, then, for Congress to provide a stronger deterrent to malicious hackers.

Our Members are taking a multi-layered approach to securing vehicles from evolving cyber threats. Towards that end, the Alliance again joined with Global Automakers in July of this year to announce that we are creating an Auto Information Sharing and Analysis Center (Auto-ISAC) to facilitate the sharing of potential cyber threats and countermeasures in real time. This development is an important step in protecting motor vehicle electronics and associated in-vehicle networks. The ISAC model has proven successful in other sectors, and likewise is expected to significantly bolster the auto sector's ability to identify potential threats and respond accordingly.

But we have also heard the concerns of many members of Congress – reflected in Section 303 – that more emphasis needs to be placed on making vehicles ever more secure against hackers. Recognizing that there is no such thing as a hack-proof system, we nevertheless agree that there are security measures that help defend against possible attack by cyber criminals to critical vehicle systems.

An approach to cyber resiliency that supports the development of industry standards and guidelines can work with some of the aspects outlined in Section 303. This will provide advantages over a traditional regulatory approach; given the constantly evolving nature of cyber threats and rapid change of connected technology, a regulation may be out-of-date before implementation starts. That design is

consistent with our national cybersecurity policy objectives, which emphasize industry-led, voluntary outcomes. These have been consistent themes in major cybersecurity legislation as well as President Obama's 2013 and 2015 Executive Orders.

We are concerned about the workability of the Automotive Cybersecurity Advisory Council, which, based on the draft, would be comprised of upwards of 30 members of the public and private and public sectors and would need to develop best practices on a very tight timeframe for a group so large and disparate. We also note that the requirement to file plans for implementing the best practices with NHTSA is not the approach taken elsewhere in the cyber security space, including in critical infrastructure sectors. We are certainly willing to work with the Committee as this legislation proceeds; however, we have decided as an industry not to wait for a legislative directive on this front.

Recognizing that good cyber security practice is collaborative, the Alliance and Global Automakers yet again are working with our Members to facilitate the development of new standards and guidelines that will be available to the entire industry and that we believe will be useful for securing our vehicles from malicious hacks. We are currently reaching out to third parties and reviewing potential approaches, such as NIST's Framework for Cyber Physical Systems, that could be adapted to the automotive context.

#### **Motor Vehicle Safety Recalls**

Auto manufacturers stand behind their products, and that includes undertaking recalls when there is a safety defect or noncompliance. When we perform a recall, we want ALL of our customers to have their vehicles repaired as soon as possible. The Alliance supports the Committee's efforts in Title II to improve the recall process especially through owner notification during vehicle registration. We have some questions about the practicability of the coordination provisions in Section 202, but we appreciate the intent and are willing to work with the Committee as the bill moves forward.

As you know, the Alliance and Global Automakers also initiated a comprehensive research initiative with the ultimate goal of improving recall participation rates. We recently briefed NHTSA and the Committees on the results of Phase I, the large quantitative survey. The survey identified several areas for improving owner response to recalls, including identifying and focusing on non-responders and engaging more points of contact – including State DMVs and insurance companies – with consumers. As we transition into the next phase of the study, we are working with the experts at NHTSA to test new ways to motivate owners to participate in safety recalls. Our efforts in this initiative are modeled after the very successful "Click It or Ticket" program, which has increased safety belt usage to 87 percent last year from 60 percent in 1995.

Again, we appreciate the opportunity to offer our views on this discussion draft. We continue to review it and look forward to working with the Committee as it proceeds through the legislative process.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

Mr. Bozzella, you are recognized for 5 minutes for questions, please.

#### **STATEMENT OF JOHN BOZZELLA**

Mr. BOZZELLA. Mr. Chairman, Ranking Member Schakowsky, members of the subcommittee, thank you very much for the opportunity to testify today. I am John Bozzella, President and CEO of Global Automakers. Mr. Chairman, thank you for your thoughtful work on motor vehicle safety and for holding this hearing today.

Our industry has been in the news a great deal lately and not always for the best of reasons. This hearing gives us the chance to discuss our ongoing efforts to improve motor vehicle safety and enhance public trust through the research and development of new technologies.

The draft bill released last week contains a number of important ideas designed to advance our shared goal of improved motor vehicle safety. We appreciate the subcommittee's commitment to improving recall completion rates and exploring innovative ways to address new and emerging challenges associated with the development of vehicles that not only actively avoid collisions, but talk to one another and to the surrounding infrastructure.

In the time available, I will focus on three important issues: 1) recall notification during vehicle registration; 2) adoption of connected-car technology; and 3) industry efforts to stay ahead of privacy and cybersecurity challenges.

Consumers should be informed of the recall status of their vehicles. Global Automakers believes an effective way to achieve this end is to use state DMV offices to notify vehicle owners of open recalls at the time they register or renew their registration. We now have some initial data that suggests there is public support for this approach. In a recent survey commissioned by Global Automakers and the Alliance of Automobile Manufacturers, we looked at how consumers respond to and think about recall notices and found overwhelming support for the idea of receiving recall information from the DMV. Over 70 percent of those asked about this issue supported not only notification at registration, but a requirement that recalls be remedied prior to registration. More research needs to be done, but these initial results indicate that the subcommittee is moving in the right direction as it explores ways to increase recall completion rates.

We are also pleased that the draft bill recognizes the substantial benefits associated with the installation of dedicated short-range communications, or DSRC devices, that allow cars to communicate with each other and the surrounding infrastructure, leading to fewer crashes, less congestion, and other potential benefits. NHTSA agrees that this technology could be a "game-changer" potentially addressing 80 percent of vehicle crashes involving non-impaired drivers. Encouraging the fastest deployment possible of DSRC will spread the benefits of this lifesaving technology more quickly and more widely.

The enormous benefits of connected-car technologies outweigh the challenges that come with living in a connected world. As auto-

makers pursue these innovations and the benefits that they bring, we recognize strong cybersecurity and privacy protections are essential to building consumer confidence.

To ensure the security of safety-critical driving systems and to protect the privacy of consumer data, we have begun establishing industry-wide cybersecurity best practices. These best practices will allow automakers the flexibility to quickly and effectively respond to the dynamic nature of cyber challenges. This builds on steps we have already taken, such as the creation of industry privacy principles to protect consumer information and the launch of the Automotive Information Sharing and Analysis Center, or Auto-ISAC, to share intelligence on immediate threats and vulnerabilities.

Last year, U.S. automakers took unprecedented steps to protect the privacy of consumers through the responsible stewardship of information collected from in-vehicle technologies and services and the meaningful disclosure of privacy principles and practices. We engaged with privacy advocates and the Federal Trade Commission during the development of these principles. As early as January of 2016, all major auto manufacturers will be accountable to the FTC for these privacy commitments. We have questions about how the privacy provisions outlined in the bill would interact with the commitments that have already been made by automakers.

In August, U.S. automakers incorporated the Auto-ISAC. The Auto-ISAC will enable secure and timely sharing of cyber threat information and potential vulnerabilities in vehicle electronics or networks. By the end of the year, we expect the ISAC infrastructure to be fully operational.

Cybersecurity challenges in the Internet of Things are not unique to automakers. Any approach to address cyber threats should be consistent with approaches used in other industries.

Thank you again for the opportunity to appear before you today. I am happy to answer any questions you may have.

[The prepared statement of Mr. Bozzella follows:]



Aston Martin • Ferrari • Honda • Hyundai • Isuzu • Kia  
Maserati • McLaren • Nissan • Subaru • Suzuki • Toyota

Testimony of  
John Bozzella  
President and CEO  
Association of Global Automakers, Inc.

Before the  
Subcommittee on Commerce, Manufacturing and Trade  
House Committee on Energy and Commerce

October 21, 2015

Executive Summary

- Global Automakers appreciates the Subcommittee's commitment to improving recall completion rates and exploring innovative ways to address new and emerging challenges associated with the development of advanced safety and connected vehicle technologies.
- Global Automakers believes an effective way to improve the recall remedy rate is to use state Department of Motor Vehicle (DMV) offices to notify vehicle owners of open recalls at the time they register or renew their registration.
- Global Automakers is pleased that the draft bill recognizes the substantial benefits associated with the installation of Dedicated Short Range Communications (DSRC) devices that allow cars to communicate with each other and with the surrounding infrastructure. Encouraging the fastest deployment possible of DSRC technology will spread the benefits of this life-saving technology more quickly and widely.
- As automakers pursue these connected car innovations and the benefits they bring, we recognize strong cybersecurity and privacy protections are essential to building consumer confidence.
- Global Automakers and the Alliance of Automobile Manufacturers have begun establishing cybersecurity best practices to build upon our joint development of privacy principles to protect consumer data and the Automotive Information Sharing and Analysis Center (Auto-ISAC) to address cyber threats.
- Global Automakers is continuing to review the draft bill and to analyze how the provisions relating to cybersecurity and privacy relate to industry efforts in these areas.

Mr. Chairman, Ranking Member Schakowsky, members of the Subcommittee, thank you very much for the opportunity to testify today. I am John Bozzella, President and CEO of the Association of Global Automakers. Global Automakers represents international automobile manufacturers that design, build, and sell cars and light trucks in the United States. Last year, our members sold 43 percent of the new vehicles purchased in the United States and produced 40 percent of all vehicles built here.

Mr. Chairman, thank you for your thoughtful work on motor vehicle safety and for holding this hearing today. Our industry has been in the news a great deal lately, and not always for the best reasons. This hearing gives us the chance to discuss our ongoing efforts to improve motor vehicle safety and enhance public trust through the research and development of new technologies.

The draft bill released last week contains a number of important ideas designed to advance our shared goal of improved motor vehicle safety. We appreciate the Subcommittee's commitment to improving recall completion rates and exploring innovative ways to address new and emerging challenges associated with the development of vehicles that not only actively avoid collisions, but talk to one another and to the surrounding infrastructure.

In the time available, I will focus on three especially important issues: 1) Recall notification during vehicle registration; 2) Adoption of connected car technology; and 3) Industry efforts to stay ahead of privacy and cybersecurity challenges.

Consumers should be informed of the recall status of their vehicles. Global Automakers believes an effective way to achieve this end is to use state Department of Motor Vehicle (DMV) offices to notify vehicle owners of open recalls at the time they register or renew their registration. We now have some initial data that suggests there is public support for this approach. In a recent survey commissioned by Global Automakers and the Alliance of Automobile Manufacturers, we looked at how consumers respond to and think about recall notices and found overwhelming support for the idea of receiving recall information from the DMV. Over 70% of those asked about this issue supported not only notification at registration, but a requirement that recalls be remedied prior to registration. More research needs to be done, but these initial results indicate the Subcommittee is moving in the right direction as it explores ways to increase recall completion rates.

We are also pleased that the draft bill recognizes the substantial benefits associated with the installation of Dedicated Short Range Communications (DSRC) devices that allow cars to communicate with each other and with the surrounding infrastructure – leading to fewer crashes, less congestion, and other potential benefits. The National Highway Traffic Safety Administration (NHTSA) agrees that this technology could be a "game changer," potentially addressing 80% of vehicle crashes involving non-impaired drivers. Encouraging the fastest deployment possible of DSRC will spread the benefits of this life-saving technology more quickly and widely.

The enormous benefits of connected car technologies outweigh the challenges that come with living in a connected world. As automakers pursue these innovations and the benefits that they

bring, we recognize strong cybersecurity and privacy protections are essential to building consumer confidence.

To ensure the security of safety-critical driving systems and to protect the privacy of consumer data, we have begun establishing industry-wide cybersecurity best practices. These best practices will allow automakers the flexibility to quickly and effectively respond to the dynamic nature of cyber challenges. This builds on steps we have already taken, such as the creation of industry privacy principles to protect consumer information and the launch of the Automotive Information Sharing and Analysis Center (Auto-ISAC) to share intelligence on immediate threats and vulnerabilities.

Last year, U.S. automakers took unprecedented steps to protect the privacy of consumers through the responsible stewardship of information collected from in-vehicle technologies and services and the meaningful disclosure of privacy policies and practices. We engaged with privacy advocates and the Federal Trade Commission (FTC) during the development of these principles. As early as January of 2016, all major automakers will be accountable to the FTC for these privacy commitments. We have questions about how the privacy provisions outlined in the bill would interact with the commitments that have already been made by automakers.

In August, U.S. automakers incorporated the Auto-ISAC. The Auto-ISAC will enable secure and timely sharing of cyber threat information and potential vulnerabilities in vehicle electronics or networks. By the end of the year, we expect the ISAC infrastructure to be fully operational.

Cybersecurity challenges in the “Internet of Things” are not unique to automakers. Any approach to address cyber threats should be consistent with approaches used in other industries.

Thank you again for the opportunity to appear before you today. I am happy to answer any questions you may have regarding my testimony or addressing portions of the legislation that I have not covered.

###

Mr. BURGESS. The chair thanks the gentleman.

Ms. Wilson, you are recognized for 5 minutes, please, for an opening statement.

#### STATEMENT OF ANN WILSON

Ms. ANN WILSON. Thank you. Chairman Burgess, Ranking Member Schakowsky, members of the subcommittee, my name is Ann Wilson. I serve as the Senior Vice President of Government Affairs for the Motor & Equipment Manufacturers Association. Thank you for the invitation today to testify about motor vehicle safety issues.

MEMA represents more than 1,000 companies that manufacture components and systems for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. Our members provide more than 734,000 direct jobs nationwide, making the motor vehicle parts industry the largest employer of manufacturing jobs nationwide.

Suppliers work closely with vehicle manufacturers to provide cutting-edge and innovative systems and components for new vehicles. In fact, suppliers manufacture more than 2/3 of the value of today's vehicles.

Today, I will focus on the safety benefits of advanced driver assistance systems, or ADAS. These technologies are included in the discussion draft in the term Advanced Automotive Technology.

As is widely recognized and as has been previously discussed, motor vehicle safety continues to improve in this country. The most influential safety factors are improvements to vehicles' structural design and advanced vehicle technologies, including ADAS. MEMA recently published, as Mr. Bainwol discussed, a study prepared by the Boston Consulting Group on the benefits of ADAS technologies. A complete copy of the study has been circulated to all the committee members.

The MEMA study focused on current technologies that can provide immediate safety benefits and form the pathway to a partially or fully autonomous vehicle fleet that could virtually eliminating traffic fatalities. However, the study did find that a suite of ADAS technologies that are currently available have the potential to prevent 30 percent of all crashes nationwide, a total of 10,000 lives saved every year.

Today, however, relatively few vehicles on the road have ADAS technologies, and their penetration in the market is only growing about 2 to 5 percent annually. Since the vast majority of accidents in the U.S. are caused by driver error, the lack of adoption of these technologies within the U.S. fleet is a significant missed opportunity.

I would like to take a minute and discuss exactly what ADAS is. They can be grouped into three broad categories: those that aid the driver, those that warn the driver, and those that can assist the driver in performing certain basic driving functions. Aid features include visual aids such as night vision, rear-mounted cameras that enhance the driver's rear vision, and adaptive lighting and surround-view systems.

Warn features alert the driver of potential dangers. Examples include park assist, forward collision warning, lane departure warning, which typically activates a beeper or causes the driver's seat

to vibrate when the vehicle drifts out of its lane. Other warning systems include blind spot and rear cross-traffic detectors and driver monitoring systems.

Assistance features actively engage steering, acceleration, and/or braking systems as is needed in order to ensure the vehicle's safe operations. Such features include forward collision assist, adaptive cruise control, self-parking, and lane-keeping assist, which actively returns the vehicle to its original lane when it is in danger of drifting from it. There is also pedestrian avoidance, which warns the driver of an impending collision with a pedestrian, and in some instances will assist the driver with steering and braking to avoid that collision.

Better consumer information and education, as well as market incentives, will increase the adoption and lower the cost of these technologies, and MEMA supports the efforts of this committee to promote ADAS technologies through the expansion of the New Car Assessment Program and advanced credits for fuel economy and greenhouse gas emissions.

We do have the following comments on the committee draft: In Title V, Section 501, suppliers must be specifically included in the Advanced Automotive Technology Advisory Committee. Furthermore, we believe the 35-percent threshold specified for inclusion of the technology on the Monroney label is too high. Collision avoidance systems are currently available, and if they are in new vehicles, they must be listed in the NCAP rating as part of all new vehicle labels.

In Section 502, MEMA supports awarding credits for advanced technologies for fuel efficiency and greenhouse gas emissions. The use of these technologies will result in better traffic flow, less fuel consumed, and fewer vehicle emissions. However, there should not be a difference in the credits for vehicles with at least three advanced safety technologies and vehicles with one connected vehicle technology.

MEMA thanks the committee on its foresight to provide greater consumer acceptance of ADAS technologies. The industry is committed to working with you to establish new and innovative ways to increase the adoption of these life-saving technologies and to address other critical issues.

Thank you.

[The prepared statement of Ms. Ann Wilson follows:]

**Motor & Equipment Manufacturers Association**  
 1030 15th Street, NW Suite 500 East Washington, DC 20005  
 Tel 202.393.6362 Fax 202.737.3742 E-mail info@mema.org



**Testimony of Ann Wilson**  
**House Energy & Commerce Committee**  
**Subcommittee on Commerce, Manufacturing and Trade,**  
**October 21, 2015**

**Introduction**

Chairman Burgess, Ranking Member Schakowsky, members of the subcommittee:

Thank you for the invitation to testify before you on vehicle safety issues.

The Motor & Equipment Manufacturers Association (MEMA) represents more than 1,000 companies that manufacture components and systems for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. Our members provide more than 734,000 direct jobs, making the motor vehicle parts industry the largest employer of manufacturing jobs nationwide.

Suppliers work closely with vehicle manufacturers to provide cutting edge, innovative systems and components for new vehicles. In fact, suppliers manufacture more than two-thirds of the value of today's vehicles. In order to meet regulatory requirements and consumer demands for safer, cleaner and more advanced vehicles, motor vehicle parts manufacturers have increasingly taken on the research, development, engineering and manufacturing of the advanced technologies necessary to meet these ever-increasing goals.

**Vehicle Safety**

Parts suppliers are dedicated to vehicle safety with the design and manufacturing of their components and systems for new cars and trucks, as well as the maintenance and repair of the 254 million vehicles on our nation's roadways. To fully appreciate the state of vehicle safety today, one only needs to look at the data. Earlier this year, the National Highway Traffic Safety Administration (NHTSA) issued a report that analyzed over 50 years of crash data and estimated that approximately 613,501 lives have been saved by vehicle safety technologies and associated Federal Motor Vehicle Safety Standards (FMVSS).<sup>1</sup> Additionally, a recent Insurance Institute for Highway Safety (IIHS) report noted that "the chances of dying in a crash in a late model vehicle have fallen by more than a third in three years... Among 2011 models, a record nine vehicles have driver death rates of zero."<sup>2</sup> According to the IIHS, newer vehicles are even safer. Over the past three years, recent model year vehicles have demonstrated significant improvements in safety. "There were 7,700 fewer driver deaths in 2012 alone than there would have been had vehicles remained the same since 1985."<sup>3</sup> The most influential safety factors are improvements to vehicle structural design and advanced vehicle technologies.

<sup>1</sup> NHTSA, "Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012: Passenger Cars and LTVs" DOT HHS 812 069, January 2015

<sup>2</sup> IIHS *Status Report* article "Saving Lives," Vol. 50, No. 1, January 29, 2015.

<sup>3</sup> IIHS *Status Report* article "Saving Lives," Vol. 50, No. 1, January 29, 2015.



Testimony of Ann Wilson  
10/21/2015 Page 2 of 6



New technologies focus on collision avoidance, not just occupant protection. There are many advanced safety features available in the vehicle marketplace ranging from passive to active systems that either warn and/or intervene to avoid or mitigate vehicle crashes. These advanced technologies have foundational systems upon which the more complex systems are built. Over recent years, computing power and sensor technologies have rapidly evolved and improved. Many of these systems and components are available on a larger scale and offered on a broader array of vehicle price-points.

Suppliers have been key innovators, developers and manufacturers of these technologies that have evolved over the years from passive to active systems from anti-lock braking system (ABS) to electronic stability control (ESC); from forward collision and lane departure warning systems (FCW, LDW) to automatic emergency braking (AEB) systems and lane keeping systems. These and other advanced vehicle safety systems plus improvements in vehicle crashworthiness are all technologies that help drivers avoid or mitigate collisions and drastically reduce fatalities, injuries and property damage claims.

#### **Advanced Driver Assistance Systems (ADAS) and the Impact on Safety**

MEMA recently published a study, prepared by The Boston Consulting Group (BCG), on the benefits of Advanced Driver Assistance Systems (ADAS) technologies.<sup>4</sup> These technologies are included in the term “Advanced Automotive Technology” in the Committee draft. A complete copy of the MEMA/BCG study is included with this testimony.

The MEMA study focused on ADAS technologies that can provide immediate safety benefits and form the pathway to a partially and fully autonomous vehicle fleet that could virtually eliminate traffic fatalities. The study found that a suite of ADAS technologies have the potential to prevent 30 percent of all crashes – a total of 10,000 lives saved yearly.

Today, however, relatively few vehicles on the road have ADAS technologies and their penetration of the market is only growing at about two to five percent annually. Since the vast majority of accidents in the U.S. are caused by driver error, the lack of adoption of these technologies within the U.S. fleet is a significant missed opportunity. This is especially true considering that ADAS technologies also pave the way to partially and fully autonomous vehicles, which could further reduce accidents—and their cost to society—by 90 percent or more.

#### **Types of ADAS Features – Aid, Warn, Assist**

Many component manufacturers and systems integrators are involved in developing key ADAS features in collaboration with vehicle manufacturers. Those features include the software that will control their operation and the rigorous testing needed to validate the new technologies. ADAS can be grouped into three broad categories – those that aid the driver, those that warn the driver and those that assist the driver in performing certain basic driving functions.

**Aid features** include visual aids such as night vision and rear-mounted cameras that enhance the driver’s rear vision to facilitate parking and reversing, adaptive front headlights, and surround

<sup>4</sup> MEMA and BCG study, “A Roadmap to Safer Driving Through Advanced Driver Assistance Systems.” September 2015



view systems. These features are enabled by technologies such as mono-vision cameras, infrared lights (for night vision) and lasers.

Aid features are not newcomers to the automotive scene. Night-vision systems have been available since 2000; rearview cameras were introduced in 2002, adaptive front headlights in 2006, and surround view systems in 2007. Component manufacturers continue to refine them, and their cost to customers is decreasing at a rate of four to nine percent a year.

**Warn features** alert the driver to potential dangers through sensory cues such as auditory or visual signals or vibrations. Park assist, which typically activates a beeper when a reversing driver draws near the obstacle behind, was introduced in 2002. Forward collision warning, which warns the driver of a potential collision ahead, first appeared in 2003. Lane departure warning, which typically activates a beeper or causes the driver's seat to vibrate when the vehicle drifts from its lane, came on the market in 2005.

Other warning systems include blind spot and rear cross-traffic detectors, introduced in 2006, and driver monitoring systems, also introduced in 2006.

These features are enabled by technologies such as mono- and stereo-vision cameras, ultrasonic sensors, short-range radar, and inertial steering data, as well as the microprocessors and software that govern their operation.

**Assistance features** actively engage steering, acceleration, and/or braking systems as needed in order to ensure the vehicle's safe operation. Such features include:

- Forward collision assist, introduced in 2008.
- Adaptive cruise control, which adjusts the vehicle's speed to maintain a constant distance from the vehicle immediately ahead of it, introduced in 2007.
- Self-parking, introduced in 2006.
- Lane keep assist, which actively returns the vehicle to its original lane when it is in danger of drifting from it, introduced in 2010.
- Pedestrian avoidance, which warns the driver of an impending collision with a pedestrian and, in some systems, will assist the driver with steering and braking to avoid collision, introduced in 2014.
- Intelligent speed adaptation, which automatically adjusts the vehicle's speed in response to the driving environment, which is likely to come on the market by 2018.

As in the case of warning and aid features, assistance features are enabled by technologies such as processors and software, mono- and stereo-vision cameras, radar (both short- and long-range), and light detecting and ranging (LIDAR) technology, which uses reflected light signals to assess the driving environment.

Testimony of Ann Wilson  
10/21/2015 Page 4 of 6



#### Foundation for Partially Autonomous Driving

Taken together, ADAS features and sensor technologies are the building blocks of partially autonomous driving, which in certain scenarios will allow a vehicle to drive or brake without driver intervention.

Some partially autonomous features will soon be available to the public. They include:

- Single-lane highway autopilot, which enables the car to operate without driver intervention as long as it remains in a single lane. It could be introduced as soon as 2016.
- Traffic jam autopilot, which takes over vehicle operation in dense, very low-speed driving environments, likely to be introduced as soon as 2017.
- Autonomous valet parking, which automatically seeks out a free parking space and parks the vehicle, coming as soon as 2017.
- Highway autopilot with lane-changing, available as soon as 2018.
- Urban autopilot, which enables autonomous driving at low speeds only. Its developers expect to roll it out in 2022.

#### Market Adoption

ADAS features have a slow adoption curve primarily because of consumer understanding and acceptance and, of course, consumer willingness to pay.

For example, the install rate in new vehicles of surround-view systems, which first became available in 2010, is projected to grow to only three percent by 2020 from one percent today. Their average cost to consumers is expected to fall during that time from \$900 per vehicle to \$660.

In contrast, rearview cameras have rapidly penetrated the market, thanks in large part to legislation that mandated their installation in all new vehicles by 2018 and the inclusion of rearview video systems in the U.S. New Car Assessment Program (NCAP) as a "Recommended Advanced Technology Feature." Introduced in 2002, the rearview cameras and parking assist features reached 40 percent market penetration in 2010 and 56 percent in 2015. Rearview cameras will be featured on 100 percent of new vehicles by 2018. Their cost to the consumer, meanwhile, has plummeted from an average of \$722 per vehicle in 2010 to \$550 today. By 2020, the average cost should drop to \$418 per vehicle.

Better consumer information and education as well as market incentives will increase the take-rate of ADAS technologies and MEMA supports the efforts of this Committee to promote ADAS technologies through the expansion of NCAP and expanded credits for Greenhouse Gas emissions.

#### Comments and Recommendations on Committee Discussion Draft

##### **Title II, Section 202**

The legislation as drafted would place an unreasonably short period of time on suppliers – three business days – to identify all part numbers subject to a recall. At the same time, vehicle manufacturers are given five business days to provide all Vehicle Identification Numbers (VIN) for recalled vehicles. While suppliers work closely with vehicle manufacturers during the recall process, in many cases the

Testimony of Ann Wilson  
10/21/2015 Page 5 of 6



same component for a recalled vehicle may have multiple part numbers depending on the model year and other factors. Therefore it can take additional time for a supplier to provide a complete and accurate list of relevant part numbers. Accordingly, we believe that the same timeframe - five business days - should apply equally to suppliers and vehicle manufacturers.

#### **Title III, Section 303**

MEMA supports the inclusion of suppliers and independent repair shops in the proposed Automotive Cybersecurity Advisory Council (ACAC), as suppliers play a leading role in many of the advanced electronics in today's vehicles. However, the objectives of the ACAC appear to be similar to those being address by the automotive industry Information Sharing & Analysis Center (ISAC). MEMA believes industry led groups can be more effective in addressing cybersecurity issues.

At the same time, MEMA would like to highlight a growing concern. New car dealers only represent approximately 14.3 percent of the total automotive service outlets and 28.1 percent of the service bays where light vehicles can go for repairs and maintenance. The majority of service (approximately 70 percent) is performed by the independent aftermarket. Technology in new vehicles contain enhanced electronic information about vehicle systems that are critical to diagnostic and repair work. The independent aftermarket must have access to this data to ensure that motorists have access to a wide range of repair options as they do today.

#### **Title IV, Section 403**

The discussion draft would require suppliers to retain virtually any and all documents for a period of 10 years concerning "malfunctions" that "may" be related to safety issues. This language as drafted is overly broad and vague, and sets a difficult standard to meet. During the design, engineering and testing process for every part or component, refinements and improvements are typically applied. Early testing for parts or components may result in adoptions or changes. However, that does not mean a safety risk exists. In the alternative, the Committee should direct NHTSA to consider whether additional document retention requirements are necessary.

#### **Title V, Section 501**

As previously discussed, suppliers have a critical role in the design, engineering, testing and manufacturing of advanced technologies for use in vehicles and accordingly suppliers must be specifically included in the Advanced Automotive Technology Advisory Committee (AATAC). Furthermore, the 35 percent threshold specified in ((a) (c) (1)) for inclusion of a technology on the Monroney label is too high. Collision avoidance systems currently available in new vehicles should be required to be listed as part of the NCAP rating on all new vehicle labels that include the technology. MEMA does support the language as drafted requiring the label to indicate if a vehicle is not equipped with such technology.

Testimony of Ann Wilson  
10/21/2015 Page 6 of 6



**Title V, Section 502**

MEMA supports awarding credits for advanced technologies for Greenhouse Gas emissions. The use of these technologies will result in better traffic flow, less fuel consumed and few vehicle emissions. However, there should not be a difference in credits for vehicles with at least three advanced vehicle technologies (three or more grams per mile) and vehicles with one connected vehicle technology (six or more grams per mile).

Advanced automotive technologies are now active and available in the marketplace, and a vehicle with at least three of these technologies is actively working to improve that vehicle's performance, using less fuel and reducing emissions. Connected vehicle technology, including Dedicated Short Range Communications (DSRC) systems exist, but are not in use in the vehicle fleet.

**Conclusion**

MEMA thanks the Committee for its foresight in working to provide greater consumer acceptance of ADAS technologies. The industry is committed to working with Congress to establish new and innovative ways to increase the adoption of these lifesaving technologies and to address other critical safety concerns.

Mr. BURGESS. The chair thanks the witness.

Mr. Dotson, you are recognized for 5 minutes for the purpose of an opening statement, please.

#### STATEMENT OF GREG DOTSON

Mr. DOTSON. Thank you. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to testify today. My name is Greg Dotson. I am Vice President for Energy Policy at the Center for American Progress, a nonprofit think tank dedicated to improving the lives of Americans through progressive ideas and actions.

The auto manufacturing industry touches the lives of all of us. Many Americans rely on their cars and trucks to get to work, to do their jobs, to transport their families safely. For these reasons, the industry is regulated in a number of vitally important ways: to minimize the risk of accidents, to minimize our dependence on oil, and to prevent pollution from choking our communities. The result is that today's vehicles have attributes once believed to be incompatible. They are safer, more efficient, and less polluting.

Today, I am going to focus my testimony on Sections 502 and 503 of the discussion draft. I have provided a lengthier statement for the record, but I would like to highlight the five important reasons that these sections are flawed.

First, the discussion draft presents a false choice by asking Members of Congress to choose vehicle safety over pollution reduction. That is an unnecessary tradeoff. The fact is that we need both safer motor vehicles and cleaner cars and trucks, and there is no reason the American people can't have both.

Second, there is not a sound analytic basis for the proposal. The bill would encourage automakers to use this technology by giving them pollution credits for every car they manufacture with crash-avoidance technology like automatic emergency braking or technology that helps with congestion mitigation like an in-dash GPS. Unfortunately, there just isn't sufficient data to support these pollution credits.

In 2012, the Environmental Protection Agency and the Department of Transportation examined this issue. The automaker Daimler had argued that the agency should provide pollution credits for crash avoidance technology. The agency said that credits should only be awarded where the technologies provided real-world improvements to fuel economy and pollution reduction, the improvements must be verifiable, and the process by which they are granted should be transparent.

The agencies determined that none of these factors were satisfied for technologies used for crash avoidance. Consequently, the agencies concluded that the advancement of crash-avoidance systems is best left to NHTSA's exercise of its vehicle safety authority.

The discussion draft would reverse this conclusion. Under this proposal, Section 502(a) provides a credit of 3 or more grams of carbon dioxide per mile to any vehicle that is equipped with an advanced vehicle technology. The bill also offers a credit of 6 or more grams of carbon dioxide per mile to any vehicle that is equipped with connected-vehicle technology. Three grams might not sound

like a lot, but it is many times more than Daimler argued to EPA was warranted for this technology in 2012.

And although EPA is still in the process of determining the extent of Volkswagen's violations, in all the publicly discussed estimates, the excess pollution from the non-complying VW vehicles is less than 3 grams per mile. The fact is 3 grams per mile for every mile every day for every year for every car adds up to substantial pollution.

Third, the discussion draft would allow more pollution for using technologies that are going to be used even without this additional incentive. For instance, just last month, 10 major vehicle manufacturers publicly committed to making automatic emergency braking a standard feature in all new vehicles. It makes no sense to give these companies an incentive for something they intend to do anyway.

Fourth, the loopholes created by this bill could only grow bigger over time. Section 503(a) would authorize the Secretary of Transportation to select any technology and award that technology as many pollution credits as necessary to "incentivize" its adoption. There is no upper-bound limit on how many credits might be awarded under this language.

Finally, the bill, as currently drafted, would curb the role of States in innovating carbon pollution reductions at the state level. As we have seen time and again, the States are the laboratories of innovation. They have demonstrated countless successes, and there is no basis for so easily stripping them of their important role. We should remember that it was the State of California that led the way in detecting the VW emissions scandal.

Mr. Chairman, Ranking Member, and members of the subcommittee, it has not been easy for the United States to establish a regulatory structure that is transparent, data-driven, technology-based, and effective. I urge you to reject pleas for new special-interest loopholes and maintain our current rigorous system. The American people expect a regulatory system that cuts pollution and increases safety. Let's not sacrifice one for the other.

And I would be happy to take any questions you have.

[The prepared statement of Mr. Dotson follows:]

Center for American Progress



1333 H Street, NW, 10<sup>th</sup> Floor  
Washington, DC 20005  
Tel: 202 682.1611 • Fax: 202 682.1867

[www.americanprogress.org](http://www.americanprogress.org)

**Testimony of Greg Dotson**  
**Vice President for Energy Policy, Center for American Progress**  
**Hearing on “Examining Ways to Improve Vehicle and Roadway Safety”**  
**Subcommittee on Commerce, Manufacturing, and Trade**  
**Committee on Energy and Commerce**  
**October 21, 2015**

Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to testify today. My name is Greg Dotson, and I am Vice President for Energy Policy at the Center for American Progress, or CAP, a nonprofit think tank dedicated to improving the lives of Americans through progressive ideas and actions.

The auto manufacturing industry touches the lives of all of us. By the industry’s own account, it directly employs more than 1.5 million people, and, according to the Bureau of Economic Analysis, adds more than \$100 billion to the nation’s gross domestic product.<sup>1</sup> Many Americans rely on automakers’ products daily to get to work, to do their jobs, and to transport their families safely.

For these very reasons, the industry is regulated in a number of vitally important ways – to minimize the risk to passengers in the event of accidents, to maximize the safety of our roadways, to minimize our dependence on oil, and to prevent pollution from choking our communities. The result is that today’s vehicles have attributes once believed to be incompatible – they are safer, more efficient, and less polluting. The Obama Administration has put us on a path to continue and enhance this trend.

Today, I am going to focus my testimony on sections 502 and 503 of the discussion draft. These provisions would unfortunately take us in the wrong direction by promoting a false policy tradeoff. The principle behind these sections is that in order to encourage automakers to introduce advanced technology – some of which is safety related and some of which is not – Congress must allow them to pollute more. This will punch new loopholes into the Clean Air Act and undermine the efforts of federal and state governments to clean up pollution from vehicle tailpipes.

**Background: Recent Federal Action to Cut Greenhouse Gas Tailpipe Emissions**

To achieve the carbon pollution reductions we need to avert the worst impacts of climate change, the United States must continue to identify ways to make our cars and trucks cleaner and more efficient. The Obama Administration has demonstrated tremendous leadership in cutting pollution from the transportation sector.

In May 2010, the Environmental Protection Agency (EPA) and National Highway Transportation Safety Administration (NHTSA) issued greenhouse gas (GHG) emissions

standards and corporate average fuel economy standards for model years 2012 through 2016 for light-duty vehicles.<sup>2</sup> These were the first-ever national greenhouse gas emission standards issued under the Clean Air Act. On October 15, 2012, the EPA and NHTSA issued the second phase of these standards for model years 2017 through 2025.<sup>3</sup> At the time of the rulemaking, light-duty vehicles accounted for nearly 60 percent of U.S. transportation-related petroleum use and greenhouse gas emissions.<sup>4</sup>

These standards are the most important federal action ever taken to reduce greenhouse gas pollution from the transportation sector while making cars more fuel efficient for consumers. In model year 2025, the EPA estimates that the standards will achieve an average fleetwide level of 163 grams of carbon dioxide per mile, which is the equivalent of 54.5 miles per gallon if achieved through fuel economy improvements. Model year 2025 vehicles will emit one half of the greenhouse gas emissions of a model year 2010 vehicle. When combined, the standards for model years 2012-2016 and 2017-2025 will cut 6 billion metric tons of greenhouse gases over the lifetimes of the vehicles, which is more carbon dioxide than the United States released in 2010.<sup>5</sup>

Consumers also benefit at the gasoline pump. The combined standards are projected to save consumers more than \$1.7 trillion in fuel costs by 2025. Consumers who purchase a new model year 2025 vehicle will save more than \$8,000 at the gasoline pump over that vehicle's lifetime.<sup>6</sup>

The EPA greenhouse gas standards for light-duty vehicles are based on carbon emissions footprint curves; meaning, each vehicle must meet a different emissions compliance target adjusted for the footprint or size of the vehicle. For example, a vehicle with a model footprint of 40 square feet, such as today's Honda Fit, would have a 2025 emissions target of 131 grams per mile, whereas a vehicle with a model footprint of 67 square feet, such as today's Chevy Silverado pickup truck, would have a 2025 emissions target of 252 grams per mile.<sup>7</sup>

#### **Concerns Raised by the Discussion Draft**

Sections 502 of the discussion draft gives automakers greenhouse gas "credits" for installing certain vehicle technology. Section 503 ensures that federal fuel economy requirements change to reflect the new, weaker emissions standards set under section 502.

If this bill becomes law, automakers will be allowed to emit more greenhouse gas emissions from vehicle tailpipes than allowed under current law. This bill suggests, falsely, that to ensure cars employ the latest in vehicle safety technology, we must concede the safety of our climate. Although this legislation is characterized as promoting safety, the Committee should be aware that this legislation also promotes technology that may not have any auto safety benefit.

#### ***The Bill Undermines the Integrity of the Vehicle Emissions Reduction Program***

This bill allows automakers to emit more greenhouse gas pollution in exchange for installing certain vehicle technology. Specifically, section 502(a) provides a credit of "3 or more" grams

of carbon dioxide per mile to any light-duty vehicle, light-duty truck, or medium-duty passenger vehicle that is equipped with at least three advanced vehicle technologies. The bill also offers a credit of “6 or more” grams of carbon dioxide per mile to any vehicle that is equipped with connected vehicle technology.

Under this bill, a single vehicle could emit at least 9 grams per mile more pollution than allowed under current law. To put that figure in context, between the 2012 and 2013 model years, automakers reported reducing their fleetwide carbon dioxide emissions by 9 grams per mile. The credits contemplated by this bill could wipe out the tailpipe emissions reductions benefit of an entire year’s worth of technological development and deployment.<sup>8</sup>

I would like to note that the majority’s background memo for this bill suggests that the intent of this section is to provide “3 or more grams per mile for an advanced automotive technology;” meaning, each installed technology, rather than each vehicle, could earn the 3 gram per mile credit.<sup>9</sup> If the bill’s language is adjusted to be consistent with this policy, then credits would be offered of at least 9 grams per mile for advanced vehicle technologies and another 6 grams for connected vehicle technology. That would open a gaping loophole in the greenhouse gas emissions program and further erode the progress we have made in putting cleaner cars on the road.

Automakers already have the ability to apply to obtain greenhouse gas credits from so-called off-cycle technologies—that is, technologies that reduce emissions and lower fuel consumption on the road but may not demonstrate that benefit during emissions testing. For example, in September of this year, the EPA approved several automakers’ requests for off-cycle technology credits for high efficiency exterior lighting, air conditioning improvements, engine and transmission warm-up technologies, and others.<sup>10</sup> To earn these off-cycle credits, the automakers have to prove that the technology will actually reduce emissions. They must use modeling, on-road testing, or other approved analytical or engineering methods to demonstrate the emissions benefit over a wide range of driving conditions. Stakeholders also have an opportunity to provide comment on proposed credits.<sup>11</sup>

In contrast, the credits proposed by this bill are arbitrary and are not supported by adequate data. Instead, the bill creates a pathway for automakers to do an end run around the existing rigorous and transparent process.

An example may help to show how arbitrary the bill’s proposed credits are and how some automakers may choose to employ them.

During the EPA rulemaking for the 2017-2025 model year light-duty vehicle greenhouse gas emission standards, the auto manufacturer Daimler submitted comments saying that EPA and NHTSA “should provide ‘congestion mitigation credits based on crash avoidance technologies,’ because crash avoidance technologies can potentially reduce traffic congestion associated with motor vehicle collisions and thus, ‘similar to off-cycle technologies,’ provide ‘significant CO<sub>2</sub> and fuel consumption benefits.’”<sup>12</sup> Daimler suggested that a technology package of forward

collision warning and adaptive brake assist should receive a credit of 1.0 gram of carbon dioxide per mile. The company suggested adding a 0.5 gram credit for installing autonomous emergency braking and adaptive cruise control.<sup>13</sup>

Notably, the bill we are discussing today would offer a 3-gram credit for installing advanced vehicle technologies. The size of the credit contemplated by this bill does not appear rooted in evidence.

For its part, the EPA and Department of Transportation rejected Daimler's suggestions. The agencies note that the EPA offers off-cycle credits for technologies when "the amount of GHG emission reduction and fuel economy improvement attributable to the technology being credited can be reliably determined, and those improvements can be directly attributed to the improved fuel economy performance of the vehicle on which the technology is installed."<sup>14</sup> They acknowledged that preventing traffic accidents can reduce congestion and associated emissions but argued that it would be impossible to attribute emissions savings to one particular make and model of a vehicle to which the credit would be applied. The agencies stated that "credits should be available only for technologies providing real-world improvements" that are "verifiable" through a transparent process.<sup>15</sup> According to the agencies, "none of these factors would be satisfied for credits for these types of indirect technologies used for crash avoidance systems, safety-critical systems, or other technologies that may reduce the frequency of vehicle crashes."<sup>16</sup>

Daimler told the EPA that emissions of 6 grams of carbon dioxide per mile could be averted "if all accidents were avoided."<sup>17</sup> I think we can all agree that elimination of all traffic accidents is an unrealistic standard. But today's bill suggests that an automaker should receive a 6 gram per mile credit for installing just one connected vehicle technology.

#### ***The Bill Opens the Door to Unlimited Loopholes***

The bill defines the qualifying technology quite broadly; in fact, the technology does not even have to provide any safety benefit to qualify for these greenhouse gas credits.

Section 503 of the bill provides a broad definition of the types of technology that could qualify as "advanced automotive technology," including any "vehicle information system, unit, device, or technology that meets any applicable performance metric and demonstrates crash avoidance or congestion mitigation benefits." Under this definition, for example, one could argue that a car equipped with GPS would qualify for the credit, as the GPS can help the driver avoid a traffic jam on the way to the grocery store. The EPA and Department of Transportation have stated quite clearly that it is nearly impossible to quantify the per-vehicle emissions reductions benefits of GPS and other "driver interactive technologies."<sup>18</sup> According to the agencies, these technologies "do not improve the fuel efficiency of the vehicle under any given operating condition."<sup>19</sup> Instead, these technologies provide drivers with information that may or may not be accurate, that drivers may or may not use, or that may or may not actually reduce emissions. The agencies specifically cite evidence that drivers most often use GPS and other navigations systems to find the shortest route to their destination, which may or may not be the route that is

the most fuel efficient or least polluting.<sup>20</sup>

The discussion draft also opens a window of opportunity for the Department of Transportation to significantly expand the type of technologies that qualify for these greenhouse gas credits. Section 503 of the bill states that any interested person can petition the Department of Transportation to promulgate a rule to add an advanced automotive technology to the definition. If the Department decides to expand the definition, the Transportation Secretary then has the authority to determine the appropriate level of greenhouse gas and fuel economy credits “necessary to incentivize the implementation of the additional advanced automotive technology.”

Again, this is incredibly broad and subjective and essentially gives the Transportation Secretary unlimited discretion to increase the number of credits to the extent necessary to “incentivize” automakers to install certain technology. Moreover, it has the effect of giving the Department of Transportation, rather than the EPA, the authority to determine how much pollution the nation’s cars will be allowed to emit.

On top of all of that, the amount of the credits offered to automakers can increase without bounds. Section 502(a) of the discussion draft directs the EPA Administrator to review the greenhouse gas credits every other year, starting in 2026, to determine whether to change the size of the credit. But the bill ties the Administrator’s hands by specifying that the credits must be “3 or more” and “6 or more” grams of carbon dioxide per mile. It appears the Administrator has authority under this bill to increase the credit and allow more pollution indefinitely but has no authority to reduce it or get rid of it entirely.

#### *The Bill Disregards the Leadership of the States*

Section 502(b) of the discussion draft threatens to upend the successful federal-state balance relating to vehicle tailpipe emissions that has worked to get cleaner, more efficient cars on the market.

The Clean Air Act preempts states from setting their own vehicle emission standards, with one important exception. The EPA can grant a waiver to California to allow it to establish its own vehicle emission standards if those standards are at least as stringent as federal standards and necessary to meet “compelling and extraordinary conditions.”<sup>21</sup> Section 502(b) of the discussion draft adds a condition for obtaining this waiver: applying the greenhouse gas emission credits “to the full extent.” Moreover, the discussion draft gives California only 30 days to revise its vehicle emissions standards should the Department of Transportation add another qualifying vehicle technology to the list of those generating credits. If California fails to meet that unfair and unrealistic timeline, the state loses its waiver and right to impose its own vehicle emissions standards.

California is not the only state affected by this provision. Under section 177 of the Clean Air Act, other states can adopt California’s vehicle emissions standards providing that “such standards are identical to the California standards for which a waiver has been granted.”<sup>22</sup> As a

result, states that have adopted the California standard would have to modify their state programs as well to match California's, assuming California was even able to modify it within the 30 day timeframe.

Interfering with the right of California and other states to exercise leadership in vehicle pollution control would have real-world consequences. California's pollution standards have helped drive development of technology that we see in cars on roads across the country. California's authority to set and enforce standards also played a key role in the discovery of the Volkswagen pollution scandal. It was the California Air Resources Board that launched the initial investigation into the company's alleged use of defeat devices to pass emissions tests.

#### *The Bill Offers Companies Credit for Actions Already Underway*

Sections 502 and 503 of the bill would give pollution credits to automakers to incentivize them to install technologies they already have committed to installing. For example, just last month, ten major vehicle manufacturers publicly committed to making automatic emergency braking a standard feature in all new vehicles.<sup>23</sup> It makes no sense to give these companies a permit to pollute more, especially in exchange for little to no real-world safety benefit.

#### **Conclusion**

Under today's policy framework, state and federal regulators have the tools they need to make continued progress on safety, efficiency, and public health protection. Unfortunately, the legislation the Committee is considering today would upend this framework by curbing the important role of states and creating new loopholes in the Clean Air Act to allow more pollution.

#### **End Notes**

<sup>1</sup> U.S. Dept. of Commerce, Bureau of Economic Analysis (online at <http://www.bea.gov/iTable/iTable.cfm?ReqID=51&step=1#reqid=51&step=51&isuri=1&5114=a&5102=1>) (accessed on Oct. 19, 2015).

<sup>2</sup> U.S. Environmental Protection Agency and U.S. Department of Transportation, "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule," 75 Fed. Reg. 25324-25725 (May 7, 2010).

<sup>3</sup> U.S. Environmental Protection Agency and U.S. Department of Transportation, "2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule," 77 Fed. Reg. 62624-63200 (October 15, 2012) (hereinafter "2017 Light-Duty Vehicle GHG Rule").

<sup>4</sup> U.S. Environmental Protection Agency, "Fact Sheet: EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks," August 2012, available at <http://www3.epa.gov/otaq/climate/documents/420f12051.pdf>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> U.S. Environmental Protection Agency, "Greenhouse Gas Emission Standards for Light-Duty Vehicles" Manufacturer Performance Report for the 2013 Model Year," March 2015, p. 40, available at <http://www3.epa.gov/otaq/climate/documents/420r15008a.pdf>.

---

<sup>9</sup> U.S. House of Representatives, Committee on Energy and Commerce, Memorandum to Members of the Subcommittee on Commerce, Trade, and Manufacturing (October 19, 2015), available at <http://docs.house.gov/meetings/IF/IF17/20151021/104070/HHRG-114-IF17-20151021-SD002.pdf>.

<sup>10</sup> U.S. Environmental Protection Agency, "EPA Decision Document: Off-cycle Credits for Fiat, Chrysler Automobiles, Ford Motor Company, and General Motors Corporation" (September 2015).

<sup>11</sup> *Ibid.*

<sup>12</sup> 2017 Light-Duty Vehicle GHG Rule at 62732.

<sup>13</sup> 2017 Light-Duty Vehicle GHG Rule at 62732.

<sup>14</sup> 2017 Light-Duty Vehicle GHG Rule at 62733.

<sup>15</sup> 2017 Light-Duty Vehicle GHG Rule at 62733.

<sup>16</sup> 2017 Light-Duty Vehicle GHG Rule at 62733.

<sup>17</sup> 2017 Light-Duty Vehicle GHG Rule at 62732.

<sup>18</sup> 2017 Light-Duty Vehicle GHG Rule at 62734.

<sup>19</sup> 2017 Light-Duty Vehicle GHG Rule at 62734.

<sup>20</sup> 2017 Light-Duty Vehicle GHG Rule at 62734.

<sup>21</sup> 42 U.S. Code § 7543.

<sup>22</sup> 42 U.S. Code § 7507.

<sup>23</sup> National Highway Traffic Safety Administration, "DOT and IIHS announce historic commitment from 10 automakers to include automatic emergency braking on all new vehicles," press release, September 11, 2015, available at <http://www.nhtsa.gov/About+NHTSA/Press+Releases/nhtsa-iihs-commitment-on-aeb-09112015>.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

Ms. Claybrook, you are recognized for 5 minutes for your opening statement, please.

#### STATEMENT OF JOAN CLAYBROOK

Ms. CLAYBROOK. Thank you very much, Mr. Chairman and Ranking Member Schakowsky and members of the subcommittee.

I am Joan Claybrook, Consumer Co-chair of Advocates for Highway and Auto Safety and former Administrator of NHTSA. I appreciate the opportunity to testify before you today on such an important issue, the safety of our families and friends on our nation's roads and highways.

Let me share with you some important statistics as you begin considering this bill: 33,000 deaths and over 2 million horrible injuries annually in motor vehicle crashes; 801 manufacturer recalls and service campaigns of more than 63 million vehicles in 2014; 613 recalls already in 2015 involving 40 million vehicles. For these recalls, at least 200 people innocently killed and hundreds injured because automakers sold cars they knew had safety defects.

There have been House and Senate hearings over the last 2 years on faulty GM ignition switches and exploding Takata airbags where I heard countless hours of testimony and indignation expressed by committee members. There have been over 2 billion in Department of Justice and civil fines against recalls since 2010 because of the NHTSA enforcement and Justice enforcement; total NHTSA safety budget, a measly \$130 million a year, a measly 130 million.

Eleven family members sitting behind me today and millions of Americans expect their legislators to enact sensible solutions for serious safety problems, one opportunity to get it right.

Congressional hearings, media reports, and DOT inspector general reports have all uncovered industry misconduct and NHTSA missteps that put millions of Americans at risk on the highway. The outstanding problems that need legislation that addresses them are: a chronically underfunded and understaffed agency responsible for regulating giant corporations and ensuring public safety; a lack of adequate civil and criminal penalties to deter automakers from putting profits before public safety; a predisposition by NHTSA to needlessly withhold information from consumers about vehicle safety problems that thwarts their ability to legally challenge the agency actions—all that is now changing under Mr. Rosekind; thank you, a legal loophole that allows consumers to drive off the lot of a rental car company or a used-car dealer with a vehicle under recall but not repaired; and agency powerlessness to take swift action when there is imminent hazard.

The draft bill will set a safety agenda for the agency for the next 6 years. At a time when motor vehicle deaths and injuries are climbing, stronger safety standards are urgently needed. Serious problems have been exposed and new challenges face the agency.

What does this bill due to enhance safety and equip the agency with the legal and financial tools to fulfill its safety mission? Very little. Instead, it seriously dilutes critical vehicle emission controls and wastes taxpayer dollars by turning NHTSA into the National

Highway Traffic Study Administration. The bill diverts precious government resources to conduct at least 16 burdensome studies and reports and put the auto industry in the driver's seat on vehicle safety at the expense of public safety.

Under the draft bill, automakers can barter and trade off fuel economy and safety when we know the technologies exist to build safe, fuel-efficient, and clean cars. Other provisions delay public notification of recalls until NHTSA is in receipt of all the vehicle identification numbers subject to the recall, and NHTSA is required to draft its notice of a safety defect and noncompliance in coordination with the manufacturer, something that a regulator should not be limited to.

The bill provides a blanket exemption for motor vehicle safety standards for replica and other vehicles intended for testing and evaluation, and these giveaways are unnecessary because NHTSA already has a regulatory process to do this in the law.

Furthermore, the draft bill provides a breathtaking double standard for manufacturers at the expense of consumers. And Section 406 mandates that industry failure to follow DOT voluntary guidelines cannot be used as evidence in a civil action. However, industry may use compliance with those same guidelines to show compliance with federal regulations in the same civil action.

The real intention of these and other provisions setting up industry-stacked advisory committees and councils are not to advance safety but to thwart NHTSA from regulating industry and to keep the public out.

Problem-solving proposals to the problems identified by the hearings that you have heard again and again are found in H.R. 1181 that has been introduced by Ranking Member Frank Pallone and Subcommittee Ranking Member Jan Schakowsky. It is a comprehensive approach that includes tougher penalties, eminent hazard authority, improved transparency, pedestrian safety measures, prohibitions on renting vehicles or selling used cars under recall, judicial review of final agency actions on recalls, and revolving-door protections, and an overdue direction to the agency to address the tragedies of unattended children left behind in a vehicle, and some 200 of them die a year.

Unless this committee acts to pass meaningful legislation that will prevent illegal and immoral behavior by the auto industry, this string of scandals will continue: Firestone tires, Toyota sudden acceleration, GM faulty switches, Takata exploding airbags, and now cheating VW cells. There are no credible excuses for delaying any longer the adoption of consumer protections, increased penalties for corporate misbehavior, strengthening NHTSA's authority and resources, and improve vehicle safety standards that can really save lives and reduce injuries and prevent industry fraud.

Thank you so much for the opportunity.

[The prepared statement of Ms. Claybrook follows:]



**Summary of Testimony of Joan Claybrook**  
**Consumer Co-Chair, Advocates for Highway and Auto Safety**  
**Former Administrator, National Highway Traffic Safety Administration**

Each year motor vehicle crashes kill more than 33,000 lives and injure millions more at a cost to society of \$800 billion. Unfortunately, deaths resulting from motor vehicle crashes are on the rise. The most recent data available from the National Highway Traffic Safety Administration (NHTSA) indicates that traffic fatalities in the first three months of 2015 have increased by 9.5 percent since last year. Moreover, the National Safety Council estimates that motor-vehicle deaths are up 14 percent over the first six months of 2015, representing the largest increase since 2007.

These grim statistics come at a time when Americans are also facing a record number of recalls for defective motor vehicles. In 2014, according to NHTSA, there were 801 separate recalls and service campaigns involving 63.7 million vehicles. So far in 2015, there have been 613 recalls covering over 40 million vehicles according to the agency. Additionally, there have been ten Congressional hearings on vehicle safety defects issues during the 113th and 114th Congresses, of which six were held by the House Energy and Commerce Committee. Yet, Congress has not taken any meaningful or corrective actions to stop auto industry cover-up and hold corporations accountable or provide the NHTSA with the staff and financial resources to protect consumers, issue critical safety standards and regulate the auto industry. In the face of so many recent deadly safety recalls, hundreds of needless deaths and injuries due to hidden defects, extensive auto industry misconduct, inadequate agency funding, and paltry fines there is an urgent need for Congress to pass legislation that protects the public instead of corporate executives.

The NHTSA has a laudable history of saving lives through issuing vehicle safety standards and implementing behavioral initiatives. It is both unfortunate and unnecessary that the agency is chronically underfunded even while its critical importance to public health and safety and saving money is clearly documented. In order to advance safety gains and improve the agency's effectiveness in detecting, investigating and solving safety threats as well as meeting new expected challenges, a substantial increase in funding is essential and justified for NHTSA. The agency must also be given the authority to pursue relevant and robust penalties. The unsatisfactory conclusion to the recent investigation of the GM vehicles equipped with a defective ignition switch is a stark reminder of why NHTSA must be given the authority to levy larger monetary fines than currently capped in the law at a measly \$35 million as well as criminal penalties for such grave malfeasance and misconduct.

Advocates supports amending several federal laws to provide NHTSA with enhanced authorities to address existing safety problems and future challenges. The draft bill released by the Committee's majority does not provide solutions to the problems identified at the six hearings nor does the bill advance safety in any significant or meaningful way. Instead, the bill seriously dilutes critical environmental protections that control vehicle emissions and promote fuel economy and wastes taxpayer dollars by turning NHTSA into the National Highway Traffic *Study* Administration. The bill diverts precious agency resources to conducting at least 16 separate burdensome studies or reports. Additionally, several provisions put the auto industry in the driver's seat on vehicle safety at the expense of the regulatory agency and the safety of the American public.

Many of the needed changes are included in the Vehicle Safety Improvement Act of 2015, H.R. 1181, sponsored by Committee Ranking Member Frank Pallone (D-NJ6) and Subcommittee Ranking Member Jan Schakowsky (D-IL9) as well as other Committee colleagues. This legislation includes commonsense and cost-effective solutions to the numerous problems identified in hearings held by the Energy and Commerce Committee on the defective GM ignition switches and exploding Takata airbags. In addition to tougher penalties, imminent hazard authority, improved transparency and pedestrian safety, critical motor vehicle safety provisions should be part of the Committee's safety title including protecting consumers by prohibiting rental car and used car dealers from selling or renting consumers cars under recall, judicial review of final agency actions, a lobbying and communications "cooling-off" period for NHTSA personnel, and equipping vehicles with technology to detect the presence of a child who has been left in a vehicle to prevent another senseless tragedy.

There are no acceptable excuses for delaying any longer the adoption of lifesaving laws, consumer protections, increased penalties for corporate misbehavior, strengthening NHTSA's authority and resources, and improved vehicle safety standards that can save lives and reduce injuries, especially when sensible solutions are at hand.



**STATEMENT OF JOAN CLAYBROOK  
CONSUMER CO-CHAIR  
ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

**ON**

**“EXAMINING WAYS TO IMPROVE VEHICLE  
AND ROADWAY SAFETY”**

**BEFORE THE**

**COMMITTEE ON ENERGY AND COMMERCE**

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE**

**OCTOBER 21, 2015**

**Introduction**

Good morning Chairman Burgess, Ranking Member Schakowsky and members of the Subcommittee. I am Joan Claybrook, Consumer Co-chair of Advocates for Highway and Auto Safety (Advocates) and former Administrator of the National Highway Traffic Safety Administration (NHTSA). Advocates is a coalition of the leading public health, safety, and consumer organizations and the major property and casualty insurance companies and insurance agents that works together to prevent motor vehicle crashes, save lives, reduce injuries and contain costs through the adoption of highway and auto safety laws, programs and regulations. Advocates is a unique coalition dedicated to improving safety by addressing motor vehicle crashes as a public health issue.

According to the federal government, each year motor vehicle crashes claim more than 33,000 lives and millions more are injured at a cost to society of \$800 billion.<sup>1</sup> Unfortunately, deaths resulting from motor vehicle crashes are on the rise. The most recent data available from the National Highway Traffic Safety Administration (NHTSA) indicates that traffic fatalities in the first three months of 2015 have increased by 9.5 percent since last year.<sup>2</sup> Moreover, the National Safety Council estimates that motor vehicle deaths are up 14 percent over the first six months of 2015, representing the largest increase since 2007.<sup>3</sup>

These grim statistics come at a time when Americans are also facing a record number of recalls for safety-defective motor vehicles. In 2014, according to NHTSA, there were 801 separate vehicle recalls and service campaigns involving 63.7 million vehicles.<sup>4</sup> So far in 2015, there have been 613 recalls covering over 40 million vehicles according to the agency.<sup>5</sup>

History has shown that when automakers place defective vehicles into the marketplace there are deadly consequences. In 2000, Congressional hearings and the media revealed hundreds of needless deaths and injuries caused by the Firestone/Ford defective tire fiasco. Again, in 2009, families were put at unacceptable risk due to the Toyota sudden acceleration problem. And, in the past two years the public has learned about the cover-ups and deception by General Motors (GM) executives who knowingly used faulty ignition switches that have been linked to at least 174 deaths with some reports placing the grim total above 200 fatalities,<sup>6</sup> and many more injuries. Subsequently, the defective airbags manufactured by Takata have caused at least 8 deaths and 100 injuries.<sup>7</sup> This tragic death toll from these defects that were not revealed to NHTSA as the law requires is equivalent to the lives that would be lost in a major aviation crash. If such an incident were the result of a faulty airplane part known to the manufacturer, there is no doubt that Congress would take swift, strong and immediate action to stop it from happening again.

Yet, why has the Congress not taken any meaningful action to address and assure correction of known safety problems contributing to this public safety crisis, despite ten Congressional hearings<sup>8</sup> on vehicle safety defects issues during the 113<sup>th</sup> and 114<sup>th</sup> Congresses, of which six were held by the House Energy and Commerce Committee?<sup>9</sup> The majority draft bill contains no significant solutions to deter future safety defects or hold corporations and individuals responsible for their wrongful actions. And, despite the release last June of the Department of Transportation's Inspector General's scathing report<sup>10</sup> on NHTSA's inadequate efforts to identify safety-related vehicle defects, including the agency's failure to document its decisions to not

investigate potential safety issues, the Majority Bill fails to provide for judicial review of the agency's arbitrary rejection of defect petitions filed by the public.

In the face of so many recent disastrous safety recalls, some of them years after the cars were first sold, the public cries out for action by Congress. The time to act is now or we can surely expect the same shameful industry behavior, the same unacceptable agency shortcomings, and the same callous disregard for the safety of families. Is there no moral authority in this Congress to insist that the blood of innocent victims not be needlessly spilled?

NHTSA has a laudable history of saving lives through issuing vehicle safety standards and implementing behavioral initiatives, and in the last year has significantly improved its performance as the cop on the regulatory beat. However, there is still an unfinished safety agenda that needs to be addressed in the safety title of the multi-year, multi-modal surface transportation authorization bill Congress is currently debating. This bill will set the safety agenda for the next six years. During this time period it is expected that there will be nearly 2 million people killed on our roads and 12 million injured. This is roughly equivalent to the populations of Houston, Texas<sup>11</sup> and the Commonwealth of Pennsylvania<sup>12</sup> respectively. Why is the sanctity of life not job One in this Congress? Particularly when the proven life-saving record of NHTSA's vehicle safety programs is so significant.

Furthermore, the agency will certainly face many new future safety challenges as vehicle technology becomes more complex and continues to rapidly develop. While emerging in-vehicle technologies hold out the hope of improving safety on our nation's roads, many remain unproven

and others may very well contribute to the epidemic of distracted driving. Due to the swift advancement of these technologies, cyber security is also a growing and serious concern. Earlier this year, researchers funded by the U.S. Department of Defense remotely hacked into the control system of a driverless car including the braking and steering controls.<sup>13</sup> It is essential that NHTSA, the agency charged with ensuring the safety of our vehicles and our drivers, be equipped with both the appropriate resources and personnel to confront the myriad of emerging issues presented by new technologies. It is almost incomprehensible that the entire vehicle safety program for the U.S. has a miniscule budget of only \$130 million, and it has barely increased over the last six years. It is both unfortunate and unnecessary that this agency is chronically underfunded by Congress even while its critical importance to public health and safety continues to expand. Congress has a moral obligation in the safety title of the six year reauthorization bill to give NHTSA the ability to do its job and to do it effectively. Our lives and those of our families as well as yours literally depend on it.

Advocates commends this committee for including in the safety title of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act<sup>14</sup>, or MAP-21, several safety provisions directing agency regulatory actions on overdue lifesaving measures to improve motorcoach safety. These issues, identified in countless recommendations and crash investigations by the National Transportation Safety Board, languished for years, even decades, until specific deadlines for agency action were enacted in MAP-21. However, even now, deadlines for the issuance of a number of final rules and other safety actions required by the legislation are delayed and will not be completed on time, including final rules for roof strength, anti-ejection protection and rollover crash avoidance.<sup>15</sup> These safety advances are critical as millions of passengers are transported by

motor coaches each year. In 2013, according the American Bus Association Foundation, the motorcoach industry in the United States and Canada provided 605 million passenger trips.<sup>16</sup> These delays in issuing safety standards are, in part, a reflection of the agency's totally inadequate resources to comprehensively address its safety mission.

### **Lives Saved by Safety Systems and Programs**

Laws passed by Congress and subsequent rules issued by NHTSA requiring vehicle safety standards and technologies have saved thousands of lives. NHTSA studies show that since 1975 motor vehicle safety technologies have saved over 400,000 lives.<sup>17</sup> For example, frontal air bags saved 2,388 lives in 2013 and have saved nearly 40,000 people since 1991.<sup>18</sup> In 2012, electronic stability control (ESC) saved an estimated 1,144 lives among passenger vehicle occupants.<sup>19</sup> Child restraints saved the lives of 263 children age four and under in 2012 and more than 10,000 young children since 1975.<sup>20</sup> In addition to laws requiring safety technologies, other laws enacted by Congress to improve safety on our roads have been proven lifesavers. For example, the 21-year-old minimum drinking age law has saved 25,013 lives since enactment in 1984.<sup>21</sup>

A comprehensive NHTSA reauthorization bill with sufficient agency funding, stronger enforcement tools, enhanced consumer protections and commonsense and cost-effective safety requirements will allow NHTSA to fulfill its statutory mission to prevent death and injuries and economic losses from motor vehicle crashes.

### **Sufficient Resources for NHTSA are Essential**

NHTSA's funding and staffing levels have suffered over the years. Today, 95 percent of transportation-related fatalities and 99 percent of transportation injuries<sup>22</sup> occur on our streets and highways and yet, NHTSA receives only one percent of the overall U.S. Department of

Transportation (DOT) budget.<sup>23</sup> NHTSA is responsible for the safety of over 316 million Americans who drive or ride in or are around more than 269 million registered motor vehicles.<sup>24</sup> Motor vehicle crashes are the leading cause of death for all Americans ages five to 24, and the second leading cause of death among adults 25 to 34 years of age.<sup>25</sup> By any measure motor vehicle deaths and injuries are a major and costly public health epidemic. In order to advance safety gains and improve the agency's effectiveness in detecting, investigating and solving safety threats as well as meeting new expected challenges, a substantial increase in funding is essential and justified for NHTSA.

The current NHTSA budget for motor vehicle safety activities and research (including rulemaking, enforcement, research and analysis) is a small portion of NHTSA's overall budget. Current funding for NHTSA's Vehicle Safety and Research program was just \$130 million for Fiscal Year (FY) 2015.<sup>26</sup> This total is grossly inadequate in the face of the agency's mission and safety responsibilities that affect every American and every registered motor vehicle on our roads. Moreover, this paltry sum has barely increased over the past eight years.<sup>27</sup> When accounting for inflation over that same time period, NHTSA has effectively experienced a 4 percent decrease in funding for operations and research activities. The agency's Vehicle Safety and Research budget of \$130 million equates to NHTSA receiving less than one-half dollar for each of the 269 million registered vehicles on the road in the U.S.<sup>28</sup>

While NHTSA's safety budget has shrunk in terms of its buying power, the number of vehicles on the road the agency must regulate has increased by 24 percent, from 217 million vehicles in 2000 to 269 million in 2013.<sup>29</sup> NHTSA remains woefully under-resourced and the agency's

ability to keep up with technology and crash and injury trends is imperiled by the lack of sufficient resources. This was made abundantly clear during the Toyota sudden acceleration crisis when the agency had few personnel with backgrounds and experience in electronics, and none with software experience.<sup>30</sup> This is unacceptable in light of the important lifesaving mission of this agency and the rapid increase in vehicle installation of electronic systems in motor vehicles.

A comparison of the NHTSA's Vehicle Safety and Research budget and the Federal Aviation Administration's (FAA) Aviation Safety (AVS) budget provides a clear example of the resource and funding disparities. From 2006 to 2013, aviation fatalities in the U.S. averaged 534 deaths annually over that eight year span, while motor vehicle fatalities averaged 35,907 annually over the same time period.<sup>31</sup> (Chart #1). On average, motor vehicle fatalities are about 67 times greater than aviation fatalities. This may be understandable because the FAA AVS budget for Aviation Safety is so much larger than the NHTSA Vehicle Safety and Research budget. In the past eight years the FAA AVS budget increased from \$949 million (2006)<sup>32</sup> to \$1.2 billion in (2014)<sup>33</sup> while the NHTSA Vehicle Safety and Research budget barely moved from \$119 million (2006)<sup>34</sup> to \$130 million (2015).<sup>35</sup> (Chart #2).

The NHTSA paltry increase of a meager \$11 million since 2006 is dwarfed by the increase of more than \$250 million in the FAA AVS budget over the same time period, and the FAA AVS budget increase since 2006 is itself nearly twice NHTSA's entire Vehicle Safety and Research budget. The comparison between aviation safety and vehicle safety, both in terms of budgets and results, are stark and disturbing. Moreover, the discrepancy between the amount spent per

fatality is stunning. (Chart #3). In 2013, based on the comparable budget figures, nearly \$3 million was spent per aviation fatality while less than \$5,000 was spent per motor vehicle fatality, and the gap is getting wider each year that NHTSA is not sufficiently funded to carry out its lifesaving mission. My father always told me that you get what you pay for, and we are paying for aviation safety and benefitting from that investment. However, the figures clearly show that NHTSA is being short-changed and has been for far too long. And, the public is paying the price with their lives and their wallets.

The agency budget for vehicle safety should reflect its important lifesaving and cost-saving mission. Laws and programs administered by NHTSA are responsible for saving at least an estimated 436,000 lives since 1975.<sup>36</sup> NHTSA authorization for vehicle operations and research should be tripled in acknowledgement of the daunting task the agency faces, the tremendous workload NHTSA undertakes to ensure the safety of millions of Americans every day of the year, and the success of its efforts.

**NHTSA Must be Given the Authority to Pursue Relevant and Robust Penalties**

The recent settlement of the investigation of the GM vehicles equipped with a defective ignition switch did not include any admission of criminal culpability or a civil fine sufficient to deter similar corporate misbehavior and offenses from occurring in the future. This unsatisfactory conclusion to an investigation involving a motor vehicle defect that has killed far too many Americans is a stark reminder of why NHTSA must be given the authority to levy larger monetary fines than currently capped in the law at a measly \$35 million as well as criminal penalties for such grave malfeasance and misconduct. Without this overdue legislative change,

the American public will continue to be the unknowing victims of manufacturers that place profits above public safety.

For far too long manufacturers have been selling deadly cars that kill and injure consumers without taking personal responsibility or suffering serious consequences. History will continue to be repeated unless Congress acts. In 2000, faulty Firestone tires were found to be responsible for numerous fatal crashes. In 2009 the sudden and unintended acceleration of Toyota vehicles killed and injured innocent motorists. Over the last two years, Congressional hearings revealed purposeful actions and decisions by corporate executives to hide and mislead NHTSA and the public about defective GM ignition switches and exploding Takata airbags. Individuals who knowingly permit vehicles with serious and deadly safety defects to be placed in the stream of commerce, and those who knew of the defect and concealed that knowledge should be held accountable for their actions. Without appropriate civil penalties and criminal sanctions to deter corporate misbehavior, nothing will change.

NHTSA is almost 50 years old<sup>37</sup> and should be given authority and powers commensurate with the agency's experience and safety mandate. This responsibility should be coupled with powers that permit the agency to fully perform its duties and allow the agency to exercise its enforcement authority to ensure the safety of vehicles on our streets and highways. For these reasons, the current cap on maximum fine amounts NHTSA may impose should be removed. For large multinational corporations the financial penalty imposed must be more than just a cost-of-doing business paid from petty cash.

The NHTSA must also be given the authority to pursue criminal penalties in appropriate cases where corporate officers who acquire actual knowledge of a serious product danger that could lead to serious injury or death and knowingly and willfully fail to inform NHTSA and warn the public. Under current federal law, many agencies already have authority to pursue criminal penalties including the Consumer Product Safety Commission, the Food and Drug Administration and the Securities and Exchange Commission. The lack of criminal penalty authority has hampered the agency's ability to deter automakers from safety defect recidivism.

#### **Safety Provisions Essential to the Safety Title**

Advocates supports amending several federal laws to provide NHTSA with enhanced authority to address existing safety challenges with 21<sup>st</sup> Century approaches that will allow the agency to leverage its resources to protect the American public. Advocates strongly supports the following legislation.

#### **Vehicle Safety Improvement Act of 2015, H.R. 1181**

We commend the Ranking Members of the House Energy and Commerce Committee and the Subcommittee on Commerce, Manufacturing and Trade Representatives Frank Pallone (D-NJ) and Jan Schakowsky (D-IL) as well as other Committee colleagues for sponsoring the Vehicle Safety Improvement Act of 2015, H.R. 1181, and strongly support its enactment. This legislation includes commonsense and cost-effective solutions to the numerous problems identified in hearings held by the Energy and Commerce Committee on the defective GM ignition switches and exploding Takata airbags. We urge that provisions in this bill be a part of the Committee's safety title.

### **Early Warning Reporting of Fatal Incidents by Manufacturers**

The intent of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act<sup>38</sup> was to ensure that the DOT Secretary receives all reports of fatal traffic crashes that are alleged or proven to have been caused by a possible motor vehicle defect. However, under current NHTSA regulation, manufacturers need only report that a fatal crash occurred and do not have to provide the agency with copies that document the underlying claim, notice or articles that inform the manufacturer that a defect-related fatality involving one of its vehicles had taken place.<sup>39</sup> The Vehicle Safety Improvement Act of 2015 requires that for incidents involving a fatality, manufacturers must submit to the DOT relevant claims and documents that notified the vehicle manufacturer of the fatal incident.<sup>40</sup>

### **Document and Information Transparency**

Currently, NHTSA is not making documents and investigations of safety defects readily available to the public. The agency has prevented public access to information by overly classifying records as confidential or requiring the public to seek records through lengthy Freedom of Information Act (FOIA) proceedings. The Vehicle Safety Improvement Act of 2015 makes several important reforms to give the public better access to NHTSA documents. It requires:

- The NHTSA to amend its regulations to establish a presumption in favor of public disclosure of all early warning data unless otherwise exempt from disclosure under federal law. This would prevent the agency from misclassifying non-privileged factual information as confidential, and allow it to be released to the public.<sup>41</sup>

- Improvements to NHTSA's early warning database in order to increase public access and availability so private individuals and researchers can assist the agency in identifying safety problems.<sup>42</sup>

#### **Imminent Hazard Authority**

The Vehicle Safety Improvement Act of 2015 would also authorize NHTSA to take immediate action when the agency determines that a defect involves a condition that substantially increases the likelihood of serious injury or death if not remedied immediately. This "imminent hazard" power is needed to protect the public, by allowing the agency to direct manufacturers to immediately notify consumers and remedy the defect as soon as possible. Sadly, far too many Americans have been killed by a defect in their vehicle they did not know existed. As serious motor vehicle recalls continue to come to light, this critical reform will give NHTSA a powerful tool to remedy the danger posed by defective motor vehicles.

#### **Pedestrian Protection**

On average, nearly 4,500 pedestrians are killed and 68,000 are injured each year since the recent low point in pedestrian deaths in 2009.<sup>43</sup> This equates to an average of a pedestrian being killed every two hours and a pedestrian being injured every eight minutes.<sup>44</sup> Pedestrian fatalities have increased by 15 percent and the number of pedestrians injured has increased by 12 percent since 2009.<sup>45</sup> In 2013, the latest year of data available, there were 4,735 pedestrian deaths and 66,000 pedestrians injured.<sup>46</sup> Vulnerable populations make up a significant share of pedestrian fatalities. More than one-fifth of children under the age of 15 who were killed in traffic crashes were pedestrians.<sup>47</sup> Older pedestrians (age 65+) accounted for 19 percent (896) of all pedestrian fatalities in 2013.<sup>48</sup> Moreover, the fatality rate for older pedestrians (age 65+) was 2 per 100,000 population – higher than the combined rate for all the other ages under 65 (1.4).<sup>49</sup> In 2010,

pedestrian crashes resulted in \$65 billion in comprehensive costs.<sup>50</sup> The Vehicle Safety Improvement Act of 2015 directs DOT to establish standards for motor vehicles in order to reduce the number of injuries and fatalities suffered by pedestrians who are struck by motor vehicles. Such a standard could protect especially vulnerable pedestrian populations, including children, older adults, and individuals with disabilities. Being hit by a car does not have to be a death sentence. Advocates and other safety groups have been urging Congress to require the DOT to issue a safety standard for the hood and bumper areas of motor vehicles in order to reduce the severity of injuries suffered by pedestrians and bicyclists that frequently result in death and lifelong disabilities. Such a standard has been in place in Europe for years. Just as added padding and restraint systems provide occupant protection inside the vehicle in the event of a crash, design improvements to the hood and bumper, which are already available on some makes and models sold in the U.S., can afford pedestrians and bicyclists protection on the outside of the vehicle in the event of a crash.

#### **Eliminate the Sale of Used Cars with Open Recalls**

Federal law prohibits automobile dealers from selling new vehicles that are subject to a safety recall until they are fixed.<sup>51</sup> However, there is no such restriction on the sale of used vehicles even when they have the exact same defects such as defective breaks, faulty steering, or malfunctioning air bags and seat belts. The Vehicle Safety Improvement Act of 2015 would close this dangerous loophole.

Consumers who cannot afford to purchase a new vehicle or who simply seek the value of purchasing a used auto deserve the same protections against safety defects afforded to new car buyers. In fact, it is not only purchasers of unsafe used vehicles that are endangered by this lack

of a common sense protection for consumers, but also all those with whom they share the roads. The problem of selling these dangerous used cars is widespread. According to CarFax, the company that provides vehicle history reports to the public, 5 million vehicles with an open recall were bought and sold by consumers in 2014.<sup>52</sup>

#### **Prohibit Regional Recalls**

The Vehicle Safety Improvement Act of 2015 will also eliminate so-called “regional recalls.” Due the transient nature of motor vehicles and the fact that the American public is highly mobile, recalls limited to certain areas of the country exclude numerous vehicles that should be subject to the same recall and remedy, leaving many Americans needlessly at risk. This dangerous and ill-advised administrative limitation on recalls should be ended immediately.

### **Additional Motor Vehicle Safety Provisions that are Needed**

#### **Protect Consumers by Prohibiting Rental Car Companies from Leasing Consumers Cars Under Recall**

Advocates supports the passage of The Raechel and Jacqueline Houck Safe Rental Car Act of 2015, H.R. 2198, of which a modified version is included in the Developing a Reliable and Innovative Vision for the Economy Act (DRIVE) Act passed by the Senate in July.<sup>53</sup> This legislation will ensure recalled rental vehicles are fixed before a consumer gets behind the wheel. The measure is named in memory of Raechel and Jacqueline Houck, daughters of Carol (Cally) Houck, who were killed in a recalled but uncorrected rental car due to a defect in a steering component that caused an under-hood fire and led to the loss of steering control. The car had been recalled but had not been repaired before it was rented to the sisters, Raechel (age 24) and Jacqueline (age 20). The intent of the bill is to prevent future tragedies and to allow consumers who rent cars to do so with confidence that the vehicles do not have safety defects subject to a safety recall. The legislation is supported by Carol (Cally) Houck, Consumers for Auto

Reliability and Safety, Center for Auto Safety, Consumer Action, Consumers Union, Consumer Federation of America, National Association of Consumer Advocates, Trauma Foundation, Advocates for Highway and Auto Safety, and others.

#### **Judicial Review of Final Agency Actions**

As already noted, the DOT Inspector General in its June 2015 report to Congress on NHTSA's efforts to identify vehicle defects, found that the agency does not always document its decisions not to investigate potential safety issues.<sup>54</sup> The agency's decisions to decline to fully investigate reported defect problems, to deny defect petitions and its basis for opening and closing preliminary investigations and engineering evaluations must be documented and explained to the public. Moreover, these final agency decisions should be subject to judicial review which is the standard practice for all other final agency orders.

#### **Lobbying and Communications "Cooling-Off" Period**

The federal agency tasked with ensuring that manufacturers meet federal regulations should never show bias or even give the appearance of partiality. Thus, except for providing testimony, former DOT and vehicle safety employees should be prohibited, for a period of one year, from engaging in any communication regarding vehicle safety matters on behalf of a regulated manufacturer where the former DOT or NHTSA employee seeks official agency action. This important reform will give the public confidence that NHTSA's first priority remains protecting the American public.

#### **No Child Left Behind in the Car**

All too often adults leave infants and young children in child restraint systems in the rear seats of passenger vehicles tragically leading to death. Exposure of young children, particularly in extreme hot and cold weather, leads to hyperthermia and hypothermia that can result in death or

severe injuries. In 2014 alone, 30 children in the U.S. died of heatstroke.<sup>55</sup> Over the period 1998 to 2014, 636 children were killed from heatstroke.<sup>56</sup> Of these needless deaths, 53 percent occurred when children were forgotten in the vehicle.<sup>57</sup> This risk of heatstroke is higher among children than adults because a child's body temperature heats up three to five times faster and risk is exacerbated if the child is too young to communicate.<sup>58</sup>

These inadvertent deaths can be avoided by equipping vehicles with sensors to detect the presence of the child and sound a warning at the time the driver locks the vehicle with a child inside. This is not rocket science. Similar warning features currently remind drivers when they have left the key in the ignition, left the headlamps on, and when a door or trunk is open while the vehicle is in motion.

**Draft Majority Bill-Unsafe Under Any Standard**

The bill released by the Committee's majority (Majority Bill)<sup>59</sup> does not seriously advance safety in any significant or meaningful way. Additionally, the bill seriously dilutes critical environmental protections that control vehicle emissions and promote fuel economy. The Majority Bill also wastes taxpayer dollars by turning NHTSA into the National Highway Traffic *Study* Administration by directing the federal safety agency to divert its inadequate resources and staff time to engage in 16 separate burdensome studies or reports.<sup>60</sup> There are also several provisions which put the auto industry in the driver's seat instead of the regulatory agency.

The Majority Bill is long on burdensome and delaying studies and short on direct actions that will actually reduce the carnage on our roads, protect consumers from deadly defects, prevent purposeful industry cover-ups and deceit and address the funding and staffing deficit at NHTSA.

This draft bill fails to increase the cap on civil penalties that NHTSA may pursue, or provide for criminal sanctions for manufacturers that knowingly introduce a defective vehicle into the marketplace even as the massive number of vehicle safety recalls continues unabated. Instead, the discussion draft of the Improving Recall Tracking Act<sup>61</sup> directed NHTSA to establish a needless vehicle identification number (VIN) database that will do little to combat the endless flood of vehicle recalls confronting American motorists.

In addition, the Majority Bill fails to provide any tangible improvements in vehicle safety, such as prohibiting used cars with open recalls from being sold to unsuspecting consumers, or providing NHTSA with imminent hazard authority to expedite the grounding of vehicle models that present a clear and present public danger. To the contrary, the Majority Bill seeks to exempt hundreds, possibly thousands of replica vehicles from Federal Motor Vehicle Safety Standards (FMVSSs) for lifesaving devices such as air bags and seat belts.

Manufacturers already consult databases maintained by private companies to contact customers regarding vehicle recalls. Thus, not only is a VIN database maintained by NHTSA unnecessary, but it will also cost untold taxpayer dollars and will swallow precious agency resources at a time when the agency is badly underfunded. In addition, as the recent scandal regarding the data breach at the Office of Personnel Management demonstrates, federal databases containing sensitive personnel information about millions of Americans are ripe targets for computer hackers at a time when the federal government seems unable to thwart such attacks. Requiring NHTSA to maintain a VIN database is nothing more than a bad solution in search of a problem that does not exist.

Furthermore, under the Majority Bill, it will take even longer for the public to learn of dangerous recalls. Section 202 of the bill delays notification to the public of recalls until NHTSA is in receipt of all the VINs subject to the recall.<sup>62</sup> Failing to promptly notify the American public about dangerous defects in their vehicles can have deadly consequences. The tragic death toll from the faulty General Motors Corp. (GM) ignition switch, and the exploding Takata air bags, may have been lessened if drivers had learned earlier that their vehicle contained a fatal defect. As the Takata defect has proven, the number of vehicles subject to a recall can expand over a matter of months. Delaying notification to the public of a safety recall when the number of affected vehicles may change is misguided and dangerous. Moreover, Section 202 also inappropriately requires NHTSA to draft any notice of a vehicle defect or noncompliance in coordination with the manufacturer prior to publishing the notice. This provision dilutes NHTSA's role as an objective regulatory agency charged with enforcing vehicle safety recalls.

The Majority Bill also contains a number of exemption provisions that will diminish public safety on our highways. For example, Section 404 of the Majority Bill provides a blanket exemption from the FMVSS for vehicles intended for testing or evaluation by manufacturers.<sup>63</sup> This broad exemption applies to an unlimited number of vehicles and, unlike the current application process, will have little or no oversight from federal authorities to ensure these vehicles do not pose any unreasonable or unnecessary risk to the American public.

Under current law, vehicles that are introduced into interstate commerce for testing or research may apply for an exemption from the FMVSS.<sup>64</sup> A regulatory process already exists by which

manufacturers who produce as many as 10,000 vehicles a year can seek exemption for up to 2,500 vehicles a year on the basis of substantial economic hardship, development or field evaluation of a new safety feature, or development or field evaluation of a low-emission vehicle.<sup>65</sup> NHTSA should retain this oversight responsibility to ensure exemptions from FMVSS do not unreasonably place the public and safety at risk. Section 404, if enacted, would provide manufacturers with a blanket exemption from all safety standards without any process for ensuring that a manufacturer will provide or even attempt to provide the bare minimum level of safety which highway users should be afforded.

Equally egregious is Section 405 of the Majority Bill which directs NHTSA to establish a program allowing any number of low volume motor vehicle manufacturers to produce 500 “replica” motor vehicles (replicas of cars produced not less than 25 years ago) annually without complying with the applicable federal motor vehicle safety standards. As noted above, examples of lifesaving safety standards from which these vehicles would be exempt include frontal- and side-occupant impact protection, effective seat belts, and airbags, among others. Under this provision, potentially thousands of “replica” motor vehicles without the proper safety protections as required by federal law could be on American roads. The safety implications are very serious for vehicle owners, their passengers and other motorists on the road who are traveling at speeds of 65 miles per hour or more, in the event they are involved in a crash.<sup>66</sup>

The Majority Bill creates a breathtaking double standard in favor of the industry at the expense of consumers. Section 406 mandates that instances where the industry has failed to follow voluntary guidelines issued by U.S. DOT cannot be used as evidence of liability in a civil

action.<sup>67</sup> However, industry may use conformity with those same guidelines as evidence of compliance with federal regulations in the same civil action.<sup>68</sup> This provision attempts to shield wrongdoing, undermine corporate accountability and hinder consumers at a time when deadly vehicle recalls are proliferating.

Section 501 of the Majority Bill establishes an Advanced Automotive Technology Advisory Committee “to develop safety performance metrics for advanced automotive technologies and connected vehicle technologies originally installed in motor vehicles.”<sup>69</sup> This committee will be charged with developing standards that will be used as the basis for safety ratings in the New Car Assessment Program (NCAP).<sup>70</sup> Such a committee, if stacked with industry representatives, should not be able to dictate to the NHTSA what standards should be used as part of NCAP. In addition, such a procedure undercuts the regulations relating to NCAP that are already in place.

The Majority Bill also fails to adequately address the serious and evolving threat of cyber security as it relates to highway safety. The possibility that a criminal could hack their car is a frightening prospect to every American, yet the majority bill seeks to protect the auto industry, rather than protect the American public. Section 301 of the Majority Bill<sup>71</sup> directs manufacturers to develop a privacy policy but fails to ensure that those policies will include sufficient protections and safeguards for the public. Nevertheless, the bill sweetens the provision for manufacturers by providing an exceedingly broad safe harbor protection. Any industry-developed privacy policy, no matter how inadequate, would exempt manufacturers from being sued for unfair or deceptive acts under Section 5 of the Federal Trade Commission Act which is intended to protect consumers.<sup>72</sup>

Similarly, Section 302 of the Majority Bill provides only civil penalties for individuals that hack into a vehicle even when such crimes may result in death or serious injury to the victim. By contrast, Section 4103 of the GROW America Act provides criminal penalties when such acts constitute a “reckless disregard for the safety of human life.”<sup>73</sup> Moreover, the Automotive Cybersecurity Advisory Council established under Section 303 of the Majority Bill to develop “cybersecurity best practices,” is mandated to have at least 50 percent of its members drawn from industry, and only one representing consumers.<sup>74</sup> Thus, the committee membership is obviously unbalanced and will do little to reflect the concerns of consumers facing the very real threat of having their car hacked and their privacy data breached.

Additionally, the Majority Bill seeks to give manufacturers emission and fuel economy credits for safety technologies that are already installed in many vehicles.<sup>75</sup> This provision will not serve as an effective incentive for automakers to install new safety technologies in their vehicles but will ensure that in the future vehicles will emit even more pollution into the air. At a time when Volkswagen, reputedly the largest automaker in the world, recently admitted to Congress that it placed a device in millions of cars worldwide to intentionally defeat current emission standards,<sup>76</sup> this Committee should be seeking ways to improve fuel economy and emissions standards, not weaken them. We know that the auto industry is capable of building safe, fuel efficient and clean cars without Congress providing unnecessary and unseemly trade-offs.

While the Majority Bill does include two incremental improvements regarding the retention of records by automakers and the time period for when a consumer may obtain a recall remedy at

no charge, these provisions should be strengthened in line with the provisions in the H.R. 1181, Vehicle Safety Improvement Act of 2015. While Section 403 of the Majority Bill requires manufacturers to retain records related to safety issues for a period of not less than 10 calendar years,<sup>77</sup> the Vehicle Safety Improvement Act of 2015 requires such records to be retained for 20 calendar years.<sup>78</sup> In addition, the Vehicle Safety Improvement Act of 2015 would eliminate the 10 year cap on remedies that are available to a consumer to fix a recall at no charge,<sup>79</sup> while the Majority Bill only extends the cap to 15 years.<sup>80</sup> These provisions in the Vehicle Safety Improvement Act of 2015 provide the sensible and optimal protections for consumers and should be adopted.

I do commend the majority bill for including some safety positive provisions. These include Section 402 that require the agency to complete research and potentially issue a rule on rear seat crash worthiness, Section 102, corporate responsibility for NHTSA reports and Section 201 which requires to NHTSA to upgrade its website to allow the public better access to agency records. Finally, Section 204 of the Majority Bill rightly restricts a manufacturer from escaping its recall obligations by filing for bankruptcy under Chapter 7 of the bankruptcy code.<sup>81</sup> This provision provides an important protection for a consumer by ensuring that their vehicle will be remedied no matter the legal status of the manufacturer that provided them with a defective product.

### **Conclusion**

There are no acceptable excuses for delaying any longer the adoption of lifesaving laws, consumer protections, increased penalties for corporate misbehavior, strengthening NHTSA's authority and resources, and improved vehicle safety standards that can save lives and reduce

injuries, especially when sensible solutions are at hand as we have highlighted today in our testimony.

Thank you for the opportunity to testify before you today and I am pleased to answer your questions.

#### Endnotes

- <sup>1</sup> The Economic and Societal Impact of Motor Vehicle Crashes, 2010 (Revised), HS 812 013, U.S. DOT, NHTSA (May 2015 (Revised)), available at <http://www-nrd.nhtsa.dot.gov/Pubs/812013.pdf>.
- <sup>2</sup> Traffic Safety Facts: Crash States, Early Estimates of Motor Vehicle Traffic Fatalities for the First Quarter of 2015, NHTSA, Aug. 2015, DOT HS 812 190
- <sup>3</sup> NSC Motor Vehicle Fatality Estimates, National Safety Council, Aug. 2015; Traffic Safety Facts: Crash States, Early Estimates of Motor Vehicle Traffic Fatalities for the First Half (Jan – Jun) of 2014, NHTSA, Jan. 2015, DOT HS 812 093.
- <sup>4</sup> 2014 Recall By Manufacturer, NHTSA, available at <http://www.safercar.gov/staticfiles/safercar/pdf/2014-recalls-mfr.pdf>.
- <sup>5</sup> Flat File Copies of NHTSA/ODI Databases: Recalls, NHTSA, last accessed Oct. 16, 2015; available at <http://www-odi.nhtsa.dot.gov/downloads/>.
- <sup>6</sup> See eg: <http://www.hmglawfirm.com/news/general-motors-to-pay-575m-to-settle-lawsuits-filed-over-faulty-ignition-sw/>
- <sup>7</sup> General Motor Ignition Switch Flaw Death Toll Rises to 169 Following Personal Injury Settlement; Penalty Costs Top \$2.1B, International Business Times, Sep. 17, 2015; Senator call for compensation fund for Takata airbag injury victims, Automotive News, Jun. 23, 2015.
- <sup>8</sup> Website of United States Senate Committee on Commerce, Science and Transportation, Hearings, available at: <http://www.commerce.senate.gov/public/index.cfm/hearings> (accessed on Oct. 17, 2015); website of the United States House of Representatives Committee on Energy and Commerce, Hearings and Votes, available at: <http://energycommerce.house.gov/hearings> (accessed Oct. 17, 2015); website of the United States House of Representatives Committee on Transportation and Infrastructure, Hearings and Votes, available at: <http://transportation.house.gov/calendar/> (accessed Oct. 17, 2015).
- <sup>9</sup> Website of the United States House of Representatives Committee on Energy and Commerce, Hearings and Votes, available at: <http://energycommerce.house.gov/hearings> (accessed Oct. 17, 2015)
- <sup>10</sup> United States Department of Transportation, Office of Inspector General, *Inadequate Data and Analysis Undermine NHTSA's Efforts to Identify and Investigate Vehicle Safety Concerns*, Report No.: ST-2015-063 (June 18, 2015).
- <sup>11</sup> The city of Houston's population was estimated to be 2,239,558 million in 2014 according to United States Census Bureau. Available at United States Census Bureau, Quick Facts: <http://www.census.gov/quickfacts/table/PST045214/4835000.00> (accessed Oct. 17, 2015).
- <sup>12</sup> The state of Pennsylvania's population was estimated to be 12,787,209 in 2014 according to the United States Census Bureau. Available at United States Census Bureau, Quick Facts: <http://quickfacts.census.gov/qfd/states/42000.html> (accessed Oct. 17, 2015).
- <sup>13</sup> Researchers Hack Into Driverless Car System, Take Control of Vehicle, National Defense Magazine, May 2015.
- <sup>14</sup> Pub. L. 112-141 (July 6, 2012).
- <sup>15</sup> Agency Rule List Spring 2015: Department of Transportation, Office of Information and Regulatory Affairs, last accessed Oct. 10, 2015.
- <sup>16</sup> American Bus Association, 2013 Motorcoach Census (March 2015).

- 
- <sup>17</sup> Traffic Safety Facts 2013: A Compilation of motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139.
- <sup>18</sup> Traffic Safety Facts 2013: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139.
- <sup>19</sup> Traffic Safety Facts: Research Note, Estimating Lives Saved By Electronic Stability Control 2008-2012, U.S. DOT, NHTSA, DOT HS 812 042 (June, 2014).
- <sup>20</sup> Traffic Safety Facts 2013: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139.
- <sup>21</sup> *Id.*
- <sup>22</sup> National Transportation Statistics 2015, U.S. DOT, RITA, BTS, Tables 2-1, and 2-2 (2015).
- <sup>23</sup> Budget Highlights Fiscal Year 2014, U.S. DOT.
- <sup>24</sup> Traffic Safety Facts 2013: A Compilation of motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139.
- <sup>25</sup> 10 Leading Causes of Death by Age Group, United States – 2013, and 10 Leading Causes of Injury Deaths by Age Group Highlighting Unintentional Injury Deaths, United States – 2013, CDC.
- <sup>26</sup> National Highway Traffic Safety Administration Fiscal Year 2016 Budget Estimates, p. 12 Exhibit II-2, U.S. DOT (2015).
- <sup>27</sup> See National Highway Traffic Safety Administration Fiscal Year 2008 Budget Estimates, p. 11 Exhibit II-2A, U.S. DOT (2007) (showing FY 2006 Enacted budget).
- <sup>28</sup> National Highway Traffic Safety Administration Fiscal Year 2016 Budget Estimates, p. 12 Exhibit II-2, U.S. DOT (2015); see also Traffic Safety Facts 2013: A Compilation of motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139..
- <sup>29</sup> Traffic Safety Facts 2013: A Compilation of motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139
- <sup>30</sup> *Response by Toyota and NHTSA to Incidents of Sudden Unintended Acceleration: Hearing before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce*, 111<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Feb. 23, 2010).
- <sup>31</sup> National Transportation Statistics 2015, U.S. DOT, RITA, BTS, Tables 2-1 (2015).
- <sup>32</sup> Federal Aviation Administration Fiscal Year 2007 Budget In Brief, p. 20 Table 6 (Feb. 2006) (showing FY 2006 Enacted budget).
- <sup>33</sup> Federal Aviation Administration Fiscal Year 2016 Budget Estimates, p. 2 Exhibit II-2 (2015) (showing FY 2014 Actual budget).
- <sup>34</sup> National Highway Traffic Safety Administration Fiscal Year 2008 Budget Estimates, p. 11 Exhibit II-A (2008) (showing FY 2006 Enacted budget).
- <sup>35</sup> National Highway Traffic Safety Administration 2016 Budget Estimates, p. 11 Exhibit II-1 (2016) (showing FY 2014 Actual budget).
- <sup>36</sup> Traffic Safety Facts 2013: A Compilation of motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139.
- <sup>37</sup> NHTSA was formally established by the National Traffic and Motor Vehicle Safety Act of 1966
- <sup>38</sup> Pub. L. 106-414 (Nov. 1, 2000).
- <sup>39</sup> 49 C.F.R. Part 579, Subpart C, § 579.21(b) & (c). Only field reports are required to be filed under § 579.21(d).
- <sup>40</sup> H.R. 1181, Section 202(b), 114<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2015).
- <sup>41</sup> H.R. 1181, Section 101(b), 114<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2015).
- <sup>42</sup> H.R. 1181, Section 102(4), 114<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2015).
- <sup>43</sup> Traffic Safety Facts 2013: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, 2015, DOT HS 812 139.
- <sup>44</sup> *Id.*
- <sup>45</sup> *Id.*
- <sup>46</sup> *Id.*
- <sup>47</sup> *Id.*
- <sup>48</sup> *Id.*
- <sup>49</sup> *Id.*
- <sup>50</sup> The Economic and Societal Impact of Motor Vehicle Crashes, 2010 (Revised), HS 812 013, U.S. DOT, NHTSA (May 2015 (Revised)), available at <http://www-nrd.nhtsa.dot.gov/Pubs/812013.pdf>.
- <sup>51</sup> 49. U.S.C. Section 30120(i).

---

<sup>52</sup> CarFax, *New Carfax Recall Data Indicates Ongoing Threat to Public Safety* (Jan. 26, 2015), available at: <http://news.carfax.com/2015-01-26-One-In-Five-Cars-Nationwide-Has-An-Unfixed-Recall>

<sup>53</sup> Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act, amendment to H.R. 22, 114<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2015)(DRIVE Act).

<sup>54</sup> *Op. cit.*

<sup>55</sup> Kids in Hot Cars: Heat Stroke Fact Sheet, NHTSA.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade, Discussion Draft (October 13, 2015) (Majority Bill).

<sup>60</sup> *Id.*

<sup>61</sup> Improving Recall Tracking Act, 114th Cong., 1st Sess. (2015).

<sup>62</sup> Draft Majority Bill, Section 202, 114th Cong., 1st Sess. (2015).

<sup>63</sup> Draft Majority Bill, Section 404, 114th Cong., 1st Sess. (2015).

<sup>64</sup> 49 U.S.C. Section 30114.

<sup>65</sup> 49 U.S.C. 30113(b)(3)(B)

<sup>66</sup> Section 30114 of title 49, United States Code, also provides exemption for research, investigations, demonstrations, training, competitive racing events, show, or display.

<sup>67</sup> Draft Majority Bill, Section 406, 114th Cong., 1st Sess. (2015).

<sup>68</sup> Draft Majority Bill, Section 406, 114th Cong., 1st Sess. (2015).

<sup>69</sup> Draft Majority Bill, Section 501, 114th Cong., 1st Sess. (2015).

<sup>70</sup> *Id.*

<sup>71</sup> Draft Majority Bill, Section 301, 114th Cong., 1st Sess. (2015).

<sup>72</sup> 15 U.S.C. 45 (2012).

<sup>73</sup> H.R. 3064, 114th Cong., 1st Sess. (2015).

<sup>74</sup> Draft Majority Bill, Section 303, 114th Cong., 1st Sess. (2015).

<sup>75</sup> Draft Majority Bill, Sections 502 and 503, 114th Cong., 1st Sess. (2015).

<sup>76</sup> *Volkswagen's Emissions Cheating Allegations: Initial Questions Before The House Energy and Commerce Committee Subcommittee on Oversight and Investigations*, 114<sup>th</sup> Cong. (Oct. 8, 2015) (statement of Michael Horn, President and Chief Executive Officer, Volkswagen Group of America).

<sup>77</sup> Draft Majority Bill, Section 403, 114th Cong., 1st Sess. (2015).

<sup>78</sup> H.R. 1811, Section 204, 114th Cong., 1st Sess. (2015).

<sup>79</sup> H.R. 1811, Section 303, 114th Cong., 1st Sess. (2015).

<sup>80</sup> Draft Majority Bill, Section 205, 114th Cong., 1st Sess. (2015).

<sup>81</sup> Draft Majority Bill, Section 204, 114th Cong., 1st Sess. (2015).

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

Mr. Welch, you are recognized for 5 minutes, please, for an opening statement.

#### **STATEMENT OF PETER WELCH**

Mr. WELCH. Mr. Chairman, Ranking Member Schakowsky, my name is Peter K. Welch, not to be confused with anybody else, and I am the President of the National Automobile Dealers Association. NADA is a nationwide trade association that represents the interests of over 16,000 franchised new car and truck dealers throughout the country.

The draft bill before you today contains a number of provisions NADA supports, including several provisions to improve recall notification and completion rates. Dealers support a 100 percent recall completion rate. And again, we commend the subcommittee for its efforts to help us achieve that goal.

The recall system Congress enacted depends on new car dealers to fix the millions of vehicles that are now under recall. Last year alone, our members performed 59 million warranty and recall repairs, and unfortunately, we are set to break that record again today with the burgeoning number of recalls that are being issued.

For the owners of recalled vehicles, it is their local dealer who remedies the defect or nonconformance and at no charge to the owner. When owners receive a recall notice but fail to act, many dealers on their own initiative will contact their customers to schedule a service appointment. One of our Texas dealer members found that sending bright pink postcards reminding owners that their vehicles were under recall is an effective way to get those cars into the service bay and to get them fixed.

Currently, the overall recall completion rate is around 75 percent, which means there is lots of room for improvement. Back-ordered repair parts and recall notices that are disregarded by consumers are the two main reasons that the completion rates lag. It is not unusual for a dealer to wait 60 days or more for a back-ordered recall repair part. In some instances, repair parts can be unavailable for over a year. I don't know of any dealer who isn't eager to remedy a recall vehicle and make a customer happy, but they need repair parts to do that.

Inaction by consumers after receiving a recall notice also hinders completion rates. One idea NADA has suggested to NHTSA at its April recall workshop was for NHTSA to launch a media campaign targeted to those demographic groups that are less likely to respond to recall notices. We ask the subcommittee to consider that idea.

Improving NHTSA's recall database and lookup tool is another way to boost the recall completion rate. The current system was designed for single-vehicle lookups by consumers. It was not designed for commercial use. Depending on its size, the dealer can have dozens to thousands of used vehicles in its inventory. This bill should include a provision directing NHTSA to upgrade its recall database to allow dealerships to automatically check on a daily basis which used vehicles in their inventory are under open recall. A tool that is searchable, automated, and can batch multiple requests is crit-

ical to identifying open recall vehicles in a dealer's inventory in getting them fixed.

We also support Section 203, which would provide notification by state DMV of a recall at the time of registration renewal. It is all about notification and awareness, and we think that this is a good idea to help increase the remedy rate.

Section 205 would extend the period for which cars could be recalled from 10 to 15 years. With the average vehicle on the road today at 11.5 years, this provision also makes sense.

In conclusion, Congress must ensure that any new recall policy it enacts is data-driven. The most successful highway safety policies such as enactment of primary safety belt laws and anti-drunk driving measures were all based on hard data and now are proven countermeasures. We commend the subcommittee for its hard work and stand ready to work with you on strong safety measures that will protect America's driving public.

Thank you, and I look forward to answering any questions.

[The prepared statement of Mr. Welch follows:]



WRITTEN STATEMENT OF  
PETER K. WELCH, PRESIDENT  
NATIONAL AUTOMOBILE DEALERS ASSOCIATION

*before the*

**House Commerce, Manufacturing and Trade Subcommittee  
of the**

**House Energy and Commerce Committee**

*a hearing entitled*

**“Examining Ways to Improve Vehicle and Roadway Safety”**

**October 21, 2015**

Mr. Chairman, Ranking Member Schakowsky, and Subcommittee members, thank you for inviting me to testify.

My name is Peter K. Welch, and I am President of the National Automobile Dealers Association (NADA). NADA is a national trade association that represents the interests of over 16,000 franchised new car and truck dealer members. NADA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also engage in automotive service, repairs and parts sales. America’s franchised new car and truck dealers collectively employ over one million individuals and are on track to sell or lease over 17 million new cars and trucks this year and over 15.5 million used vehicles. Last year, our dealer members completed over 285 million repair orders, including 59 million warranty and recall repair orders, and they are on track to exceed those numbers this year. NADA members operate in practically every

congressional district in the country, and 39 percent of our members sell fewer than 300 new vehicles per year. NADA appreciates the opportunity to comment on the draft legislation before the Subcommittee which seeks to improve motor vehicle safety.

Congress has made great strides in improving highway safety in the recent past. For example, in the 2005 highway bill [SAFETEA-LU, P.L. 109-59], Congress tripled funding to combat drunk driving. That legislation also established grants to states to encourage the enactment of primary safety belt laws. This data-driven focus resulted in drunk driving deaths declining from 16,885 in 2005 to 10,076 in 2013, and in safety belt usage rising to a record 87 percent in 2013. These reductions in fatalities are proof that government action based on data and proven counter-measures can make a difference.

America's franchised new automobile dealers are committed to improving road safety through a number of programs. For example, in 2011, NADA launched "Dealers Driving Road Safety", a program that brings together a core group of auto dealers to educate and encourage other dealers to host safe driving events at their dealerships to promote child passenger safety, safe teen driving, and rural road safety. To bolster those efforts, the National Automobile Dealers Charitable Foundation initiated a micro-grant program whereby qualified dealers can sponsor a road safety event at their dealerships and be reimbursed up to \$500. The goal of these programs is to encourage auto dealers to sponsor road safety programs tailored to meet the local safety needs of the communities they serve.

Dealers are making a difference in safety every day, all across our country. One of our member dealers, Fitzgerald Auto Malls, with dealerships in Maryland, Florida and Pennsylvania, has installed or checked more than 46,500 child passenger safety seats since 1999. Similarly,

during extraordinary circumstances (such as the 2010 Toyota unintended acceleration recall), many dealerships stayed open 24 hours a day to meet the demand for safety repairs.

Against this background of our members' broad-based commitment to safety, I offer the following comments on the provisions of the discussion draft which affect franchised new car dealers:

**Sec. 106. Electronic Odometer Disclosures**

NADA strongly supports this provision, which mirrors language in the Senate-passed highway bill (H.R. 22). Congress correctly recognized the importance of this issue when it required the U.S. Department of Transportation (DOT) to implement regulations providing for electronic odometer disclosures within 18 months after enactment of MAP-21 in 2012. Those regulations have yet to be proposed.

Presently, the law governing odometer disclosures requires it to be on paper, which is archaic. Enactment of Sec. 106 will enable individual states to move forward with secure electronic odometer disclosure programs until such time the DOT issues the regulation Congress required three years ago.

**Sec. 201. Improvement in Availability of Motor Vehicle Safety Recall Information**

Under the recall system Congress created, franchised new car dealers faithfully fix millions of recalled vehicles every year at no cost to consumers. Dealers support a 100 percent recall completion rate. In general, Congress should focus on strategies that boost recall completion rates, while avoiding policies that indiscriminately ground recalled vehicles that may not result in them actually getting fixed.

In 2012, Congress created a new NHTSA database (accessed at [www.safercar.gov](http://www.safercar.gov)) to identify recalled vehicles by vehicle identification number (“VIN”). However, that database only allows for one VIN to be looked up at a time. A single dealer can have dozens, hundreds, or even thousands of used vehicles in inventory, some of which may be subject to the ever-changing list of open, unremedied safety recalls. This section lacks a provision directing NHTSA to upgrade its VIN lookup database to allow dealerships to automatically check which used vehicles in inventory are subject to open recall. For franchised dealerships, a tool that is searchable on both an automated and batched basis is critical to assessing the recall status of multiple vehicles involving many brands, and thus increases the likelihood of getting recalled vehicles fixed. Therefore, NADA urges the Subcommittee to include such a provision.

**Sec. 202(d). Option for Purchasers to Provide Email to Manufacturers**

NADA supports efforts to increase recall completion rates by allowing for electronic mail and other communication channels to notify vehicle owners of open recalls. However, portions of this section are overbroad and could impede legitimate commerce. Additionally, to boost notification of open recalls to owners, Members should consider adding language clarifying that no federal telemarketing, email, or other restrictions apply to recall communications if such communications are exclusively limited to the recall.

**Sec. 203. Recall Notification at State Vehicle Registration.**

NADA supports a requirement that DMVs provide recall notifications at the time of registration renewal, as it would help boost recall completion rates. NADA would also support such notifications in conjunction with state and local emissions and safety inspections.

**Sec. 205. Application of Remedies for Defect and Noncompliance**

With the average age of vehicles at a record 11.4 years, this provision to extend recalls from 10 to 15 years makes sense, and is supported by NADA.

**Sec. 301. Vehicle Data Privacy**

NADA supports protecting the privacy of dealership customers and giving them control over the telematics and related data generated when they drive. NADA supports auto manufacturer privacy principles with respect to such data and will continue to work to provide consumers with choices and control over such data. However, we are concerned that as drafted, the restrictions and obligations in Section 301 only apply to auto manufacturers. NADA believes that those restrictions should be broadened to include any party that accesses or seeks to access vehicle data.

**Sec. 302. Motor Vehicle Data Hacking**

NADA is concerned about the potential risks not only to the driving public but also to dealers that could result from hackers or from insufficient security measures in automobile systems. NADA believes that ensuring security is a prerequisite to deployment of autonomous vehicles and new advanced automotive technologies designed to bring greater efficiencies and safety gains.

To be effective, however, automobile privacy and cybersecurity efforts must address the entire vehicle ecosystem, including dealer service and other systems. Without protection as robust as that afforded the vehicle, we are concerned that dealership service departments could become the “weak link in the chain” of automotive privacy and security and may become the

targets of hackers and others seeking to gather and misuse customer and vehicle data. We urge the Subcommittee to recognize that to fully protect consumers and vehicle data, dealer systems need to be afforded the same hacking protections as the vehicles themselves.

### **Sec. 303. Automotive Cybersecurity Council**

NADA supports the creation of this council, and believes it will be instrumental in facing the important challenges ahead in this arena. We commend the Subcommittee for including franchised dealer representation on the council.

### **Title V. -- Advanced Automotive Technologies**

This title would “incentivize the adoption of crash avoidance technologies and other connected vehicle technologies that improve roadway safety and fuel efficiency.”

For the public to reap the benefits of the latest automotive safety technologies, vehicles must be affordable. If government regulations make cars unaffordable for more and more Americans, deployment of safety improvements will be delayed.

Currently, the average price of a new vehicle is \$33,114. Adding to this cost are new NHTSA/EPA/California Air Resources Board fuel economy mandates for model year 2017-2025. These rules are the most expensive auto regulations of all time (costing \$151 billion), and come on the heels of the 2010 fuel economy rules (costing \$51 billion). These combined fuel economy mandates will raise the average price of a vehicle by more than \$3,000 when fully implemented.<sup>1</sup>

---

<sup>1</sup> The \$3,000 average vehicle price increase may be low, as a NADA study of EPA’s price projections for heavy duty truck emissions found that EPA’s estimate was off by 320 percent. See *A Look Back At EPA’s Cost and Other Impact Projections for MY 2004-2010 Heavy-Duty Truck Emissions Standards* (February, 13 2012).

More expensive vehicles delay fleet turnover. With a cumulative price tag of over \$200 billion for current fuel economy rules, fewer resources will be available to develop new safety technologies by the automakers and their suppliers. For these reasons, NADA generally supports efforts such as in Title V to ensure that highway safety is always made an integral part of a vehicle's design, and that appropriate credit is given for safety technologies that help improve the efficiency of vehicle operations.

Mr. Chairman, thank you for your time and attention, and I welcome any questions.

Mr. BURGESS. The chair thanks the gentleman.

Mr. Wilson, you are recognized for 5 minutes, please, for an opening statement.

#### STATEMENT OF MICHAEL WILSON

Mr. MICHAEL WILSON. Chairman Burgess, Ranking Member Schakowsky, members of the subcommittee, thank you very much for the opportunity to testify. I am Michael Wilson, CEO of the Automotive Recyclers Association.

The Association is dedicated to the efficient removal and reutilization of genuine original equipment automotive parts and the proper recycling of inoperable motor vehicles. ARA represents the interests of over 4,000 automotive recycling facilities in the United States who each day sell over 500,000 recycled parts directly to consumers, mechanical shops, collision repair shops and automobile dealers.

These quality, recycled original equipment parts are designed by automakers and built to meet their requirements for fit, finish, durability, reliability, and safety. These parts are often reutilized in the repair and service of vehicles throughout their lifespan, and these replacement parts continue to operate as they were originally intended in terms of form, function, performance, and safety.

I urge Congress to add language to the subcommittee's draft legislation that would provide the automotive recycling industry access to critical original equipment parts data on all motor vehicles. The critical data includes part numbers, names, and descriptions tied to each vehicle's specific vehicle identification number.

The straightforward reason that this information is necessary is because manufacturers and dealers in the automotive industry speak a totally different parts language than those in the auto recycling community. Automakers and dealers utilize original equipment part numbers, while automotive recyclers have historically utilized Hollander Interchange part numbers.

The Hollander Interchange enables automotive recyclers and enthusiasts to identify and find parts they need to keep their vehicles running and in original condition. The Hollander Interchange indexes millions of parts and their interchangeable equivalent from other vehicles, for example, a specific part that is in a Ford F-150 is also interchangeable with the same part in a Ford Expedition, a Mercury Mountaineer, or a Lincoln Navigator.

It is only through the utilization of both original equipment part numbers and the Hollander Interchange part numbers that automotive manufacturers and recyclers can come together to enhance overall motor vehicle safety, help improve recall remedy rates, and comply with the federal recall remedy statute for used equipment enacted 15 years ago in the TREAD Act.

First, I would like to address the challenge automotive recyclers face in identifying automakers' non-remedied defective parts in their current inventory. Regrettably, the TREAD Act, MAP-21, and their respective rulemakings did not compel the automakers to provide essential parts data, making it functionally impossible for used replacement part stakeholders to comply with the federal statute.

Automakers are fully aware that the lifecycle of their parts can go beyond the initial utilization in a motor vehicle from the factory. This recognition was underscored in August 2014, when General Motors contracted with a third-party supplier to coordinate the purchase and return of certain used parts, which are subject to a product safety ignition switch recall from automotive recycling facilities.

In a third-party notice to recycling facilities, the correspondence not only included the make, model, and year of the vehicles subject to the recall but also detailed the specific GM part and the ACDelco service part numbers, which the notice stated, “are provided so the manager can identify the parts being recalled.” The notice also included the Hollander Interchange number for ignition switches. Clearly, GM understands that specific part numbers are vital to correctly and efficiently locate the affected parts.

In NHTSA’s current SaferCar.gov site, individuals or companies who sell a significant number of vehicles or parts do not have the multiple VIN lookup capability to necessary information and are severely limited by objections to allowing electronic integration of important data to enhance safety. Just as problematic is the data provided by the automakers through safercar.gov is many times a recall narrative rather than actual part numbers, names, or descriptions, making it all but impossible to identify specific recalled parts electronically.

It is essential that our recyclers be able to electronically identify those parts associated with VINs which have been recalled and not remedied before vehicles are potentially purchased at auction or acquired from the general public. If the automakers provide access to parts data, it will allow the recycling community to comply with its obligations under the TREAD Act, and can help protect our nation’s drivers from the manufacturers’ defective parts.

While some automakers may concede to the need for providing the original equipment data for their defective parts, it is important to understand this is not enough. The number of defective automotive parts in today’s marketplace is increasing at alarming rates. In fact, some 100 million vehicles have been recalled since the beginning of 2014. These recall campaigns create multiple challenges for my members who provide safe and quality recycled original equipment parts to the marketplace.

Also consider the original equipment parts that automotive recyclers sell today and are subject to a recall at some future date. If automotive recyclers don’t have access to all original equipment parts data, there is no specific part number to track it going forward if there is a subsequent recall on that part.

Most agree that the private sector has developed or has the potential to develop highly effective solutions to the vehicle and the part identification, along with the remedy-tracking problem. However, these systems would only be as good as the data the companies have access to and are able to provide to the affected parties. Unfortunately, IIHS and other data providers currently do not have access to part numbers, descriptions, and other important data needed to track recalled parts and to significantly increase recall remedy rates.

Automakers are accountable for the safety of all original equipment parts throughout their lifecycle and should be required to share whatever parts information is necessary to identify and locate recalled defective parts within the recycled original equipment parts population. The practice of sharing original equipment part numbers with recyclers should not be an anomaly. Rather, it should be a standard automotive industry practice, especially in light of the new safety norm.

Consumer demand for a safe and vibrant replacement parts market makes it imperative that Congress include language that would require automakers to remove the barriers they have constructed so that all parts data is available to the professional automotive recycling industry.

Thank you.

[The prepared statement of Mr. Michael Wilson follows:]



Automotive Recyclers Association Statement on  
"Examining Ways to Improve Vehicle and Roadway Safety"

House Commerce, Manufacturing and Trade Subcommittee  
of the  
U.S. House Energy and Commerce Committee

Wednesday, October 21, 2015

Chairman Burgess, ranking member Schakowsky, members of the Subcommittee, thank you very much for the opportunity to testify today. I am Michael Wilson, CEO of the Automotive Recyclers Association (ARA).

The ARA is dedicated to the efficient removal and reutilization of genuine original equipment (OE) automotive parts, and the proper recycling of inoperable motor vehicles. ARA represents the interests of over 4,000 automotive recycling facilities in the United States who each day sell over 500,000 recycled original equipment parts directly to consumers, mechanical/collision repair shops and automobile dealers.

These quality, recycled original equipment parts are designed by automakers and built to meet their requirements for fit, finish, durability, reliability and safety. These parts are often subsequently reutilized in the repair and service of motor vehicles throughout their lifespan and these replacement parts continue to operate as they were originally intended in terms of form, function, performance and safety.

I come before you today to urge Congress to add language to the subcommittee's draft legislation that would provide the automotive recycling industry access to critical original equipment parts data on all vehicles. The critical data includes motor vehicle part numbers, names and descriptions tied to each motor vehicle's specific Vehicle Identification Numbers (VIN).

The straight forward reason that this information is necessary is because manufacturers and dealers in the automotive industry speak a totally different parts language than those in the automotive recycling community. Automakers and dealers utilize original equipment part numbers while automotive recyclers have historically utilized Hollander Interchange numbers.

The Hollander Interchange enables automotive recyclers, enthusiasts and parts suppliers to identify and find parts they need to keep their vehicles running and in original condition. The Hollander Interchange indexes millions of auto parts and their interchangeable equivalents from other vehicles, i.e. a specific part that is in a Ford F-150 is also interchangeable with that same part in a Ford Expedition, Mercury Mountaineer, or Lincoln Navigator.

It is only through the utilization of both original equipment part numbers and the Hollander Interchange parts that automotive manufacturers and automotive recyclers can come together to enhance overall motor vehicle safety, help improve recall remedy rates and comply with the federal recall remedy statute for used equipment enacted 15 years ago in the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD Act).

First, I would like to address the challenge automotive recyclers' face in identifying automakers' non-remedied defective parts in their current inventory. Regrettably, the TREAD Act, MAP-21 and their respective rulemakings did not compel the automakers to provide essential parts data making it functionally impossible for "used" replacement part stakeholders to comply with the federal statute.

Automakers are fully aware that the life-cycle of their parts can go beyond the initial utilization in a motor vehicle from the factory. This recognition was underscored in August 2014, when General Motors (GM) contracted with a third-party supplier to "coordinate the purchase and return of certain used parts, which are subject to a product safety ignition switch recall, from salvage yards [automotive recycling facilities]."

In a notice from this third-party supplier, on behalf of GM, to automotive recycling facilities, the correspondence not only included the make, model and year of the vehicles subject to the recall but also detailed the specific part numbers, which the notice stated, "are provided so the manager can identify the parts being recalled." It also included the Hollander Interchange numbers for the ignition switches. Clearly GM understands that specific part numbers are vital to correctly and efficiently locate the affected parts. Also clear is that only when it is in their best interest will this information be shared.

In NHTSA's current [www.SaferCar.gov](http://www.SaferCar.gov) site, individuals or companies who sell a significant number of vehicles or parts do not have multiple VIN lookup capability to necessary information and are severely limited by objections to allowing electronic integration of important data to enhance safety. Just as problematic is that the data provided by the automakers through [www.SaferCar.gov](http://www.SaferCar.gov) is many times a recall narrative rather than actual part numbers, names or descriptions, making it all but impossible to identify specific recalled parts electronically.

It is essential that the professional automotive recycling community be able to electronically identify those parts associated with VINs which have been recalled and not remedied before vehicles are potentially purchased at auction or acquired from the general public. Under an automated system with access to this critical data, the recalled parts on vehicles can be identified early in the recycling process and properly addressed in the marketplace. This action - if the automakers provide access to parts data - will allow the recycling community to comply with its obligations under the TREAD Act, and can help protect our nation's drivers from the manufacturers' defective parts.

While some automakers may concede to the need for providing the original equipment data for their defective parts, it is important to understand that this is not enough. The number of defective automotive parts in today's marketplace is increasing at alarming rates, in fact some 100 million vehicles have been recalled since the beginning of 2014 in the United States alone. These recall campaigns create multiple challenges for our members who provide safe and quality recycled original equipment parts to the marketplace.

How about original equipment parts that professional automotive recyclers sell today and are subject to a recall at some future date. If professional automotive recyclers don't have access to all the original equipment parts data, there is no part number to track it going forward if there is a subsequent recall on that part.

Most agree that the private sector has developed or has the potential to develop highly effective solutions to the vehicle/part identification and remedy tracking problem. However, these systems would only be as good as the data the companies have access and are able to provide to effected stakeholders. Unfortunately, Information Handling Services (IHS) and other automotive data providers currently do not have access to part numbers, descriptions and other important data needed to track recalled parts and to significantly increase remedy recall rates.

Automakers are accountable for the safety of all original equipment parts throughout their life-cycle and should be required to share whatever parts information is necessary to identify and locate recalled defective parts within the recycled original equipment parts population. This practice of sharing original equipment parts numbers with professional automotive recyclers should not be an anomaly, rather it should be a standard automotive industry practice,

especially in light of the new "safety norm." Consumer demand for a safe and vibrant replacement parts market makes it imperative that Congress include language that would require automakers to remove the barriers they have constructed so that all of the parts data is available to the professional automotive recycling industry.

Mr. BURGESS. The chair thanks the gentleman, and thank all of you for your testimony. We will move into the question-and-answer portion of the hearing, and I will begin that by——

Mr. BUTTERFIELD. Mr. Chairman, I have a unanimous consent request.

Mr. BURGESS. The gentleman may state his request.

Mr. BUTTERFIELD. Yes, I am preparing to chair a meeting in just a few minutes with 45 Members. May I submit my questions for the record and have the witnesses respond later in writing?

Mr. BURGESS. The gentleman certainly understands there is a lot of Members who are wanting to ask questions, but I would be prepared to yield to the gentleman to go first for his questions if you would like.

Mr. BUTTERFIELD. You are very kind, and I can talk fast.

Mr. BURGESS. Proceed. The gentleman is recognized.

Mr. BUTTERFIELD. Ms. Claybrook——

Mr. BURGESS. And I will hold off all the other Members.

Mr. BUTTERFIELD. You are very kind. Thank you.

Ms. Claybrook, thank you for coming. Ms. Claybrook, as you know, I have worked closely with Lois Capps and Ms. Schakowsky and others on rental car safety legislation. In fact, in May we introduced 2189, the Raechel and Jacqueline Houck Safe Rental Car Act of 2015. I am disappointed that the text of that bill was not included in the base text of the safety title, but it was included in the bill that the Senate is working on. Do you share in my disappointment in any way that the text of 2189 was not included as a part of the title?

Ms. CLAYBROOK. I certainly do. And as you heard Administrator Rosekind, he does, too. We believe that all cars that have been subject to recall, whether new cars or used cars or rental cars, should all be fixed immediately.

Mr. BUTTERFIELD. Thank you. Why is enacting a federal standard with regard to rental car safety so important?

Ms. CLAYBROOK. Well, it is important because it causes death and injury on the highway for unsuspecting owners or renters, and that is the bottom line is safety on the highway.

Mr. BUTTERFIELD. And to the best of your knowledge, do the vast majority of rental car companies support a federal rental car safety standard?

Ms. CLAYBROOK. That is my understanding: the vast majority do. And the public does overwhelmingly.

Mr. BUTTERFIELD. OK. Is there anyone on the panel that would dispute that?

[Nonverbal response.]

Mr. BUTTERFIELD. Consumers for Auto Reliability and Safety and the Consumers Union and the Consumer Federation of America, AAA, and the American Rental Car Association all support 2189, and they have called on this committee to move the bill either on its own or as part of a larger package. Do you agree or disagree?

Ms. CLAYBROOK. Oh, I completely agree. And warning is not enough, by the way. The car has to be fixed. The vehicle has to be fixed.

Mr. BUTTERFIELD. All right. And finally, for Mr. Welch, thank you very much, Mr. Welch, for coming, and you certainly know we have a Member named Peter Welch from Vermont.

Your association, Mr. Welch, believes that we should focus more on fixing recalled rental cars instead of grounding them. It seems to me that the rental companies have every incentive to repair a grounded vehicle and get it back on the road as soon as possible. And so I would think that a requirement to ground an unrepaired vehicle would actually speed up the repair rate. As you know, federal law already requires new recalled cars to be grounded until they are fixed. Do your members prefer to fix these new recalled cars quickly or simply have them to sit on the lot?

Mr. WELCH. Well, of course our members are the ones that perform the vast majority of recall fixes and remedies across the country.

With respect to the rental car bill, we are supportive of the premise behind the bill that vehicles that are unsafe to drive should not be put into the hands of the public. Our issues with that bill is the definition of when is it unsafe to drive a vehicle and differentiating between recalls that would not render a vehicle unsafe to drive, as determined by either NHTSA or the original equipment manufacturer of the vehicle. And I think we could have lots of discussions and hope to have discussions on drawing a clear, bright line on when a vehicle is unsafe to drive to distinguish it, for instance, between those types of recalls that would not affect the safety of driving the vehicle.

We have a number of other issues. I can get into it if you want, but in the interest of time, specific provisions on that bill, for instance, it is overly broad because it paints all of these vehicles with the same brush. We think it is unfair to small businesses. Eighty percent of our members are small businesses. It treats our members the same. If I have five vehicles in a loaner fleet, for instance, I am subject to the same penalties and fines that Hertz and Avis is. So there are a number of issues.

Mr. BUTTERFIELD. Do you think that rental companies would have the same incentive to repair?

Mr. WELCH. Well, of course that raises another issue, and that is the fight for parts. As I mentioned before, the only thing that is holding us back from fixing any vehicle that comes onto our lot is the availability of parts, and we have commissioned some research on that. And the average delayed part on trade-in vehicles, for instance, is 60 days. And we have some concern that the rental car companies might get in a tug-of-war with the manufacturers for the availability of parts that may adversely affect our customers that are coming in to get their vehicles repaired.

Mr. BUTTERFIELD. Thank you. Thank you very much, Mr. Welch.

Ms. CLAYBROOK. Mr. Chairman, could I comment on one thing?

Mr. BUTTERFIELD. Yes?

Ms. CLAYBROOK. Could I comment on one thing? It seems to me that in terms of whether the car is safe to drive that the manufacturer has already made that decision. When they do a recall, they are saying this is a safety issue and this car needs to be fixed. And there are very few cars that are unsafe when they are not driven. So it seems to me that the manufacturer has already made that de-

cision, and it is not up to somebody else to decide, NHTSA or anybody else to decide whether or not it is safe to drive that.

Mr. WELCH. If I could respond to that?

Mr. BUTTERFIELD. All right.

Mr. WELCH. The manufacturers and NHTSA do in fact issue stop-drive notices, and it is about 6 percent of the recalls that they do stop-drive. And I understand that there could be a dispute between whether it ought to be 8 percent or 10 percent or 40 percent or whatever. Again, we are the monkey in the middle. The car dealers, we are there looking for parts to fix the cars. But there is a big difference between, for instance, a mislabel—and I don't want to be trite in any way, shape, or form, characterize any violation of a statute subject a vehicle to recall but there—

Ms. CLAYBROOK. When would you fix it? So you don't want to fix it today because it is OK to drive it with a bad label. When are you going to fix it? Are you going to fix it—

Mr. BUTTERFIELD. Well, maybe some of the other Members will—

Mr. WELCH. As soon as the part is available, it will get fixed so they—

Mr. BUTTERFIELD. The chairman was so kind—

Mr. BURGESS. And I will reclaim—

Mr. BUTTERFIELD [continuing]. To yield to me and I—

Mr. BURGESS. I will reclaim the time. The dais will ask the questions.

Mr. BUTTERFIELD. Thank you, Mr. Chairman. Thank you so very much.

Mr. BURGESS. Thank you, Mr. Butterfield. And good luck with your meeting.

I will now recognize myself for 5 minutes for questions. So that was an interesting exchange.

Let me just ask Mr. Bainwol about this ISAC, the gathering of data. What is the mechanism for disseminating information back then to your members or anyone else involved?

Mr. BAINWOL. The ISAC, again, which will be stood up in a matter of weeks—I think today an announcement went out with the board of directors so it is very much in process. The board is comprised of auto companies, so this is really a forum for members, OEMs, to share information about risk and countermeasures. And so the mechanism is the ISAC itself, and that is precisely why it has been established.

We are augmenting the ISAC—which, by definition, deals with problems after they have been manifest—with the best practices to preempt the possibility of problems. So this is a comprehensive approach. We are going to be working, obviously, with NHTSA using guideposts as we develop these best practices, including NIST, but the ISAC itself is comprised of the OEMs, and down the road, we will broaden out to include suppliers.

Mr. BURGESS. And how do you then get the word out? Is it certified mail, e-mail, carrier pigeon? What are you doing?

Mr. BAINWOL. So the process is being established but they are talking to each other. The OEM community is a relatively small one and—

Mr. BURGESS. So you don't see that as being an obstacle or a barrier?

Mr. BAINWOL. The communications when events happen, I think, will be very quick, accelerated, and that will not be a problem.

Mr. BURGESS. Very well. Mr. Welch, if I can ask you a question because, of course, this committee and another subcommittee has been very involved on the airbag recall, and of course in the Fort Worth-Dallas area. The backorder, you brought up the issue of the backorder of the recalled repair parts. And what has been the experience with your member dealers as far as being able to get the parts, specifically the airbags, for replacement when someone brings their vehicle in to have it fixed?

Mr. WELCH. Well, that has been a particularly troublesome recall, as you know. There are some 24 million vehicles that are involved in that, and in order to produce sophisticated airbags in sufficient numbers to replace 24 million of them are going to take time. In fact, the backorders on those, depending on the make, the model, what factory they are coming from, availability, could well be over a year.

And the dilemma that we face day in and day out because of the publicity that this recall has received, we have to deal with our consumers, your constituents that come in, and we don't have the replacement part. And the dilemma is that they don't affect all of the vehicles the same depending on what the climate is. There is a humidity issue with them, and I think our partners the manufacturers are doing as good a job as they can in trying to triage the availability of those parts and get them to the regions of the country where they would have the largest impact with respect to it.

But we are just going to have to wait through that and do the best that we can with the availability. We have got databases with people waiting, priority issues, and some of them want us to disengage the airbag, which creates a whole other dilemma, and we don't think that is a good idea. And then there is the debate between the risk of the occupant having an airbag since not all of them have the defect in them. So it is a very complex issue, Mr. Chair.

Mr. BURGESS. And, of course, in the hearings that we have held on this, this is all made more difficult because no one knows what the central defect is, and the replacement parts that you are putting in the cars that do come in that are subject to the recall and do require a replacement part, no complete assurance that the replacement part is actually compliant since we don't know what the defect was in the first place.

You brought up getting the information out to targeted demographics, and that is something that has been the subject of a lot of discussion in this subcommittee as well, because typically, this is the third or fourth owner of a vehicle. I know in the market in the Dallas paper, one of the automotive manufacturers actually took out full-page ads in the paper, if you have one of our cars that is of this vintage, call the number or bring it in or whatever their requirement was.

But they said it is very, very difficult to get the information out to, again, that third or fourth owner who may not be someone who reads the newspaper regularly that is maybe difficult to reach that

individual. So is that one of the things that your association is working on as well? How do we get people in?

Mr. WELCH. Well, any way that we can contact our customer base. Unfortunately, as the vehicles get older in age, they don't continue to bring them to the franchise dealer for their ordinary maintenance.

I might add that the completion rate, the remedy rate for vehicles that are 5 years old or newer is actually 85 percent, and one of the primary reasons for that is those vehicles are still coming in for warranty work. And trust me, any time a vehicle comes into our service department, we are scanning the VIN, we are running it if we have access to the database, and we are snagging it there and repairing them at our service bays.

Mr. BURGESS. And my time is expired. I yield to the gentlelady from Illinois 5 minutes for questions, please.

Ms. SCHAKOWSKY. Thank you.

I wanted to ask a yes or no question, a couple of them, for Mr. Bainwol. Did the Alliance of Automobile Manufacturers ask the committee for the provision in the bill that would give automakers a break from health-based carbon emissions requirements in exchange for adding safety features?

Mr. BAINWOL. We did not request it per se but we had a conversation about the value of—

Ms. SCHAKOWSKY. Yes or no, do you support that provision? Yes or no?

Mr. BAINWOL. We certainly support the provision, sure.

Ms. SCHAKOWSKY. You do?

Mr. BAINWOL. Sure.

Ms. SCHAKOWSKY. And, Mr. Bozzella, I am asking the same question of the association of Global Automakers. Did you ask the committee for that provision?

Mr. BOZZELLA. We did not.

Ms. SCHAKOWSKY. Do you support it?

Mr. BOZZELLA. The provision to incentivize lifesaving technologies we think is a very important conversation to have.

Ms. SCHAKOWSKY. Well, I want all consumers to understand that manufacturers of automobiles support a provision that would actually increase pollution in exchange for providing—I am not asking now; I am talking—to improve safety of the automobiles. I think it is outrageous. Consumers like myself who now have a hybrid are seeking that. I would imagine that auto dealers would find the consumers are coming in and wanting more fuel-efficient cars. And to add this as an incentive to get safety often for safety features that are readily available is completely outrageous.

I want to thank you, Mr. Dotson, for your testimony on this matter, and I want to move on to something else.

Mr. BAINWOL. May we comment on that?

Ms. SCHAKOWSKY. Briefly.

Mr. BAINWOL. OK. Well, I will try to be brief.

Ms. SCHAKOWSKY. No, you will be brief.

Mr. BAINWOL. Well—

Ms. SCHAKOWSKY. It is my time. Go ahead.

Mr. BAINWOL. It is your time. So the challenge here is I think to some extent we are talking past each other. You define safety

as a matter of defect policy and we define safety as a totality of the problem. So when you look at the issue, and this chart I think makes it pretty clear, 94 percent of the challenge when it comes to death if not more, if not close to 99 percent, is a function of driver error. The magic of this technology is that it will address the totality of the problem.

Ms. SCHAKOWSKY. What are you talking about? We are talking about incentives that increase auto pollution——

Mr. BAINWOL. We are——

Ms. SCHAKOWSKY [continuing]. In exchange for getting those safety——

Mr. BAINWOL. We are talking about maximizing and accelerating the deployment of lifesaving technologies.

Ms. SCHAKOWSKY. Exactly. And doing it in a way that increases auto emissions.

Mr. BAINWOL. In a——

Ms. SCHAKOWSKY. I am sorry. I want to move on. It is my time.

This is for Ms. Claybrook. Over the last several years, we have seen multiple scandals involving auto manufacturers and major safety defects that were internally reported but allowed to endanger people for years before the company did anything about this. NHTSA's ability to collect safety-related information from carmakers is critical to catching and fixing those problems. The draft we are looking at today asked NHTSA to conduct eight new studies and reports without providing any additional funding. Meanwhile, it does almost nothing to improve the communication of vital safety information from manufacturers to the agencies. My legislation, the Vehicle Safety Improvement Act, would facilitate communications.

Let me ask you. As former NHTSA administrator, do you believe that more information from auto manufacturers would allow the agency to be more effective in its safety mission?

Ms. CLAYBROOK. Absolutely, I believe more information is necessary. The early warning system that was created by the 2000 law for the TREAD Act did not give a lot of specificity about what the manufacturers had to report. They often report inconsistent information, it is very difficult to understand, and they fail to report information. Many have been fined for that recently. So that law needs to be upgraded, and your bill does a good job of helping to do that.

I also think there need to be criminal penalties when the manufacturers fail to give that kind of information knowingly and willfully because otherwise they are not going to stop doing it.

Ms. SCHAKOWSKY. And do you think the penalties currently are adequate?

Ms. CLAYBROOK. No. First of all, if you look at what the U.S. Attorney fined Toyota, 1.2 billion; and General Motors, 900 million; and NHTSA's maximum penalty is 35 million. So it is clear that that number has to be drastically increased or there has to be no maximum. But there also need to be criminal penalties because when a manufacturer knows that they might go to jail, they are going to behave differently and they are going to pay more attention to what is going on.

When the counsel of General Motors said that he didn't even know about settlements of lawsuits involving the ignition switch and that they were covering up information from those lawsuits, that was just incomprehensible. And so I think that there needs to be much stronger penalty provisions.

Ms. SCHAKOWSKY. I appreciate that. Thank you. I yield back.

Mr. BURGESS. The gentlelady's time has expired. The gentlelady yields back.

The chair recognizes the gentleman from Kentucky 5 minutes for your questions, please.

Mr. GUTHRIE. Thank you. Thank you for having this meeting. I appreciate the panel for being here. And I apologize. There is another subcommittee of this committee going on, so I was in the other one during your opening remarks. If some of my questions repeat those, then I apologize. I will give you a chance to elaborate if you have already addressed some of these.

This is for Mr. Bainwol and then Mr. Bozzella. Have NHTSA and the auto industry had discussions on how best to apply the NIST cybersecurity risk management framework to the development of automobile security?

Mr. BAINWOL. Not directly the question of NIST but we have had discussions with the administrator about best practices. We met with him in September, and it was his view that the pace of innovation is so rapid that it would be wise for us to move forward with the best practices, that we would be, in his words, more nimble. And as a result of that conversation, as a result of discussions with members of this committee, we made the decision to go forward with the best practices. And NIST will be part of the framework that we evaluate as we move forward.

Mr. GUTHRIE. Mr. Bozzella?

Mr. BOZZELLA. Yes, I will just simply build on Mr. Bainwol's comment by simply saying the NIST framework is going to be part of obviously our discussion as an industry. And I think it is important to recognize that, though we have had ongoing conversations with NHTSA, that we can't afford to wait.

It is really important that we make sure that our customers have the confidence and the trust in these products so that they can take advantage of the benefits, the lifesaving benefits of these technologies. And so we have moved forward. We are going to continue to consult not only within the industry but with a broad number of stakeholders, and certainly the NIST framework will be part of those discussions.

Mr. GUTHRIE. And then I have another question for you, too. How are car companies currently dealing with the security of aftermarket or third-party devices that are typically being plugged into the vehicle through the OBD-II port?

Mr. BOZZELLA. This is a really important question. As you know, Congressman, the industry has voluntarily adopted a set of privacy principles that treat sensitive personally identifiable information really as sacrosanct. We care deeply about making sure that our customers know that we are treating geolocation data—where the vehicle has been or other personal data, maybe biometric data if the car is able to collect that type of data, or driver behavior data—differently than other kinds of data. And we think it is very impor-

tant that we continue to work with a broad set of stakeholders to understand the implications of what might happen if an aftermarket device is plugged into the OBD port.

And we think also consumer education is important in this area. It is a very important question to understand. Is the manufacturer of that device, do they have the same types of privacy policies? How they established the same cyber best practices that the automakers have or are doing? And so that actual entrance into the vehicle sort of represents a very important question about how we think about cybersecurity.

Mr. BAINWOL. And I simply add that, by way of example, I have a Progressive device. It is actually an Allstate device that I plug in for insurance purposes. That doesn't run, in terms of the privacy question, through the manufacturer. That is a relationship with the insurance company. And I derive a value from that because I derive cheaper insurance and an ability to understand better the driving behavior of my children, which is something we all, I think, aspire to.

So this does get complicated, and the point of the example is whether it is insurance or whether it is Google or Apple or carriers, there are relationships here that now really compel us to work with suppliers and other folks that we have not traditionally worked with. And so on privacy and on cyber, we are going to have to reach out, and we have started that process.

Mr. GUTHRIE. Do you have a comment, Ms. Wilson?

Ms. ANN WILSON. Congressman, I represent also aftermarket manufacturers, and we have been working with vehicle manufacturers to create an ISO standard—

Mr. GUTHRIE. OK.

Ms. ANN WILSON [continuing]. So that you can do exactly that, take a look at aftermarket products and make sure that when they are plugged into the OBD port, they meet some kind of standards that are known throughout the industry.

Mr. GUTHRIE. All right. Thank you. And thank you. We have talked on fuel-efficient standards and safety, and I want a fuel-efficient car that is safe. I think all of us want that, but they are not unrelated because if you are going to go for more fuel efficiency—I know this area pretty well—automotive companies will try to take weight out of the car and try to keep it safe. I mean that is how you get more fuel efficient. So they are interrelated.

So if you are going to incentivize—and automotive companies, they are spending an enormous amount of money trying to get to the new CAF AE1E standards. An enormous amount of investments come from automotive companies, which does add to the expense of the car. And the security issues and safety issues are expensive. So if you can give some relief in one area to get safety and security first, I think that is important. And then you move to more fuel-efficient cars. I think that is the number one priority is safety. And they are interdependent. They are not unrelated to each other.

Mr. BAINWOL. In my testimony, Congressman, I use the phrase “safety equals green.” This is a change paradigm. When these technologies like accident-avoidance technologies yield better safety outcomes, the yield is more fuel-efficient cars, better emissions records, and certainly a more productive economy.

Mr. BURGESS. The gentleman's time has expired.

The chair recognizes the gentleman from Massachusetts 5 minutes for your questions, please.

Mr. KENNEDY. Thank you, Mr. Chairman. Thank you to the panelists and the witnesses here for their testimony.

I wanted to touch on Section 202 of the draft bill, which requires NHTSA to draft recall notices in coordination with auto manufacturers before making recalls public. And recall notices would not be published until all vehicle identification numbers for affected vehicles are made available to NHTSA by the auto manufacturer. I believe the first panel touched on this a little bit as well.

So, Ms. Claybrook, if you can, in some of the recent major recalls we have heard concerns that the recalls were made public before any information about whether a specific vehicle was included in the recall, which led to some customer confusion. At the same time, you have noted in your testimony that a delayed notice can actually have deadly consequences.

So I just wanted to get you to kind of expand on that dichotomy if you could. Why is prompt notice so crucial in your mind, and how would you navigate through those tensions?

Ms. CLAYBROOK. Well, first of all, I think that at the bottom line the public, the consumers, the people who are driving these cars, they are entitled to know that there is a problem with the vehicle. And they can maybe do something on their own to avoid the problem while they are waiting for the recall to occur. So any delay in announcing that recall I think is disadvantageous, and I would actually urge the administrator of NHTSA, as I did when I was administrator, to put out a consumer alert and allow the public to be informed about what is going on.

This provision in this bill suggests that they could not do that, that the administrator would be limited in the way that they could communicate to the public and then have to wait for the manufacturer to say OK. I think that that is completely back-assward—

Mr. KENNEDY. I got what you meant.

Ms. CLAYBROOK. Backwards. And so the administrator's hands should not be tied that way.

Mr. KENNEDY. My words not his, but I believe Dr. Rosekind this morning echoed those statements about if the government was in fact sitting on the fact that they knew there was a problem yet was not time divulging that information to consumers and an accident were to take place, that is not a position that I think any administrator would want to be in.

So instead of delaying notice of recalls to consumers, the Vehicle Safety Improvement Act would give NHTSA imminent hazard authority to expedite a recall when the agency determines that a defect or noncompliance, as I understand it, substantially increases the likelihood of serious injury or death if not remedied immediately.

So, Ms. Claybrook, how do you think this imminent-hazard authority would be beneficial to NHTSA in reducing deaths and injuries resulting from those crashes?

Ms. CLAYBROOK. Oh, absolutely, because there are occasions where the car is so hazardous that that recall ought to be handled immediately.

And I would say also that this provision that is in the bill was in an earlier bill about 15 years ago, and consumers were extremely upset about it, and it was taken out of the bill because a committee came to realize that it was really totally unfair, that the administrator would not be able to inform the public.

Mr. KENNEDY. VSIA would also eliminate, as my understanding, regional recalls, an issue that the majority's draft bill does not address. Americans are much more mobile than they have ever been in the past, and just because a vehicle is registered in a particular region does not mean that the vehicle will only be driven in that region. Under VSIA, all recalls would be carried out on a national basis. It would also allow NHTSA to prioritize certain parts of the country when the quantity of replacement parts is limited.

So, Ms. Claybrook, once again, could you explain how the elimination of the regional recall aspect would improve safety?

Ms. CLAYBROOK. Well, first of all, regional recalls are not in the statute. It is completely an informal thing that the manufacturers about 25, 30 years ago came to the agency and say, well, we would just like to do a regional recall on this for these reasons. And the agency said all right. And then it became so standard operating procedure because it is much cheaper for the manufacturers only to recall a small number of vehicles rather than nationwide.

Of course, vehicles don't stay stationary. That is the silly thing about the whole regional recall because they go all over the country. And if your car has only been fixed because you bought it and lived with Florida for a while and then you moved to Minnesota, it just doesn't make any sense.

So I think that the agency could prioritize. I think they have the discretion under the law to prioritize and say if you are doing the recall and it is more likely to happen in a particular area because of the weather, then we would prefer that you do it that way. I am sure the manufacturers would agree.

Mr. KENNEDY. And just briefly—unfortunately, I have just a few seconds left—but in your experience, would eliminating those regional recalls, as you touched on, but allowing NHTSA to prioritize the allocation of replacement parts by region when necessary—essentially, the prioritization you just spoke about—have an effect on NHTSA's ability to execute a recall?

Ms. CLAYBROOK. No. No, it absolutely would not. And I think that the experience that we have with the misbehavior of manufacturers over the last 5 years, as we have seen, in covering up recalls, delaying them, not doing them for years and years, and all the rest means that NHTSA has to take a stronger role and they should be the decision-makers on this, not the manufacturers.

Mr. KENNEDY. Thank you, ma'am. I yield back.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the ranking member of the full committee, Mr. Pallone, 5 minutes for your questions, please.

Mr. PALLONE. Thank you, Mr. Chairman.

My questions are to Mr. Dotson. Section 502 of the discussion draft would amend the Clean Air Act by interfering with the national program that EPA and NHTSA have developed to reduce greenhouse gas emissions and improve fuel economy for passenger

cars and trucks. Mr. Dotson, can you briefly explain this national program and what are its goals?

Mr. DOTSON. Certainly. The purpose of the program is essentially to control carbon pollution from light-duty vehicles, and the program is remarkably successful. It will essentially have the effect of doubling fuel economy or reducing the emissions of cars and trucks by half, reducing emissions by half by 2025.

Mr. PALLONE. All right. So why is it so important to establish standards for greenhouse gas emissions for vehicles, and how will changing these commonsense requirements impact our ability to avoid or prevent the worst impacts of climate change?

Mr. DOTSON. Well, it is now I think a consensus amongst scientific community, business, and even the faith community that climate change is a very serious threat. Last year, the Intergovernmental Panel on Climate Change said that they have high confidence that unmitigated warming will be high to very high risk of severe, widespread, and irreversible impacts globally, so things like food shortages—

Mr. PALLONE. You don't have to talk about climate change. You don't have to convince me, and you are not going to convince my colleagues on the other side. Why is it important to establish these standards for gas emissions for vehicles?

Mr. DOTSON. Well, the standards are very important, but they are important because they provide the industry clear direction on where they need to go over time.

Mr. PALLONE. OK.

Mr. DOTSON. And the erosion that occurs in this bill, while it might sound small, is actually very significant. If you were to award a 3-gram credit for cars that have in-dash GPS or emergency auto braking, in the first year—last year, there were 16.5 million cars sold in the United States. You assume those cars drive 13,000 miles a year or so. You are talking about over 700,000 tons of additional pollution in year 1.

Mr. PALLONE. OK.

Mr. DOTSON. In year 2, it is over a million, in year 3 it is over 2 million tons.

Mr. PALLONE. All right. Now, there are flexibilities built into the national program such as the ability to generate credits for over-compliance with the standards, that is, credits that can be banked or traded. And there are also air-conditioning improvement credits and other types of credits known as off-cycle credits. Can you explain briefly what are the off-cycle credits?

Mr. DOTSON. Certainly. Off-cycle credits essentially allow the manufacturers to take credit for efficiencies they gain that are unrelated to the power train of the vehicle. So, for example, if an auto manufacturer uses high-efficiency lighting or high-efficiency air-conditioning, they may be able to recognize those benefits in off-cycle credits.

The EPA and the Department of Transportation looked at this issue with regard to congestion mitigation or crash avoidance, and they found that there is "no consistent established methods or supporting data to determine the appropriate level of the credit." And that is really the problem with awarding credits for these kinds of technologies.

Mr. PALLONE. But in other words, these credits such as air-conditioning that don't readily appear to contribute to improved vehicle mileage or reduced greenhouse gas emissions, they must have had a positive effect, right?

Mr. DOTSON. And those effects are demonstrated through data to the agencies. So essentially, if you are using very high-efficiency lighting, you will need less electricity. Your car will have to generate less electricity to power those headlights. And so it is a way of recognizing that even though it might not show up in the emissions testing, which is—

Mr. PALLONE. OK. But the difference, in contrast, is that Section 502 of this bill would expand the credits list to include the use of advanced automotive technologies, for example, adaptive brake-assist technology, connected-vehicle technology. I mean, automakers have argued that crash-avoidance technology will result in fewer crashes and therefore less traffic congestion, but less congestion, they argue, would result in less emissions and less fuel use? Is there any way to directly connect fuel savings for lower emissions to individual vehicles? I am just trying to make the contrast between, you know, the things that you are doing now versus what Section 502 does. It doesn't seem to me that there is any real connection if you will.

Mr. DOTSON. You put your finger on exactly the issue, that there could be, there may be diffuse benefits to using these technologies and reducing emissions, but there also might not be. For example, there is an American car which is on the market today, and as an option, you can buy lane-departure warning technology. Well, the Highway Loss Data Institute looked at that technology and they compared claims against that car that either have the technology or don't, and what they found was there is no reduced claims on cars that have that technology. Therefore, it is not preventing accidents. Therefore, it is not reducing emissions. And so that is one concrete example where this bill would give credits to that car even though we have data to help us understand that there are not emissions benefits to it.

Mr. PALLONE. All right. Thanks so much.

Thank you, Mr. Chairman.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman.

The chair recognizes the gentlelady from California, 5 minutes for questions, please.

Mrs. CAPPS. Thank you, Mr. Chairman, and to all our witnesses for your testimony today.

Federal law prohibits car dealers from selling new cars subject to recall, but there is no similar law to stop rental car companies from renting or selling dangerous recalled cars that have not been fixed. Since the Houck sisters' death near my district in 2004, the major rental companies signed onto a voluntary pledge to not rent out recalled vehicles. While this was a good step forward, these standards are still not enough. Just last year, after the pledge was in place, Jewel Brangman was killed in her rental car when an unrepaired Takata airbag exploded.

As we heard from NHTSA on the first panel, a change in federal law is needed, and that is why I have introduced H.R. 2198 with

my colleagues Ms. Schakowsky, Mr. Walter Jones, Mr. Butterfield to prohibit the rental of recalled vehicles. I am disappointed our bill was excluded from the draft we are considering today despite its broad support from the rental industry and consumer groups and that it has already passed the Senate.

I also remain baffled that the Alliance of Automobile Manufacturers and National Automobile Dealers Association actively oppose H.R. 2198 despite years of ongoing discussions and efforts to find a compromise. For example, the alliance cites a concern about potential loss of use and other liability impacts as a reason for its opposition.

To address this concern, we added a savings clause to the bill explicitly stating that nothing in the bill will impact manufacturers' liability or other contractual obligations. Because of this change, General Motors, one of the alliance's biggest members, now supports H.R. 2198. Honda has also expressed its support for the bill.

Mr. BAINWOL—and I would like a yes or no answer on this if you would—does the alliance still oppose H.R. 2198 despite General Motors' support for the bill? Yes or no?

Mr. BAINWOL. The alliance does not have consensus.

Mrs. CAPPS. Thank you. So you can't say yes or no then because there is no consensus?

Mr. BAINWOL. We don't have consensus.

Mrs. CAPPS. Thank you.

Mr. Welch, your organization has expressed concerns about the impacts H.R. 2198 would have on dealers with small rental or loaner car operation. My question to you: when consumers bring their recalled cars to a dealer for repairs and they need a loaner car, do you think dealers should be able to loan them vehicles with unrepaired safety recalls? And again, I ask you for a yes or no answer.

Mr. WELCH. If the vehicle has been deemed to be unsafe to drive either by the OEMs or by NHTSA, we would not put one of those cars in the hands of the consumer.

Mrs. CAPPS. So that is a no? You do not think dealers should be able to loan vehicles with unrepaired safety recalls?

Mr. WELCH. No, I said if they were unsafe to drive we wouldn't put them out there. If it involves—

Mrs. CAPPS. You would not loan them, then, as loaner cars?

Mr. WELCH. If it was unsafe to drive. If it had a door jamb sticker or a misprinted number—

Mrs. CAPPS. OK. That is not quite what my question is, but I just go back to the first panel in which NHTSA said that every recall is a safety issue. There are no frivolous recalls. It is a simple question. The vast majority of rental companies have agreed to voluntarily stop renting rental cars. Why can't the dealers do the same?

Mr. WELCH. Well, again, I would like to draw a distinction between a recalled vehicle for a noncompliance that may not make it unsafe to drive.

Mrs. CAPPS. May I ask you for a follow-up then? Who is going to determine that?

Mr. WELCH. Well, we rely on NHTSA and the OEMs to make that determination.

Mrs. CAPPS. OK. NHTSA has said that every recall is a safety issue, that they don't put recalls out unless it is a safety issue.

Mr. WELCH. Well, NHTSA has the authority to issue stop-drives or make the manufacturers issue stop-drives, and if they believe that a vehicle is unsafe to drive or the manufacturer does it, they can issue that notice and we would certainly honor it, but that doesn't apply to all vehicles that are subject to recalls.

Mrs. CAPPS. I didn't get an answer but my time is out. Thank you.

Mr. BURGESS. The chair thanks the gentlelady.

I do just want to offer the observation, Ms. Schakowsky said that she drove a hybrid vehicle. I want you to know your chairman drives a hybrid also, but I have no problem at all if you want to make future hybrid vehicles safer. If you want to warn me as I depart a lane that there is a car, motorcycle, tricycle in the other lane, I would like to know that information, and I will give up a couple of carbon credits to be able to have that available in the next version of the car that I buy.

Mrs. CAPPS. Mr. Chairman, I am sorry, may I add an addendum, not a question, but I would like to enter into the record some letters——

Mr. BURGESS. Does the gentlelady have a unanimous consent request?

Mrs. CAPPS. Yes, please.

Mr. BURGESS. You are recognized for your unanimous consent request.

Mrs. CAPPS. OK. I wanted to enter into the record a letter from Raechel and Jackie's mother, Cally Houck, urging passage of H.R. 2198, two letters from General Motors indicating the company's support for H.R. 2198, and also a letter on behalf of my colleague who needed to leave, Ms. Schakowsky.

Mr. BURGESS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mrs. CAPPS. Thank you.

Mr. BURGESS. Seeing that there are no further Members wishing to ask questions, I would like to thank all of our witnesses for being here today.

Before we conclude, I would like to include the following documents to be submitted for the record by unanimous consent: a written statement by the American Car Rental Association, a letter from the Auto Care Association, a letter from the American Chemistry Council, a letter from the American Association of Motor Vehicle Administrators, a report from the Motor & Equipment Manufacturers Association,<sup>1</sup> a statement from the Environmental Protection Agency.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record. I ask the witnesses to submit their responses within 10 business days upon receipt of the questions. Without objection, the subcommittee will stand adjourned.

<sup>1</sup>The report has been retained in committee files and is also available at <http://docs.house.gov/meetings/if/if17/20151021/104070/hhrg-114-if17-20151021-sd006.pdf>.

Ms. CLAYBROOK. Mr. Chairman, could I just ask that I make a correction in my testimony, unanimous consent to do that?

Mr. BURGESS. Yes, I would be happy to hear the correction of the testimony.

Ms. CLAYBROOK. Thank you very much.

Mr. BURGESS. Oh, you are not going to say it today?

Ms. CLAYBROOK. No, I won't bother you now. I will just submit it.

Mr. BURGESS. All right. We are left wondering about the correction.

The committee stands adjourned.

[Whereupon, at 12:51 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
Administration**

Deputy Administrator

1200 New Jersey Avenue SE.  
Washington, DC 20590

November 5, 2014

The Honorable Claire McCaskill  
United States Senate  
Washington, D.C. 20510

Dear Senator McCaskill:

This responds to your October 8, 2014 letter requesting the National Highway Traffic Safety Administration's (NHTSA) position on the Alliance of Automobile Manufacturers' Rental Car Legislative Proposal ("Alliance Proposal") for the record of the September 16, 2014 hearing on "Oversight of and Policy Considerations for the National Highway Traffic Safety Administration." Specifically, you asked that the agency provide its views and analysis of the Alliance Proposal, particularly in comparison to your legislation (S. 2819) and the Administration's proposal (GROW AMERICA Act) regarding the grounding of rental car vehicles subject to a safety recall.

**Summary of Relevant Limitation on Rental Provisions (Alliance Proposal, S. 2819 and GROW AMERICA Act)**

The Alliance Proposal provides that a rental car company may not rent a motor vehicle subject to a recall until the company notifies the renter of the recall and the renter provides acknowledgement in writing ("informed consent"). The Proposal permits exceptions from these requirements if the defect or noncompliance which is the subject of a recall is remedied or enforcement of the order regarding the recall is set aside by a civil action. Finally, the Alliance Proposal states that notwithstanding the informed consent provisions, a motor vehicle subject to a recall may not be rented if the defect notice from a manufacturer contains precautionary advice to refrain from driving the vehicle until the specified remedy is completed.

In contrast to the Alliance Proposal, both S. 2819 (Section 3) and the GROW AMERICA Act (Section 4109) prohibit rental companies that receive a defect notification from a manufacturer from renting vehicles subject to a recall unless the defect or noncompliance is remedied. Both bills provide limited exceptions from these requirements, but neither bill permits the rental company to rent the motor vehicle even after obtaining consent from the consumer. In addition, neither bill makes the prohibition on rental dependent upon the defect notification containing precautionary advice to refrain from driving. Further, the GROW AMERICA Act also prohibits used car dealers from selling a vehicle with a defect or noncompliance that has not been fixed.



Page 2  
The Honorable Claire McCaskill

### **Agency Views and Analysis**

The agency opposes the Alliance Proposal because it would not adequately protect rental consumers and the driving public in the event of a recall. The Proposal allows vehicles subject to recall to be rented if consumers acknowledge and consent to the risks and dangers of the defect. A consumer who is renting a short term vehicle usually is not in an informed position to understand the nature and extent of a defect or noncompliance. The consumer is therefore put in a position of quickly choosing between risking their safety and their ability to fulfill the purpose of their trip as planned. The agency believes it is unreasonable to place the burden on the consumer in this context or to expect that rental car companies and their employees could adequately educate a consumer on the risks and dangers of the defective vehicle.

In addition, the Alliance Proposal prohibiting the rental of vehicles subject to a recall only when the defect notice from manufacturers contains precautionary advice to refrain from driving would apply to very few recalls and thus, would be wholly ineffective in protecting the American public. The agency issued an information request (IR) on October 14, 2014 to the nine motor vehicle manufacturers who support the Alliance proposal directing them to report the number of instances since January 1, 2000 that they have issued a notice in the circumstance suggested in the Alliance Proposal – a defect or noncompliance notice with precautionary advice to refrain from driving a vehicle.

In response to our request, the Alliance provided information for their members for the years 2010-2013. The Alliance reported only six (6) recalls where unconditional “do not drive” instructions were issued by manufacturers, covering only 53,300 vehicles. This represents 0.24% of the total vehicle recalls (2,459) for the time period of 2010-2013, and a mere 0.07% of the total number of vehicles recalled during this period (73,910,203). The Alliance also reported 45 instances where conditional “do not drive” recall notices were issued – recalls that instructed the owner not to drive the vehicle under certain circumstances. Because these recalls include instructions that indicate the driver can keep driving the car if the conditions are first satisfied (e.g., the vehicle owner should examine the vehicle to determine if the defect is apparent) the Alliance’s proposed language would not appear to prohibit rental companies from renting vehicles in these recalls. However, the Alliance’s analysis shows that even including conditional “do not drive” recalls in the calculation, the 45 recalls still make up only 10% of the recalls during the period 2010-2013 that were examined by the Alliance. By NHTSA’s calculation, these recalls represent only 1.8% of the total recalls, and only 4.9% (3,646,904) of the total number of vehicles recalled, during the period 2010-2013.

In addition, NHTSA received responses from the nine manufacturers who received the information request from NHTSA. The manufacturers confirmed NHTSA’s initial assessment that the manufacturers very rarely issue “do not drive” recalls. Specifically, these manufacturers reported only 29 vehicle recalls since 2000 in which they have issued “do not drive” instructions (BMW (10), Jaguar Land Rover (5), Chrysler (1), Ford (6), VW (6), Mazda (0), Volvo (0), Toyota (1), and Mercedes (0)).

Page 3

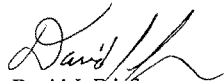
The Honorable Claire McCaskill

These results show that the Alliance Proposal is not a serious, comprehensive approach to redress the problem of defective rental vehicles on our nation's roads and highways. The agency is also concerned that this approach is counterproductive, making consumers believe that defects and noncompliance in motor vehicles are only serious and dangerous if the defect notice tells consumer not to drive the vehicle.

The agency submits to the record its opposition to the Alliance Proposal. The informed consent provisions and the requirement to ground rental vehicles only in the limited circumstance when the defect or noncompliance notice contains advice not to drive does not adequately protect consumers and the driving public. The agency supports S. 2819 to the extent that it is consistent with our GROW AMERICA proposal – to protect consumers from renting vehicles subject to a recall unless the defect or noncompliance is remedied. The agency further supports Section 4109 of the GROW AMERICA Act, that would extend these requirements to used car dealers. All defects and noncompliance should be addressed and remedied prior to selling or renting a motor vehicle to the public.

I have sent a similar response to Senator Barbara Boxer. If I can provide additional information or assistance, please feel free to call me. If members of your staff have questions, they may contact Alison Pascale, Director, Office of Governmental Affairs, Policy and Strategic Planning at (202) 366-2386.

Sincerely yours,

  
 David J. Friedman  
 Deputy Administrator

**Carol ("Cally") Houck  
Ojai, California  
Mother of Raechel and Jacqueline Houck**

October 15, 2015

Honorable John Boehner  
Speaker, U.S. House of Representatives  
The Capitol H-232  
Washington, DC 20515

Honorable Fred Upton  
Chairman, House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Honorable Michael C. Burgess  
Chairman, House Subcommittee on Commerce, Manufacturing and Trade  
2125 Rayburn House Office Building  
Washington, DC 20515

**Re: Passage of H.R. 2198, the Raechel and Jacqueline Houck Safe Rental Car Act**

Dear Speaker Boehner, Chairman Upton, and Chairman Burgess:

I write to you as the mother of two beautiful, talented, treasured daughters, Raechel and Jacqueline, who were killed by an unrepaired, recalled Chrysler rental car, seeking your support for H.R. 2198, which is named the *Raechel and Jacqueline Houck Safe Rental Car Act* in their memory.

They were just 24 and 20, full of life, and devoted to making the world a better place. The rental car company handed them the keys to a recalled Chrysler PT Cruiser. It had a defective steering component that was prone to leaking, causing an under-hood fire and loss of steering. Chrysler had issued the safety recall notice about 30 days before, but the rental company just kept renting it out, without bothering to get the free repairs done first.

On their way back home from visiting their father, younger brother, and me in Ojai, CA, their rental car caught on fire near Santa Cruz, and Raechel lost steering. The car veered across the median and crashed head-on into a tractor trailer. Witnesses told the highway patrol that their rental car was on fire before the crash.

Eventually, the rental car company admitted 100% liability for their deaths, and years later, they also apologized to me. While what they did was illegal under California law, existing law was inadequate to prevent my daughters' deaths. Other states have similar laws, but they too are not enforceable until after there are "damages" or a personal injury or death. That is why we need a uniform, federal law that is enforceable by the National Highway Traffic Safety Administration. Only NHTSA can do the pro-active policing of the law, to ensure compliance and prevent tragedies *before* people are injured or killed.

Chrysler and other auto manufacturers are telling Congress that rental companies should be required only to inform consumers when a rental car is under a safety recall, unless the recall is a so-called “do not drive” recall. Such a law would not have saved my daughters’ lives. The PT Cruiser was the last car on the lot, and even if the rental car company had notified Raechel and Jackie about the defect, they weren’t mechanics, and wouldn’t have known how risky the defect was. Plus Chrysler chose not to issue a “do not drive” warning, which is extremely rare and has nothing to do with how unsafe a vehicle is – it’s basically done for PR reasons, usually for owners of relatively new cars that are getting bad press.

Virtually the entire rental car industry (with few exceptions, including a company called Rent-a-Wreck) is now working with me and auto safety groups to enact the Raechel and Jacqueline Houck Safe Rental Car Act, which would make it a violation of federal law for a rental car company to rent or sell recalled cars with lethal safety defects, until the defects have been repaired. GM, Honda, AAA and the State Farm Insurance Company are also supporting the bill. Earlier this year, the California New Car Dealers Association officially sponsored legislation in California that was modeled after the federal safe rental car bill. Polling shows that the American public overwhelmingly supports enactment of this law. Support crosses party lines and the many divides in our nation. The bottom line is that when people rent a vehicle from a reputable rental car company, or are loaned a car at a car dealership, they fully expect that it will be safe.

I am so proud to tell you that Sen. Thune included the *Raechel and Jacqueline Houck Safe Rental Car Act* in his safety legislation, which was then included in the Senate highway bill that passed the Senate with overwhelming bipartisan support in July. The Senate passed the rental car legislation despite the fact that the Alliance of Auto Manufacturers, Global Automakers, and National Automobile Dealers Association remain opposed. The Senators realized that those trade associations should not stand in the way of a common sense safety measure that is overwhelmingly supported by consumers and the only industry that would be regulated under the bill.

Tragically, delays in passing this legislation have already claimed another innocent life. Last fall, another talented, beautiful young woman, Jewel Brangman, age 26, was also killed by a recalled rental car. It had an exploding Takata air bag, and when she was in a multiple-vehicle fender-bender, everyone else walked away, but flying metal from the air bag severed an artery in her neck.

How many more lives will be lost because of unsafe, recalled rental vehicles before Congress acts? The Senate has done the right thing – it is now in your hands. If you believe, like I do, that all human life is precious, you will support this bill and make sure it is included in any highway legislation that is passed by the House of Representatives.

Sincerely,

Carol “Cally” Houck

Cc: Minority Leader Nancy Pelosi  
Energy and Commerce Ranking Member Frank Pallone  
H.R. 2198 sponsors Reps. Lois Capps, Jan Schakowsky, G.K. Butterfield and Walter Jones



*Lee R. Godown  
Vice President  
Global Government Relations*

---

*General Motors Company  
25 Massachusetts Avenue, N.W.  
Suite 400  
Washington, D.C. 20001  
Phone: 202-775-5033  
Fax: 202-775-5023*

June 26, 2014

The Hon. Chuck Schumer  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Schumer:

Thank you for meeting with me, our CEO Ms. Mary Barra, and for the continuing cooperation of your staff in an effort to find common ground on the provisions of S. 921, The Raechel and Jacqueline Houck Safe Rental Car Act of 2013.

As you know, under existing law auto manufacturers have the ability to defend against loss of use claims by rental car companies, because rental car companies have the ability to manage the way they repair their fleets subject to safety recalls or other safety-related notices. While we think that the rental companies will continue to have that ability as a practical matter (because of the size and diversification of their fleets) if S. 921 passes as currently drafted, our defense as a manufacturer might be degraded, since the rental companies would be able to point to the absolute statutory grounding of vehicles as the basis for claims of loss of use – even in the absence of a showing of actual “damages.”

Our primary concern with the current language of S. 921 is that the new requirements for rental companies to repair recalled vehicles could increase manufacturers' liability under state laws for the losses suffered by the rental car companies as a result of having to ground recalled cars before they can be repaired. In discussion with your staff, it became apparent that you never intended to change the status quo with regard to loss of use, and believe that the issue would be best addressed in the contracts between the manufacturers and the rental companies.

As part of discussions I have had with your staff, and the staffs of the cosponsors of S. 921, I would like to suggest the below language as an amendment to the current provisions of the legislation.

After section 8 (of S.921), insert the following:

SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act shall—

(1) be construed to create or increase any liability, including for loss of use, for a manufacturer as a result of having manufactured or imported a motor vehicle subject to a notification of defect or noncompliance under subsection (b) or (c) of section 30118 of title 49, United States Code; or

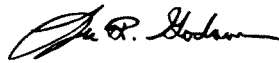
(2) supersede or otherwise affect the contractual obligations, if any, between such a manufacturer and a rental company (as defined in section 30102(a) of title 49, United States Code, as amended by section 2).

If this change in S. 921 can be accomplished and addressed, General Motors stands ready to support such a revised bill.

I would like to add that, in discussions with your staff, I have raised the possibility of mandating that rental car companies be obliged to report their repair completion rates monthly or quarterly to the National Highway Transportation Administration (NHTSA) – the goal being to prompt the companies to repair their vehicles in a timely fashion, and to make this completion rate more transparent and public. We support this requirement.

Lastly, our auto dealer partners (NADA) have expressed a concern that the NHTSA rulemaking authority in section 9 of the legislation is too broad. Section 9 states: *The Secretary of Transportation may promulgate rules, as appropriate, to implement this Act and the amendments made by this Act.* I understand through your staff that you are willing to delete this section of the legislation, and we support this deletion.

Sincerely,





Lee R. Godown  
Vice President  
Global Government Relations

---

General Motors Company  
25 Massachusetts Avenue, N.W.  
Suite 400  
Washington, D.C. 20001  
Phone: 202-775-5033  
Fax: 202-775-5023

July 8, 2014

The Hon. Chuck Schumer  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Schumer:

On behalf of General Motors, I would like to thank you, as well as the cosponsors, for reviewing our proposed changes to S. 921 as described in my June 26, 2014, letter to you (herewith again attached).

With these changes made to the committee-reported text of S. 921, "The Raechel and Jacqueline Houck Safe Rental Car Act of 2013," such a revised bill will have the support of General Motors.

Let me offer our appreciation to you, as well as to your staff for their professionalism, as we worked through this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee R. Godown".

Attachment

Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
2183 Rayburn House Office Building  
Washington, DC 20515

Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
237 Cannon House Office Building  
Washington, DC 20515

Honorable Michael C. Burgess  
Chairman  
Subcommittee on Commerce, Manufacturing  
and Trade  
2336 Rayburn House Office Building  
Washington, DC 20515

Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Commerce, Manufacturing  
and Trade  
2367 Rayburn House Office Building  
Washington, DC 20515

**American Council for an Energy-Efficient Economy | Center for Auto Safety  
Environment America | League of Conservation Voters | Natural Resources Defense Council  
Safe Climate Campaign | Sierra Club | Union of Concerned Scientists**

October 20, 2015

Re: Discussion Draft on Vehicle and Roadway Safety

Dear Committee Chairman Upton, Ranking Member Pallone, Subcommittee Chairman Burgess and  
Subcommittee Ranking Member Schakowsky,

The undersigned environmental, science, and safety organizations urge you to strike Section 502: Credits for Advanced Automotive Technology and Section 503: Fuel Economy Credits for Advanced Automotive Technologies from the Discussion Draft on Vehicle and Roadway Safety. These sections create unnecessary credits for technologies that are already expected to be adopted, thus providing uncertain safety benefits while undermining our energy security, public health, the environment, and consumer savings. There is insufficient evidence that the proposed advanced automotive and connected vehicle technologies described in the draft bill would actually lead to real-world emissions reductions and improvements in fuel economy. Hence legislation giving credits to these technologies would likely lead to net increases in pollution and fuel consumption, in addition to circumventing the important public regulatory process that defines automaker compliance options.

The National Highway Traffic Safety Administration (NHTSA) and Environmental Protection Agency (EPA) should continue to use their existing authority to conduct public rulemakings in order to consider changes to fuel economy and emissions crediting systems. The agencies have very successfully demonstrated the effectiveness of a public process to develop strong standards that are supported by automakers as well as environmental, consumer, and national security organizations. Directing credit levels through legislation circumvents the expertise of the agencies, industry, and public to develop standards that are based on detailed quantitative analysis of technology effectiveness and result in clean air and economic security benefits to society.

The credit levels directed in the Discussion Draft would create a loophole that offsets real gains and increases fuel use and pollution. The Discussion Draft awards a minimum of 9 grams per mile of greenhouse gas credits for a collection of advanced automotive technologies (including forward collision warning, driver attention monitor and left turn assist) and connected vehicle technologies that send safety messages between motor vehicles. It's unclear that any of these technologies will lead to real-world carbon pollution or fuel consumption reductions. Those 9 grams per mile of credits would slow the development of more efficient and less polluting technology.

For comparison, from model year 2012 to 2013, automakers reduced greenhouse gas emissions from new cars and light trucks by an average of 9 grams per mile under the current standards.<sup>1</sup> The credit windfall of the Discussion Draft would have effectively allowed the industry to avoid all needed advancements in engines, transmissions and vehicle bodies that actually save consumers money at the pump and cut pollution.

Opportunities to improve road safety with new technologies are important, and we welcome policies that will help to realize those improvements. However, we do not believe that there needs to be a trade-off between the fuel consumption of vehicles and additional safety features, many of which automakers are already making available on their products. One of the technologies that can qualify for additional credits is automatic emergency braking, a technology that 10 auto manufacturers committed to putting in all of their new vehicles in an agreement with NHTSA and the Insurance Institute for Highway Safety in September of this year.<sup>2</sup> Moreover, recent manufacturer malfeasance, shown by a lack of compliance with vehicle emissions requirements together with a host of similar, lower profile events, demonstrates the urgency of closing the gap between certified and real-world vehicle performance. The proposed credits would serve instead to widen that gap, costing consumers hundreds of dollars at the pump.

Automakers currently have the ability to apply for emissions and fuel economy credits for new technologies, which makes Sections 502 and 503 unnecessary. Under the current greenhouse gas and fuel economy standards, automakers can earn credits for technologies that reduce emissions and fuel consumption during real-world operation but are not completely quantified on the compliance test cycle. EPA and NHTSA have already provided a list of so-called “off-cycle” technology credits and automakers can petition for new credit levels for existing technologies and for the inclusion of new technologies. Companies such as Mercedes-Benz,<sup>3</sup> Fiat Chrysler, Ford, and General Motors<sup>4</sup> have already used this petition process to increase their compliance flexibility. The petition process follows a clear methodology that requires extensive data input and allows for public review. It is essential that emissions and fuel economy credits are only awarded for technology adoption that results in consistently measurable and verifiable emissions and fuel consumption reductions in real-world vehicle operations.

We urge the Committee not to establish the vehicle greenhouse gas and fuel economy credits put forward in the Discussion Draft. Assigning credits is a task best left to NHTSA and EPA, as their existing authority allows for a transparent, public process based on technical analysis. We urge the committee to strike Sections 502 and 503. These Congressionally-defined credits would lead to increases in fuel consumption and greenhouse gas emissions.

Sincerely,

American Council for an Energy-Efficient Economy  
Center for Auto Safety  
Environment America  
League of Conservation Voters  
Natural Resources Defense Council  
Safe Climate Campaign  
Sierra Club  
Union of Concerned Scientists

<sup>1</sup> EPA, “GHG Emission Standards for Light-Duty Vehicles: Manufacturer Performance Report for the 2013 Model Year”, EPA-420-R-15-008, March 2015. Available at <http://www3.epa.gov/otaq/climate/ghg-report.htm>.

<sup>2</sup> <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-iihs-commitment-on-aeb-09112015>

<sup>3</sup> <http://www3.epa.gov/otaq/regs/ld-hwy/greenhouse/documents/420r14025.pdf>

<sup>4</sup> <http://www3.epa.gov/otaq/regs/ld-hwy/greenhouse/documents/420r15014.pdf>



SUBMITTED WRITTEN STATEMENT  
OF THE  
AMERICAN CAR RENTAL ASSOCIATION  
HOUSE SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE  
LEGISLATIVE HEARING ON  
THE "DISCUSSION DRAFT ON VEHICLE AND ROADWAY SAFETY"  
IN SUPPORT OF H.R. 2198  
"THE RAECHEL AND JACQUELINE HOUCK SAFE RENTAL CAR ACT OF 2015"  
OCTOBER 21, 2015

**Introduction**

Good morning, Chairman Burgess, Ranking Member Schakowsky and Members of the Commerce, Manufacturing and Trade Subcommittee of the Energy and Commerce Committee. The American Car Rental Association (ACRA) respectfully submits this written statement and ask that it be included as part of the Subcommittee's record for the hearing today.

The hearing today focuses on a "discussion draft" legislative proposal to improve vehicle and roadway safety. ACRA submits that the discussion draft omits a major bi-partisan legislative initiative that undoubtedly will improve vehicle and roadway safety -- H.R. 2198, "The Raechel and Jacqueline Houck Safe Rental Car Act of 2015." H.R. 2198 has the support of auto safety advocates and the industry the bill will regulate. ACRA respectfully encourages the Subcommittee's to include the text of H.R. 2198 in the mark-up legislative vehicle when it considers a House surface transportation bill safety title in the coming weeks.

ACRA is the national representative for over 98% of our nation's car rental industry. ACRA's membership is comprised of more than 300 car rental companies, including all of the brands you would recognize such as Alamo, Avis, Budget, Dollar, Enterprise, Hertz, National and Thrifty. ACRA also has as members many mid-size, regional car rental companies as well as smaller, "Mom & Pop" operators. ACRA members have over two million registered vehicles in service, with fleets ranging in size from one million cars to ten cars.

ACRA applauds this Subcommittee for its continued interest in auto safety legislation. Our 300-plus member organization has come together in an unprecedented partnership between an industry trade group and consumer safety organizations and advocates in support of H.R. 2198 and to urge Congress to enact the legislation. H.R. 2198 was introduced in the House early this year on a bipartisan basis and a companion bill (S. 1173) also was introduced in the Senate. The House bill was referred to the Committee on Energy and Commerce and to this Subcommittee.

In July, the Senate Commerce Committee adopted an amendment containing the text of S. 1173 by a unanimous, bi-partisan voice vote during its consideration of a Senate surface transportation safety title. Senator John Thune (R-SD), Chairman of the Senate Commerce Committee, pointed out the car rental recall provisions in the committee's safety title as an important vehicle safety improvement in his floor statement in support of the Senate's overall highway bill. The full Senate passed S. 1173 as a part of that chamber's long-term reauthorization legislation of federal surface transportation programs on July 30, 2015. We strongly encourage the House to follow the Senate's example and incorporate H.R. 2198 into the House's surface transportation reauthorization legislation.

#### **The Car Rental Industry and Consumer Safety**

In 2004, Raechel and Jacqueline Houck were killed while driving a rental car that had an unrecalled safety recall. H.R. 2198, the legislation named in their memory, was introduced in the House by Representatives Lois Capps (D-CA), Walter Jones (R-NC), G.K. Butterfield (D-NC) and Jan Schakowsky (D-IL) on May 1, 2015.

The Safe Rental Car Act would prohibit rental companies from renting or selling cars subject to a federal safety recall unless they have been repaired. The only exception to this rule would be if the manufacturer identified an interim measure that could be taken while the permanent repair was being developed that would eliminate the risk. Once the permanent repair becomes available, however, the car must be grounded until the repair is made.

ACRA worked collaboratively with consumer advocates to develop the provisions that are part of H.R. 2198. The bill fairly balances the public's interest in safety with the rental car industry's business model. The provisions of the bill are well-reasoned, effective and workable, given the realities of the auto rental marketplace. Moreover, in these aspects the legislation embodies the safety practices that have been adopted and followed by ACRA members for many years. Our organization strongly supports the legislation and encourages Congress to enact it this year.

Properly maintained vehicles in the rental industry are paramount. It's about trust – between customers and the individual businesses of ACRA members. Customers should have confidence that their rental is not the subject of a safety recall and the legislation provides that confidence. It is common sense that the laws require that which ACRA already recommends -- that rental cars subject to safety recalls be repaired before they are put into the hands of consumers.

#### **Important Safety Provisions of H.R. 2198**

- Timing of Notice and Grounding

H.R. 2198 defines the timeframe in which rental companies have to take a vehicle out of service (i.e., “ground” or “lock down” the vehicle) after receiving the safety recall notice. There is a period of time the companies need in order to receive the notice and successfully lock down the appropriate vehicles. The bill calls for the vehicles to be grounded as soon as practicable, or within 24 hours of receiving the safety recall notice. In the situation of a particularly large recall – one that affects more than 5,000 vehicles for one company, the lock down timeframe is 48 hours.

- Interim Remedy

The only exception under H.R. 2198 to the grounding or “do not rent,” requirement is when the manufacturer has issued a safety recall and has not developed the permanent repair, but offers a temporary fix – or interim remedy – that eliminates the safety risk. If the rental car company performs the interim remedy, then the car may continue to be rented. Once the permanent repair is offered by the manufacturer, the vehicle must be pulled from service and permanently repaired before being re-rented.

- Car Sales From Rental Fleets

The American car rental industry is the largest single purchaser of cars from domestic and foreign car manufacturers every year. The industry, in turn, sells a large number of cars each year through retail and wholesale channels. H.R. 2198 requires that rental car companies repair any safety recall to any vehicle prior to selling that vehicle – either through retail or wholesale markets. The only exception to this requirement is if a vehicle has been so severely damaged that it will only be sold for parts. In this instance, the rental company does not need to perform the recall work.

### **Federal versus State Role**

This is a critical national issue and deserves a national solution. The motor vehicle safety recall process is overseen by the National Highway Traffic and Safety Administration (NHTSA) and has its origins in the Federal Motor Vehicle Safety Act, originally enacted in 1966. Therefore, ACRA believes strongly that major changes to rental vehicle safety recall procedures should be made by Congress, rather than individual states. Rental cars are an integral part of interstate commerce and car rental customers cross state borders in rental vehicles that are rented in one state, driven and then returned in another state.

As attention to vehicle safety recalls remains squarely in the public spotlight, policy makers at the local, state and federal level are understandably eager to address safety concerns. There have been several initiatives at various levels of government to particularly address safety recalls concerning the rental industry. No two proposals are the same. ACRA believe a patchwork of state and local laws would be disruptive to consumers and the car rental industry since rental cars regularly are rented in one state and driven and left in another. In addition, these state and local proposals create challenges because each attempts to address a regulatory process that is controlled and overseen by a federal agency (NHTSA). ACRA's conviction is that rental car safety should be addressed on the federal level.

### **Organizations Supporting H.R. 2198**

ACRA is not alone in its support for H.R. 2198. This legislation is also supported by the following companies and organizations:

- Consumers for Auto Reliability and Safety (CARS)
- Advocates for Highway and Auto Safety; Center for Auto Safety
- Consumers Union
- Consumer Federation of America; Consumer Action
- National Association of Consumer Advocates
- Trauma Foundation
- American Automobile Association (AAA)
- Truck Renting and Leasing Association
- State Farm

### **Conclusion**

As strong supporters of H.R. 2198, we continue to talk to members of Congress and their staff in support of this legislation and are often asked why the car rental industry is willing to accept new federal regulation of the industry's practices. The response to that is easy. After listening to customers, ACRA engaged and became part of the process. The end result is a proposal that will provide car rental customers additional assurance that the vehicles they rent are safe and provides the car rental industry

with a critical and clear uniform federal standard across the country.

Again, ACRA urges Congress to enact this bill as soon as possible. As this Subcommittee works on legislation regarding all aspects of auto-safety, we respectfully request that H.R. 2198 be included in the safety title this Subcommittee and the full Energy and Commerce Committee will develop for the House highway bill.

Thank you for providing ACRA with the opportunity to submit this statement.



Independence drives us.

7101 Wisconsin Avenue  
Suite 1300  
Bethesda, MD 20814  
www.autocare.org  
T: 301.654.6664  
F: 301.654.3299  
info@autocare.org

October 19, 2015

Congressman Michael Burgess  
Chairman  
Subcommittee on Commerce, Manufacturing & Trade  
2125 Rayburn House Office Building  
Washington, DC 20515

Congresswoman Jan Schakowsky  
Ranking Member  
Subcommittee on Commerce, Manufacturing & Trade  
2322A Rayburn House Office Building  
Washington, DC 20515

RE: Discussion Draft to Provide Greater Transparency, Accountability, and Safety Authority to the National Highway Traffic Safety Administration

Dear Chairman Burgess and Ranking Member Schakowsky:

The Auto Care Association, on behalf of our 3,000 member companies representing more than 150,000 independent auto care businesses, are encouraged by the efforts to address the role of the National Highway Traffic Safety Administration (NHTSA) in order to further the passage of a long-term national transportation bill. The current discussion draft attempts to tackle the most complicated issues surrounding vehicle safety in our modern day with new sections on data privacy, hacking and cybersecurity. However, the current draft language under-values the role of the auto care industry in new and developing automotive technologies in a manner that could cripple the industry moving forward. We urge the subcommittee to revisit these critical sections of the discussion draft before proceeding.

The Auto Care Association is a national trade association representing the independent businesses within the supply chain of the \$328 billion vehicle maintenance and repair industry. The auto care industry contributes more than 2.2 percent to the U.S. gross domestic product and employs more than 4 million people. Following expiration of a new car warranty, over 75 percent of car owners patronize independent repair shops rather than new car dealers.

The proliferation of software, firmware, and hardware into the operating functionality of motor vehicles means mechanical functions of vehicles are being partially performed by electronic systems. These systems are functionally integrated with, and as a practical matter, inseparable from physical engine parts. Whereas in the past a repair shop or car owner could diagnose an issue impacting emissions and safety solely by mechanical adjustments, today they require access to the vehicles' control software using laptop computers and sophisticated diagnostic tools and software.

However, section 302 of the Committee's discussion draft states that it is "unlawful for any person to access, without authorization, an electronic control unit (ECU) or critical system of a motor vehicle, or other system containing driving data for such motor vehicle, either wirelessly or through a wired connection." It should be noted that the ECU is the brain of a vehicle and therefore for a service facility to repair a vehicle system, they will need access to that ECU for both the diagnosis and repair. The language in the draft is extremely vague and could be interpreted to provide the car company with full control over who has access to key vehicles systems many of which are needed for repair purposes. Such action could have severe anti-competitive impacts on our industry and car owners who depend on independent repair shops for about 80 percent of post warranty repairs.

The Auto Care Association believes that when a consumer purchases a vehicle, they own not only the sheet metal and mechanical parts, but the software as well. While the design of the software might be the property of the developer, ownership and therefore access to that software should be controlled by the owner of that vehicle and not by the vehicle manufacturer. Therefore, it is important that in generating any measures to

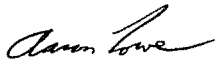
Auto Care Association Letter Regarding NHTSA Discussion Draft  
October 19, 2015  
Page 2

protect cyber security, that the ability for car owners to be able to obtain competitive service or for that matter to be able service the vehicle themselves must be taken into account.

Furthermore, it has been promoted by academics and motor vehicle manufacturers, alike, that the aftermarket is a critical ally in accelerating the adoption of advanced vehicle technologies that have proven safety benefits. Add-on devices for lane departure warning, location services, collision warnings, and other technologies are being developed not solely by motor vehicle manufacturers, but auto care companies and aftermarket divisions of motor vehicle equipment companies. These companies outnumber motor vehicle manufacturers by far and provide just as much of a necessary perspective on the development of best practices for data and systems security. However, the current discussion draft grossly limits their ability to be present during the development of policies and practices surrounding the security of motor vehicle equipment. Specifically, limiting the presence of aftermarket representation on advisory committees determining policies on cyber security, advanced vehicle technologies, and other critical systems to one or even no members potentially cripples these policies from being effective and consistent across the automotive technology spectrum.

The Auto Care Association, on behalf of the auto care industry, strongly urges the subcommittee to review and redraft portions of the current discussion draft published October 13, 2015 with regards to electronic vehicle systems, data, hacking, advanced vehicle technologies, and cyber security.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Lowe". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Aaron Lowe  
Senior Vice President, Regulatory and Government Affairs  
Auto Care Association



American Chemistry Council  
Statement for the Record  
House Energy and Commerce Committee  
Subcommittee on Commerce, Manufacturing, and Trade  
“Examining Ways to Improve Vehicle and Roadway Safety”

October 21, 2015

The American Chemistry Council (ACC) appreciates the opportunity to comment on the House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade hearing entitled, “Examining Ways to Improve Vehicle and Roadway Safety.” Representing over 180 companies engaged in the business of chemistry, ACC is an innovative \$801 billion enterprise and a key element of the nation’s economy. ACC members apply the science of chemistry to make innovative products and services that make people’s lives better, healthier and safer.

The business of chemistry, including manufacturing of lightweight plastics and polymer composites used by the transportation industry, creates over 800,000 manufacturing and high-tech jobs, plus six million related jobs that support families and communities. The products of chemistry, such as plastics and polymer composites, make it possible to provide clean air and water, safe living conditions, efficient and affordable energy sources, lifesaving medical treatments and safe and innovative transportation solutions. Given the focus of today’s important and timely hearing to consider legislative proposals intended to improve motor vehicle safety and prepare the National Highway Traffic Safety Administration (NHTSA) for the next generation of innovative vehicles, ACC would like to share background on our work in this important area.

Automotive technology is changing rapidly with the goal of creating more sustainable personal transportation and associated infrastructure. Manufacturers are increasingly utilizing innovative lightweight plastic and composite materials to increase auto fuel efficiency. This trend is likely to accelerate as automakers across the country take steps to meet the Corporate Average Fuel Economy (CAFE) standards. As vehicles become lighter in weight, Congress, NHTSA, automotive manufacturers and automotive material suppliers, including ACC members, play a critical role in ensuring that safety continues to improve.

Since FY2006, Congress has devoted \$1.3 million to the NHTSA to study the safety benefits of using plastics and composites to lightweight vehicles as a tool to achieve new CAFE standards. In the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141), known as “MAP-21,” Congress formally authorized the NHTSA Council for Emerging Technologies to implement the Plastic and Composite Intensive Vehicle Safety Roadmap (Report No. DOT HS 810 863). The NHTSA Safety Roadmap creates a 15-year research plan for the inclusion of emerging lightweight plastic and composite technologies in motor vehicles. ACC continues to be pleased that the products of chemistry – including lightweight plastic and polymer-based materials – have helped increase fuel efficiency, enabled more flexible vehicle designs, and helped improve auto safety, and that the NHTSA continues to facilitate these developments with necessary pre-competitive safety research and development, dynamic modeling and crash testing.

Fully implementing the NHTSA Safety Roadmap will help ensure automakers have the tools they need to continue to make automobiles more fuel efficient and lightweight while maintaining vehicle safety. NHTSA's continued work on the Safety Roadmap is needed to ensure that necessary pre-competitive research and development continues. This includes computer modeling for advanced plastic and polymer composites to help ensure accuracy in crash simulations. In addition, increased non-destructive testing and evaluation capabilities for plastic and polymer composites can help ensure safety integrity. We appreciate the Committee's support to continue this important, pre-competitive safety research at NHTSA to support the next generation of innovative vehicles.

Plastic and polymer composite products contribute robust and distinct economic benefits to our nation. Produced at 1,572 plants in 45 states, employing over 54,000 people and featuring a payroll of over \$2.5 billion, advanced plastics and composites in the automotive sector have doubled in use over the last twenty years.

Plastics and polymer composites are helping to solve many of our nation's transportation challenges, including those faced by automakers seeking to achieve current and future federal safety standards for vehicles and light trucks. Technological innovation plays an important role. For example, carbon fiber reinforced plastic can absorb up to twelve times the crush strength of steel and has the potential to reduce the weight of some vehicle components by as much as seventy-five percent. As manufacturers continue to lightweight vehicles in order to meet increasingly challenging automotive requirements, NHTSA needs to ensure that data and standards exist to achieve light-weighting while maintaining vehicle safety. Together, the plastics and polymer composites industry can successfully harness new and innovative vehicle technology to help auto manufacturers achieve safety requirements, fuel efficiency and contribute to reduced greenhouse gas emissions.

ACC applauds the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade for its efforts to improve vehicle and roadway safety. ACC supports this work and highlights the increasingly important role of lightweight plastics and polymer composites in manufacturing innovative automotive technologies. We look forward to continuing to work with the Committee, Congress, NHTSA and all stakeholders on the development of emerging technologies and manufacturing processes to improve fuel economy and auto safety.

# # #

<http://www.americanchemistry.com>

*The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is an \$801 billion enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 14 percent of all U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.*



American Association of  
Motor Vehicle Administrators

**safe drivers  
safe vehicles  
secure identities  
saving lives!**

October 20, 2015

House Energy and Commerce Committee  
Subcommittee on Commerce, Manufacturing and Trade  
2125 and 2322A Rayburn House Office Building  
Washington, DC 20515

Dear Energy and Commerce Committee Members:

AAMVA welcomes the opportunity to address concerns with the Vehicle Safety Title provided via discussion draft for its hearing on "Examining Ways to Improve Vehicle and Roadway Safety." AAMVA believes the true issue behind recent vehicle recall issues is not ultimately related to consumer notification. While informing the consumer may help satisfy completion rates, the larger issue at hand is ensuring manufacturers are complying with their responsibility to report recalls to the federal government in a timely manner.

Section 203 would mandate state participation in a safety recall notification program. This section would require state governments notify each owner or lessee of an open motor vehicle recall at the time of vehicle registration.

AAMVA objects to these provisions as follows:

- This legislation would place additional requirements on states participating in the National Driver Register (49 USC 30303). By adding subsection (d), and requiring that in order to participate in NDR a state must notify owners of open recall information at the time of vehicle registration, this language could cause some states to become non-participants in NDR. Non-participation would compromise a state's authority to issue any driver's license, as 49 USC 30304(e) requires that "before issuing a motor vehicle operator's license to an individual or renewing such license, a State shall request from the Secretary information from the National Driver Register."
- The National Driver Register does not include vehicle-related information. States participating in NDR do so under the presumption of checking the Register prior to driver's licensing transactions - not for checking status on vehicle transactions. The NDR is not a sensible conveyance for this type of information.
- This section constitutes an unfunded mandate on states and transfers costs and manufacturers' legal responsibility associated with notification requirements onto taxpayers and state government.

House Energy and Commerce Committee  
 Page 2  
 October 20, 2015

- Vehicle data, owner data, and vehicle identification numbers associated with an open motor vehicle recall reside in exclusively separate data systems. Integration of these systems for notification purposes (and into a driver database with for which there are no current links) would be costly with no associative funding mechanism.
- A mandate to check each vehicle's recall status at time of registration would contribute significantly toward customer wait times – adversely impacting a state's ability to serve customers.
- Integration of web solutions to individual branch offices and front-line employees is not universal. System capabilities for each state and branch office vary, including limited connectivity to protect system integrity.
- This legislation impacts all online customer service systems within the state. States using online vehicle registration methods would have to update their individual web portals to accommodate the ability to provide notification requirements for online vehicle registration transactions. This has the potential to disrupt not only vehicle transactions, but all web-based transactions.

**Recommendations:**

AAMVA continues to urge Congress to incentivize state involvement in a voluntary process. Language passed in the Senate would allow states to recognize their own system needs, anticipate additional requirements, and realize how they can become more involved in the recall notification process. AAMVA endorses the language in Section 34205 of the Senate-passed DRIVE Act (HR 22) as follows:

**SEC. 34205. PILOT GRANT PROGRAM FOR STATE NOTIFICATION TO CONSUMERS OF MOTOR VEHICLE RECALL STATUS.**

*(a) IN GENERAL.—Not later than October 1, 2016, the Secretary shall implement a 2-year pilot program to evaluate the feasibility and effectiveness of a State process for informing consumers of open motor vehicle recalls at the time of motor vehicle registration in the State.*

*(b) GRANTS.—To carry out this program, the Secretary may make a grant to each eligible State, but not more than 6 eligible States in total, that agrees to comply with the requirements under subsection (c). Funds made available to a State under this section shall be used by the State for the pilot program described in subsection (a).*

*(c) ELIGIBILITY.—To be eligible for a grant, a State shall—*

- (1) submit an application in such form and manner as the Secretary prescribes;*
- (2) agree to notify, at the time of registration, each owner or lessee of a motor vehicle presented for registration in the State of any open recall on that vehicle;*

House Energy and Commerce Committee  
Page 3  
October 20, 2015

(3) *provide the open motor vehicle recall information at no cost to each owner or lessee of a motor vehicle presented for registration in the State; and*

(4) *provide such other information as the Secretary may require.*

(d) *AWARDS.—In selecting an applicant for an award under this section, the Secretary shall consider the State's methodology for determining open recalls on a motor vehicle, for informing consumers of the open recalls, and for determining performance.*

(e) *PERFORMANCE PERIOD.—Each grant awarded under this section shall require a 2-year performance period.*

(f) *REPORT.—Not later than 90 days after the completion of the performance period under subsection (e), a grantee shall provide to the Secretary a report of performance containing such information as the Secretary considers necessary to evaluate the extent to which open recalls have been remedied.*

(g) *EVALUATION.—Not later than 180 days after the completion of the pilot program, the Secretary shall evaluate the extent to which open recalls identified have been remedied.*

(h) *DEFINITIONS.—In this section:*

(1) *CONSUMER.—The term “consumer” includes owner and lessee.*

(2) *MOTOR VEHICLE.—The term “motor vehicle” has the meaning given the term under section 30102(a) of title 49, United States Code.*

(3) *OPEN RECALL.—The term “open recall” means a recall for which a notification by a manufacturer has been provided under section 30119 of title 49, United States Code, and that has not been remedied under section 30120 of that title.*

(4) *REGISTRATION.—The term “registration” means the process for registering motor vehicles in the State.*

(5) *STATE.—The term “State” has the meaning given the term under section 101(a) of title 23, United States Code.*

Should Congress decide to move forward with other language, the responsibility for funding the full stand-up costs and the continuous maintenance of effort associated with a notification system must lie with the manufacturers and not with state budgets. If the Committee continues consideration of the draft discussion language, AAMVA proposes the following amendments to that language:

House Energy and Commerce Committee  
Page 4  
October 20, 2015

**SEC. 203. RECALL NOTIFICATION AT STATE VEHICLE REGISTRATION.**

*(a) RECALL PROGRAM PARTICIPATION. — Section 30119 of title 49, United States Code, is amended by adding at the end the following:*

*“(g) ADDITIONAL RECALL NOTICE —A participating State shall—*

*“(1) agree to notify, at the time of vehicle registration, each owner or lessee of a motor vehicle presented for registration in the State of any open recall on that vehicle;*

*“(2) provide the open motor vehicle recall information at no cost to each owner or lessee of a motor vehicle presented for registration in the State; and*

*“(3) provide such other information as the Secretary may require.*

*“(h) MANUFACTURER RESPONSIBILITY — Manufacturers are required to construct a centralized repository for all vehicle identification numbers subject to an open recall and ensure that information is current and accessible to the Secretary and participating states.*

*“(i) AUTHORIZATION OF FEE STRUCTURE - The Secretary is authorized to prescribe regulations establishing a fee structure whereby manufacturers assume the full cost of -*

*“(1) implementing the system*

*“(2) integrating state systems with the centralized repository of all vehicle identification numbers subject to an open recall*

*“(3) maintaining the operational costs associated with notification procedures at the time of state vehicle registration.*

*“(j) EXEMPTION FROM LIABILITY — The additional notification provided by a state at the time of vehicle registration is not meant to replace the notification obligations of the manufacturer. Only the manufacturer is liable in absence of notification.*

*“(k) SYSTEM AVAILABILITY — Notification at the time of state vehicle registration shall not be required prior to the establishment of state integration with the system described in paragraph (h).*

*“(l) DEFINITIONS.—In this section:*

*“(1) MANUFACTURER — The term ‘manufacturer’ has the meaning given the term under section 30102(a) of this title.*

House Energy and Commerce Committee  
Page 5  
October 20, 2015

*“(2) MOTOR VEHICLE.—The term ‘motor vehicle’ has the meaning given the term under section 30102(a) of this title.*

*“(3) OPEN MOTOR VEHICLE RECALL.—The term ‘open motor vehicle recall’ means a recall for which a notification by a manufacturer has been provided under section 30119 of this title, and that has not been remedied under section 30120 of this title.*

*“(4) PARTICIPATING STATE.—The term ‘participating state’ means a state that has voluntarily agreed to supplement existing notification requirements through agreement with the Secretary.*

*“(5) REGISTRATION.—The term ‘registration’ means the process for registering a motor vehicle in the State or renewing the registration for such motor vehicle.*

AAMVA thanks the Committee for their continued efforts to improve safety on the nation’s roadways. We look forward to our continued collaboration, and should you have any questions, feel free to contact me at [aferro@aamva.org](mailto:aferro@aamva.org) or (703) 908-5766.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ferro', with a long horizontal flourish extending to the right.

Anne S. Ferro  
President and CEO

ASF/sfb

**Statement of the Environmental Protection Agency****Hearing: Examining Ways to Improve Vehicle and Roadway Safety****Energy and Commerce Committee****U.S. House of Representatives****Subcommittee on Commerce, Manufacturing, and Trade****October 21, 2015**

The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to provide a statement for the hearing entitled, “Examining Ways to Improve Vehicle and Roadway Safety” before the Subcommittee on Commerce, Manufacturing, and Trade, Energy and Commerce Committee. Prior to the hearing date, the Subcommittee made available a discussion draft of legislation on vehicle and roadway safety. EPA has had only a very limited time in which to conduct a technical analysis of the draft (“Discussion Draft” or “Draft Legislation”) and the Administration has not developed a position on the draft legislation. Below we present some potential concerns based on this preliminary analysis.

**Vehicle Emission Compliance Standards for Low-Volume Vehicle Manufacturers (Section 405)**

Section 405 of the Draft Legislation establishes requirements for the National Highway Traffic Safety Administration (NHTSA) and EPA relating to regulatory treatment of certain “replica motor vehicles.” The draft provisions would require EPA and NHTSA to issue regulations exempting “low-volume manufacturers” who produce or import less than 500 replica/antique vehicles per year from vehicle safety standards, emissions testing, and inspection and maintenance requirements. Section 405(b) would amend Clean Air Act Section 206(a) to allow an engine from a vehicle with a certificate of conformity to be installed in an exempt replica vehicle,

subject to specific installation requirements, and would exempt these vehicles from emissions testing and inspection and maintenance requirements. The same section would require that manufacturers of such “exempted specially produced motor vehicles” register with EPA and submit annual reports to EPA describing the vehicles produced, the engines used in such vehicles, as well as other information.

As written, Section 405 of the Draft Legislation does not appear to differentiate between modern very low-emitting vehicle technologies and much dirtier certified vehicle systems from the earliest days of EPA’s automobile emission control program. If manufacturers, even small volume manufacturers producing 500 or fewer vehicles per year, were able to use antiquated but certified emission control systems, these vehicles could create a safety risk for carbon monoxide exposure in enclosed garages. They could also produce high emissions rates while being operated, as compared to modern vehicles, which are 90 percent cleaner today than the first vehicles certified under the Clean Air Act.<sup>1</sup>

#### **Provisions on “Advanced Automotive Technologies”**

Title V of the Discussion Draft, entitled “Advanced Automotive Technologies,” would amend both EPCA and the Clean Air Act, and would establish a system to provide greenhouse gas emission and fuel economy “credits” for manufacturers that manufacture automobiles with certain advanced technologies installed. Section 503(a) defines “advanced automotive technology” as “any vehicle information system, unit, device, or technology that meets any applicable performance metric and demonstrates crash avoidance or congestion mitigation benefits.” The draft definition then lists several technologies that would qualify, including among others forward collision warning, adaptive brake assist, and autonomous emergency breaking. The same section then defines “connected vehicle technology” to mean a “dedicated short-range communications device that meets applicable performance

---

<sup>1</sup> See [http://www3.epa.gov/airquality/peg\\_caa/carstrucks.html](http://www3.epa.gov/airquality/peg_caa/carstrucks.html) for more information

metrics” as defined by a technology advisory committee set up under a different provision of the Discussion Draft.

Section 504(c) provides the Secretary of Transportation (Secretary) with authority to issue a rule adding an advanced automotive technology to the list in 503 (a). “Any interested person” may petition the Secretary to promulgate such a rule. Such a rule would include a determination, made after consultation with EPA’s Administrator, of the “appropriate level of greenhouse gas credits and fuel economy credits” need to encourage additional advanced technology.

Section 502 of the Draft Legislation would amend Section 202(a) of the Clean Air Act (42 U.S.C. 7521(a)), which provides EPA with the authority and obligation to set air pollution standards for new motor vehicle engines and new vehicles. Section 502(a) would add a subsection to CAA 202(a) entitled “Credits for Advanced Automotive Technology,” which would apply to new light duty trucks, light duty cars, or medium-duty passenger vehicles built after model year 2018. Under this provision, any such vehicle equipped with at least three advanced automotive technologies (as defined by the Draft Legislation in section 503(a)) would receive a credit of “3 or more grams per mile,” as determined by EPA’s Administrator, that would count towards meeting EPA’s greenhouse gas standards. Any such vehicle equipped with at least one connected vehicle technology would receive “6 or more grams per mile” towards meeting the applicable GHG standards. Section 502 also requires that the Administrator, in 2026 and every two years thereafter, review the amount of credits being given under the program to determine whether the credit value should change, and to submit to Congress a report of such review and any determination. Section 502 also prohibits the Administrator from taking the installation of advanced technologies (or connected vehicle technology) into account for any purpose other than providing credits.

Section 502(b) contains provisions on state standards directed at the California motor vehicle emissions program, which has also been adopted by

multiple states pursuant to Section 177 of the Clean Air Act. Under Section 502(b), California would not be entitled to receive a waiver under Section 209(b) of the Clean Air Act if California's program did not also provide full credits for advanced automotive technologies. In addition, if NHTSA were to publish a new "safety performance metric" for a relevant vehicle technology, California would be required to revise its own standard within 30 days, or the waiver would cease to apply.

These "advanced automotive technology" provisions of the Draft Legislation would provide GHG credits that could be used by auto manufacturers to comply with EPA's greenhouse gas (GHG) emission standards, both for light and medium duty vehicles. These emission standards are part of a comprehensive national program designed to reduce GHG emissions, increase fuel economy, reduce the nation's dependence on foreign oil, and save consumers money. When President Obama first took office, one of the first actions he took was to direct the EPA and the Department of Transportation (DOT) to work with the auto industry to develop new fuel economy standards for cars and light trucks. This work culminated in President Obama announcing in July of 2011 national standards to double the efficiency of light-duty cars and trucks by 2025. Taken together, the Administration's light-duty standards span model years 2011 to 2025 and are the first significant improvement in over three decades. Under the final program, average new car and light truck fuel economy is expected to double, reaching an average greenhouse gas performance equivalent of 54.5 miles per gallon by 2025,<sup>2</sup> saving consumers \$1.7 trillion at the pump—roughly \$8,200 per vehicle for a Model Year 2025 vehicle — reducing oil consumption by 2.2 million barrels a day in 2025, and slashing greenhouse gas emissions by 6 billion metric tons over the lifetime of the vehicles sold during this period.

---

<sup>2</sup> The projected model year 2025 CO<sub>2</sub> compliance value of 163g/mi would be equivalent to 54.5 mpg, if the entire fleet were to meet this CO<sub>2</sub> level through tailpipe CO<sub>2</sub> and fuel economy improvements. The agencies expect, however, that a portion of these improvements will be made through improvements in air conditioning leakage and through use of alternative refrigerants, which would not contribute to fuel economy. Real-world fuel economy is typically 20 percent lower than the fuel economy equivalent GHG compliance value discussed here.

EPA's greenhouse gas standards were developed jointly with NHTSA and are based on comprehensive analysis of vehicle technologies that reduce GHGs and improve fuel economy, their effectiveness, and their costs. These rules require compliance with progressively more stringent GHG emission standards for the 2012 through 2025 model years. These standards are being implemented now, and the industry is outperforming the GHG standard.<sup>3</sup> While EPA is supportive of advanced technologies that increase vehicle safety, we have concerns about mandating GHG emissions credits for such technologies at this time without a better understanding of the potential impacts of this mandate on our vehicle emissions standards program. EPA and NHTSA have previously considered this issue as part of the final rule establishing GHG and fuel economy standards for light duty vehicles, model years 2017-2025 (see 77 FR 62732, October 15, 2012). At that time, we indicated that while there is a nexus between accident avoidance/congestion mitigation and fuel/CO<sub>2</sub> savings for the entire on-road fleet, EPA and NHTSA were limiting the availability of vehicle credits to those technologies where reductions in fuel consumption and CO<sub>2</sub> emissions could be reliably determined and attributed to the vehicles.

With respect to the Draft Legislation's provisions regarding advanced safety technologies, there is insufficient data today to tie GHG benefits to direct and reliably quantifiable improvements in any individual vehicle equipped with advanced safety technologies. Further, should such data become available in the future, EPA has discretion under the Clean Air Act to consider the appropriateness of such technologies under the LD GHG program.

---

<sup>3</sup> For more information on how auto manufacturers are complying with the standards, see <http://www3.epa.gov/otaq/climate/ghg-report.htm>.

**Conclusion**

EPA has not had sufficient time to fully review this draft legislation. While EPA is supportive of advanced safety technologies for automobiles, we are concerned that the potential impacts of the draft bill have not been fully considered. EPA further notes that it has authority to consider such technologies under the Clean Air Act already and that doing so in a regulatory context allows the agency to give full consideration (with broad public input) to the full range of impacts that any specific incentives for such technologies may have.



October 26, 2015

The Honorable Michael Burgess  
2336 Rayburn House Office Building  
Washington, DC 20515

SUBJECT: Vehicles and Roadway Safety

Dear Chairman Burgess,

As representatives of the largest companies in the auto recycling industry, we applaud your efforts to address the important issue of vehicle recalls. This is a critical issue not only for consumers and vehicle manufacturers, but also for companies in the auto recycling industry.

We appreciate that this issue is addressed in the Commerce, Manufacturing, and Trade Subcommittee discussion draft on Vehicles and Roadway Safety released on October 13, 2015. However, we encourage the committee to include additional language to ensure that consumers, including members of the auto recycling industry, have access to the part-specific recall information needed to remove defective parts from the marketplace.

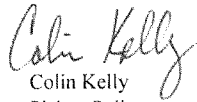
Our companies combined have more than 500 facilities and employ more than 30,000 individuals across the nation; we have the best interest of the consumer in mind. Our business allows average Americans an alternative to purchasing new replacement parts, which are often unaffordable for working families. It is the goal of our companies to sell safe and reliable parts to the customers we serve. In order for our industry to assure the highest-quality recycled parts to our customers, we must be able to check for specific recalled parts on the end-of-life vehicles we purchase. Currently, this information is not available to the auto recycling industry from existing databases. With the number of vehicle recalls growing every year, access to accurate recall information is no longer a luxury for our industry — it is a necessity.

We encourage the Commerce, Manufacturing, and Trade Subcommittee to adopt language that will require Original Equipment Manufacturers (OEMs) to report the name, number, and description of the specific part or parts that caused the recall of a vehicle, and to associate those parts with specific vehicle VINs. We would ask that this information be made available in real time through government or private sector databases. This requirement will allow companies in the recycled parts industry to check the VIN numbers of the vehicles that they purchase for recalled parts, in turn helping ensure that defective parts are removed from our stocks and not inadvertently returned to the road.

Mr. Chairman, this is a critical issue for our industry. We ask that you please take into consideration our recommendation for additional language to the Vehicles and Roadway Safety legislation. If we can answer any additional questions for you please do not hesitate to contact any of us.



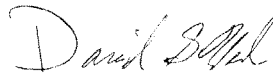
Ray Colas  
LKQ Corporation  
(312) 621-2755



Colin Kelly  
Pick-n-Pull  
(781) 873-1665



Steve Levetan  
Pull-A-Part  
(678) 607-7000



David Weed  
U-Pull & Pay  
(513) 419-6256

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Dr. Mark Rosekind  
Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Dear Dr. Rosekind,


Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

U.S. House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Commerce, Manufacturing, and Trade  
October 21, 2015 Hearing:  
“Examining Ways to Improve Vehicle and Roadway Safety”  
NHTSA Administrator Mark R. Rosekind, Ph.D.

Additional Questions for the Record

**The Honorable Michael Burgess, M.D.**

1. You testified that the National Highway Traffic Safety Administration has an *Office* for Vehicle Electronics, Vehicle Software, and Emerging Technologies. The Moving Ahead for Progress in the 21st Century Act (MAP-21) directed NHTSA to establish a *Council* for Vehicle Electronics, Vehicle Software, and Emerging Technologies. Please clarify if the “Office” is the same entity as the Council that NHTSA was required to establish under MAP-21.

**RESPONSE:** The Office Electronic Systems Safety Research and Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies are different entities.

A. If the Office and the Council are different, please describe the differences between the two and indicate whether or not the Office and Council interact with each other and in what manner they interact.

**RESPONSE:** Within NHTSA’s Vehicle Safety Research program, the Office of Electronic Systems Safety Research was created in 2012. Its mission is to implement research programs that will build a scientific base to support NHTSA’s (the agency) decisions in the areas of electronics reliability, cybersecurity, vehicle control systems and emerging technologies that use sensors to achieve higher levels of automation.

The Council, as established by MAP-21 in 2012, formalized an internal agency working group in the area of vehicle electronics. The Council expands NHTSA’s existing automotive electronics expertise by providing a forum for coordinating, communicating, and disseminating information on emerging technologies throughout the agency.

Managers and staff from the Vehicle Safety Research program are members of and participate in Council meetings, ensuring regular interaction.

B. If the Office and the Council are the same entity, when was the Office/Council established at NHTSA?

**RESPONSE:** The Office of Electronic Systems Safety Research and Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies are not the same entity. Both the Office and Council were established in 2012.

C. Other than the 2015 publication of "NHTSA and Vehicle Cybersecurity" that you referenced during the question and answer portion of the hearing, what other publications has the Office or Council produced on issues related to motor vehicle safety? Are there any pending publications expected to be produced by the Office/Council within the next 12 months? If so, what is/are the topic(s) of those publications?

RESPONSE: The Council is an internal coordinating body. It does not produce publications.

The Office of Electronic Systems Safety Research publishes research project reports when they are completed. These technical reports are published on the NHTSA website or in public dockets. Web publications can be found at [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov) by clicking on the Research link. Examples of recent technical publications from this Office include:

- Human Factors Evaluation Of Level 2 and Level 3 Automated Driving Concepts (DOT HS 812 182);
- Assessment of the Information Sharing and Analysis Center Model (DOT HS 812 076);
- A Summary of Cybersecurity Best Practices (DOT HS 812 075);
- Characterization of Potential Security Threats in Modern Automobiles: A Composite Modeling Approach (DOT HS 812 074);
- National Institute of Standards And Technology Cybersecurity Risk Management Framework Applied to Modern Vehicles (DOT HS 812 073).

The Office of Electronic Systems Safety Research also published a Federal Register Notice on Automotive Electronic Control Systems Safety and Security, outlining NHTSA automotive cybersecurity and electronic reliability programs, and solicited public feedback (79 Fed. Reg. 60574, Oct. 7, 2014). Over the next year, the Office of Electronic Systems Safety Research will continue to publish technical reports as projects are completed, such as reports on automated vehicles, automotive cybersecurity, and functional safety/electronics reliability.

2. What are the standard allowable nitrous oxide emissions for vehicles under current Environmental Protection Agency guidelines? Please also provide the allowable nitrous oxide emissions for vehicles in calendar year 2000.

RESPONSE: Nitrous oxide, or N<sub>2</sub>O, is a greenhouse gas pollutant primarily emitted by agricultural sources, although motor vehicles are also an important source. For Model Year (MY) 2012 and later light-duty vehicles, the EPA standard is 0.010 g of N<sub>2</sub>O/mile. The Committee may find more information about EPA's light-duty N<sub>2</sub>O standards at 77 Fed. Reg. at 62799-801 (Oct. 15, 2012). EPA did not determine that nitrous oxide was a pollutant requiring regulation under the Clean Air Act until 2009, so there were no applicable Federal standards for N<sub>2</sub>O in calendar year 2000.

3. How many vehicle safety recalls has NHTSA initiated over the last 10 years because a vehicle manufacturer denied the presence of a defect and refused to initiate its own recall? Of those cases, how soon after the defect was identified did NHTSA publicize the defect notice? Please provide the average number of days.

**RESPONSE:** NHTSA has influenced nearly 1,500 vehicle recalls over the last 10 years. Manufacturers almost always conduct recall campaigns after NHTSA requests that they do so. If the manufacturer declines to conduct a recall in response to NHTSA's formal request, the Associate Administrator for Enforcement may issue an Initial Decision that a safety-related defect exists. An Initial Decision will be followed by a Public Meeting, at which the manufacturer and interested members of the public can present information and arguments on the issue. During the meeting itself, the manufacturer may attempt to refute the agency's evidence in addition to presenting new information. Public interest groups, other manufacturers, trade associations, and consumers may also present information that will be considered and evaluated by NHTSA's Administrator in making a Final Decision on whether a safety-related defect exists. If a manufacturer still declines to conduct a recall, the entire investigative record is then presented to NHTSA's Administrator, who may issue a Final Decision that a safety defect exists and order the manufacturer to conduct a recall.

It is exceedingly rare for the agency to engage in this process to force a manufacturer to conduct a safety recall. NHTSA has initiated the foregoing steps for only three safety recalls in the last 10 years. In all three of these cases, manufacturers eventually agreed to issue defect notices, but only after NHTSA made an Initial Decision. The agency did not need to proceed to issue a Final Decision as the manufacturer agreed to initiate a recall prior to that step. In NHTSA-initiated recalls, the agency publishes both Initial Decisions and Final Decisions immediately after execution.

4. The staff discussion draft requires vehicle manufacturers to provide the vehicle identification numbers (VINs) of cars affected by a safety recall initiated by NHTSA within five business days before NHTSA can publicize the safety defect notice to consumers. If NHTSA publicizes a safety recall notice, as it did with respect to the Takata airbag inflator recalls on May 19, 2015, without having all affected VINs available on [safercar.gov](http://safercar.gov), what immediate action can consumers take to determine whether their vehicles are impacted by the recall?

**RESPONSE:** Consumers whose VINs are available on [safercar.gov](http://safercar.gov) can take immediate action. Consumers whose VINs are not yet identified can examine the recall notice and other documents to ascertain if the make, model and model year of their vehicle is included in the recall. They may also contact their dealer or the vehicle manufacturer to confirm if the build date of their vehicle puts it within the scope of the recall. However, using the VIN lookup tool is the best method for confirming if a consumer's vehicle is covered by a recall, which is why we urge consumers to use the tool on a recurring basis, as information is updated, to make sure their car is safe.

A. In the case of the Takata example, what immediate action could consumers take on May 19, 2015 to determine whether their vehicles were affected by the safety recall notice?

RESPONSE: Until more specific information became available so individual owners could check for a recall on their particular vehicle, consumers could review information on NHTSA's website and contact the vehicle manufacturer to determine if their particular make, model and model year was within the potential scope of the recall.

Many aspects of the Takata recall were unprecedented and very challenging, such as the number of inflators involved and the number of different manufacturers involved. Linking specific vehicles and VINs to the inflators supplied by Takata to these manufacturers was difficult and took time. The VINs for vehicles impacted by the Takata recall were available as soon as the various vehicle manufacturers could complete the task of compiling accurate lists.

5. Does Section 202 of the staff discussion draft change NHTSA's ability to determine the presence of a safety defect and decision to publish a notice of defect or noncompliance in the first instance?

RESPONSE: Section 202 would not impact NHTSA's ability to make an *Initial* (non-binding) Decision that a vehicle contains a safety-related defect or is in noncompliance with a safety standard. However, it would impede and delay, perhaps significantly, NHTSA's ability to notify the public of that decision and to make a *Final* Decision ordering a recall. The proposal would prevent NHTSA from publishing a notice of an Initial Decision that a vehicle contains a defect or is in noncompliance unless and until NHTSA notifies each affected manufacturer and supplier, acquires part numbers for all involved parts, obtains a comprehensive list of VINs for the vehicles that would be impacted, and obtains information on whether remedies are available. Although this process for initiating a recall is only needed when a manufacturer does not agree that there is a defect or noncompliance, the amendment would require NHTSA to draft the notice of its Initial Decision "in coordination with the affected manufacturer or manufacturers," creating what is in essence a conflict of interest. These provisions dilute NHTSA's authority to compel a recall, and therefore may create a disincentive for manufacturers to conduct voluntary recalls.

6. You testified that you could have obtained the Takata air bag recalls "years" earlier if your agency possessed "imminent hazard" authority. Please explain this in detail. What would your agency have done differently in the Takata air bag investigation if "imminent hazard" authority had been available? When would NHTSA have issued a recall with respect to Takata air bag inflator defects had the agency had imminent hazard authority?

RESPONSE: While we are pleased that Takata finally agreed on May 19, 2015, to declare defects under our statute, Takata may have done so sooner, perhaps significantly so, if the agency had imminent hazard authority. After opening our investigation in June 2014, NHTSA had numerous discussions with Takata and the vehicle manufacturers about conducting recalls. Those discussions went nowhere. As a result, in November 2014, NHTSA publicly called on the vehicle manufacturers to conduct nationwide recalls of certain driver side inflators, and sent a

recall request letter to Takata. The agency's demands were rebuffed, even though the inflator ruptures were known to create a likelihood of death or serious injury. If NHTSA had imminent hazard authority, the agency could have taken immediate action in the fall of 2014 in the form of an agency order, requiring Takata and the vehicle manufacturers to conduct a recall.

A. The Vehicle Safety Act already authorizes NHTSA to order a recall after deciding that a vehicle (or item of equipment) contains a safety-related defect. It appears that the only difference between your current authority and the "imminent hazard" authority you are seeking in Grow America is the fact that you wouldn't have to provide the manufacturer with an opportunity to present its views before ordering a recall. Given that you've known Takata's views for some time, what provision of your current statute prevented you from using your existing authority to order Takata to recall the air bags months or even years ago?

RESPONSE: The existing legal process under 49 U.S.C. §§ 30118(a) and (b), implemented in 49 C.F.R. Part 554, includes a full investigation and administrative proceeding before we can issue a Final Decision that a defect exists. After Takata rejected the agency's initial, informal requests for a recall, NHTSA sent Takata a recall request letter, consistent with its process under 49 U.S.C. § 30118(a), in November 2014. In early-December, Takata responded, and again refused to conduct the requested recall. The agency then began preparing for an administrative proceeding; however, before it formally commenced such a proceeding, Takata finally agreed to submit Part 573 Reports, declaring a safety-related defect. Under GROW AMERICA's imminent hazard authority, the agency would not have to go through the administrative proceeding before making a determination that a defect exists that presents an imminent risk of death or injury.

B. The Grow America Act describes an imminent hazard as "an emergency situation involving imminent hazard of death, personal injury, or significant harm to the public," and would authorize your agency to "issue an order prescribing such restrictions and prohibitions as may be necessary to abate the situation". What "restrictions and prohibitions" would you have prescribed in the Takata air bag case if Congress had given you this authority?

RESPONSE: GROW AMERICA's imminent hazard authority would have allowed NHTSA to quickly take certain actions. NHTSA could have prescribed any and all restrictions necessary to protect the American public from the risk of harm posed by the rupturing Takata inflators, including, but not limited to, ordering a recall much earlier than when Takata agreed to declare a defect on May 19, 2015. NHTSA could also have ordered, in whole or in part, the various actions the agency ordered on November 3, 2015, again much earlier than Takata agreed. Those actions included accelerated recall repairs to millions of affected vehicles, prioritization of recalls, and establishing deadlines for future recalls of other Takata inflators.

7. In January, Secretary Foxx announced a plan to add two automatic emergency braking systems to the list of recommended vehicle advanced technology features under its New Car Assessment Program (NCAP). In September, ten automakers committed to make automatic emergency braking a standard feature in new vehicles. NHTSA is also undergoing an update of the NCAP. When can we expect that update to be completed and how will it measure the performance of crash avoidance and congestion mitigation technologies entering the marketplace today?

RESPONSE: On December 8, 2015, the Department announced significant changes to NHTSA's NCAP program. NHTSA plans to finalize its decision regarding the NCAP upgrade in late 2016. NHTSA intends to measure the performance of crash avoidance technologies using the test procedures described in the Federal Register notice requesting public comments.

8. Has NHTSA developed any privacy standards for auto manufacturers regarding how auto manufacturers should treat the data being generated or collected by motor vehicles or motor vehicle equipment beyond what has been provided for event data recorders? If not, does the agency have any plans to do so within the next 12 months?

RESPONSE: No. We currently do not anticipate a need to publish any guidance in this area because the automobile industry has already developed its own guidelines, "Consumer Privacy Protection Principles: Privacy Principles for Vehicle Technologies and Services" (<http://www.autoalliance.org/index.cfm?objectid=CC629950-6A96-11E4-866D000C296BA163>). However, we are coordinating with the Federal Trade Commission on motor vehicle data collection specifically for the V2V rulemaking activities.

9. Does NHTSA believe that the information and data generated from increased car connectivity can enhance vehicle and roadway safety? If so, please describe how. If not, please explain why not.

RESPONSE: Yes, vehicle-to-vehicle (V2V) communications have the potential to greatly improve vehicle safety, which is why NHTSA has committed to Secretary Foxx to send a Notice of Proposed Rulemaking to require V2V communications for all new light vehicles to the Office of Management and Budget for review by the end of 2015. V2V communications send out a basic safety message 10 times per second and provide 360 degree situational awareness of surrounding vehicles, such as location, speed, direction, without collecting or sharing personal information about the driver. These unique features allow V2V communications to enable a variety of vehicle safety technologies, particularly intersection crash warning technologies, which are difficult or impossible to address using conventional sensing systems. V2V technologies stand out in addressing intersection crashes, which are among the most deadly crashes on our roads. Just two V2V applications, intersection movement assist and left-turn across path warnings, may help avoid more than half of these types of crashes – nearly 600,000 crashes and more than 1,000 lives potentially saved every year.

10. How many data privacy or security complaints has NHTSA received in the last 5 years? What actions has NHTSA taken to respond to or address those complaints?

RESPONSE: In the 5 years prior to the July 2015 publication of the *Wired* magazine article that immediately preceded the Chrysler entertainment system security recall, NHTSA received two complaints in which the primary allegation was that a computer module in a vehicle had been “hacked” to the degree that the ability to control the vehicle may have been compromised. Our examination and analysis of these incidents, which included interviews of the complainants, indicated that one vehicle may have experienced issues caused by aftermarket accessories and the other would likely only be susceptible to attack through a direct wired connection to the onboard diagnostics port. Since the publication of the *Wired* article and subsequent Chrysler recall, NHTSA has received about eight complaints scattered across models and model years relating to vehicle computer security. These complaints either stated a general concern about the security of vehicle computer systems, alleged that vehicles had been “hacked” in unspecified ways, or ascribed costly repairs or undiagnosed electrical problems to “hacking.”

NHTSA conducted follow-up interviews to determine if the incidents presented a safety risk. The agency has not identified any complaint data indicative of a safety risk but remains very concerned about the potential safety consequences of unauthorized control and/or modification of vehicle computer systems.

11. You testified that “do not drive” warnings are issued by the manufacturer and not NHTSA. Currently, regulations require manufacturers to submit draft safety recall notification letters to NHTSA to review and approve before they are sent to customers. Does NHTSA believe it has the authority to require auto manufacturers to issue “do not drive” or “stop drive” warnings in these notices? If not, how did the agency make that determination and why wasn’t this authority requested in its Grow America proposal? What is the agency reviewing and approving in the draft notices that auto manufacturers submit to NHTSA prior to sending out safety recall notices to consumers?

RESPONSE: NHTSA does not have the authority to order consumers not to drive their vehicles. In appropriate circumstances, NHTSA may require a manufacturer to advise consumers not to drive their vehicles until a safety-related defect or noncompliance is remedied.

NHTSA’s Recall Management Division reviews a draft of the entire safety recall notice for every recall and approves the draft or requires changes before the manufacturer sends the notice to vehicle owners.

12. Under what circumstances or conditions does NHTSA believe auto manufacturers should issue “do not drive” or “stop drive” warnings and notices to consumers? Have there been any cases in the last 5 years that NHTSA has recommended that an auto manufacturer issue a “stop drive” warning or notice and the manufacturer has refused to do so?

RESPONSE: NHTSA believes that “do not drive” or “stop drive” warnings and notices should be issued in instances where the safety risk posed by a defect is severe or catastrophic, and there is a high probability that the defect will manifest itself when the vehicle or equipment item is in use. Within the last five years, manufacturers have issued a handful of “do not drive” instructions in recall notices, and no manufacturer has refused to issue a “do not drive” or “stop drive” after NHTSA recommended that they do so.

13. Do you believe that customers with vehicles equipped with recalled Takata air bags should stop driving those cars?

RESPONSE: No, but we do urge these customers to have recall remedies performed as quickly as possible, particularly for cars located in the hot and humid areas of the U.S. As demonstrated by the prioritization in NHTSA’s Coordinated Remedy Plan, the greatest risk posed by Takata air bags exists in driver inflators in certain vehicles located in the hot and humid regions. Even for those vehicles, testing of air bags recovered from repaired vehicles and monitoring of field events indicate that ruptures are very rare. Given the fact that a vehicle must be in a frontal crash that is sufficiently severe to require a frontal air bag deployment and the air bag itself must contain the defect before a rupture can occur, NHTSA does not presently believe that owners should stop driving their cars.

14. How many lives does NHTSA estimate will be saved if every rental vehicle under open recall is grounded by rental car companies as required by Section 4109(a) of the Grow America Act? How many injuries does NHTSA estimate will be prevented if rental car vehicles are grounded as required by Section 4109(a) of the Grow America Act?

RESPONSE: The data for the requested estimates do not exist because, in general, data sources do not track a vehicle’s rental status. However, the U.S. rental fleet numbers several million vehicles, and there is no reasonable safety justification to treat this universe of vehicles differently than new car sales, where a known defect must be remedied. A consumer renting a vehicle is not well situated to know the recall status of that vehicle, and therefore especially vulnerable in this situation.

15. Has NHTSA identified any trends in the complaints it receives about the safety of after-market recycled parts? If so, please describe those trends.

RESPONSE: NHTSA has not identified any defect trends. However, the agency is particularly concerned about the sale of recalled Takata air bags by automobile recyclers and private individuals through online outlets such as E-Bay. NHTSA is currently working with E-Bay to identify and remove listings offering recalled Takata air bag modules for sale and to prevent new listings for these parts from appearing on the site. NHTSA has also contacted another online service specializing in listing salvage parts to accomplish similar goals.

16. When can we expect NHTSA to issue its Phase 2 Driver Distraction Guidelines? What additional considerations is NHTSA making in its development of the Phase 2 Guidelines?

RESPONSE: NHTSA expects to issue the Phase 2 Driver Distraction Guidelines in the near future. In developing the Phase 2 Guidelines, we are considering public input from our stakeholder meeting, meetings with technology providers, and comments to the Phase 1 guidelines.

17. What guidance does NHTSA currently provide to consumers on how to submit vehicle safety complaints?

RESPONSE: In late September 2015, NHTSA enhanced its online complaint form to include additional guidance to consumers on how to submit vehicle safety complaints. Our Safety Hotline personnel have been trained to provide comparable guidance when processing complaints from telephone calls. Each section and field of the form has descriptive/explanatory sentences that guide consumers on the information that is needed in that section and/or field. All required fields throughout the form are clearly indicated with asterisks. Finally, each page of the form has two "Chat Help" buttons that consumers can click to obtain live chat assistance to answer any questions that they might have about filling out the form.

18. In 2012, Congress passed MAP-21, which directed NHTSA to "prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically" within 18 months of the bill's enactment. Such regulations allow States to permit electronic odometer disclosures. Why hasn't NHTSA followed through with a rule?

RESPONSE: In the Department's August 13, 2014 letter to the Committee on Commerce, Science, and Transportation, NHTSA stated that we were unable to meet the 18-month deadline in MAP-21 for this rulemaking because of other higher priority safety rulemakings and the need for additional research on electronic odometer information reporting, which was then underway by the American Association of Motor Vehicle Administrators (AAMVA). After reviewing the AAMVA report, which was published in December 2014, we determined that additional research was still necessary because this rulemaking involves unique issues that the agency has not faced before. For example, some unique issues included: how to identify the equivalent of written signature for enforcement actions for forgery, the level of security sufficient for electronic servers, and achieving compatibility of electronic systems across States, among others.

A. How long does it take for a State to be granted a waiver from NHTSA if the State applies to electronically receive and process odometer disclosures?

RESPONSE: The waiver process, including analysis of the petition, publication of an initial determination in the Federal Register, a comment period and analysis of the comments, and issuance of a final determination, has averaged about 22 months. Five States have gone through the waiver process prior to 2012.

B. How many States have sought this waiver since 2012? Are there any applications pending today? If so, can you provide an estimate for when that waiver should be granted or denied?

RESPONSE: Since 2012, one State petitioned for approval of alternative odometer disclosure requirements. The agency issued an initial determination denying the request and expects to issue a final determination in the next 6 months.

C. Have any waivers been denied? Under what circumstances would NHTSA deny a waiver?

RESPONSE: None of the petitions have been denied in their entirety. Some petitions have been denied in part and granted in part.

The Motor Vehicle Information and Cost Savings Act requires NHTSA to approve alternate motor vehicle mileage disclosure requirements submitted by a State unless NHTSA determines that such requirements are not consistent with the purpose of the disclosure required by the Act.

Under this authority, NHTSA may deny the petition, for example, if the alternative disclosure scheme offered by a State does not use a secure title, does not create a sufficient "paper trail" for detecting and prosecuting odometer fraud, or does not adequately prevent alteration or forgery of odometer disclosure statements.

19. How is NHTSA currently working with States to improve the public's awareness of safety recalls?

RESPONSE: NHTSA regularly interacts with the American Association of Motor Vehicle Administrators and the State DMVs, and has provided guidance to State DMVs about ways to increase recall completion, particularly through promoted use of the agency's VIN look up tool, whether at physical locations or on their websites for renewing vehicle registrations. GROW AMERICA contains our proposed pilot grant that would help determine the feasibility of linking safety recall notification with vehicle registration and registration renewals.

20. The Federal Highway Administration has estimated that 12.5% of fuel wasted in traffic is a direct result of crashes. You have testified in front of this Committee that V2V technology has the potential to eliminate or mitigate up to 80% of non-impaired crashes. Do you agree with the assertion that there is "no link" between the technologies that could be eligible for CAFE credits (including DSRC connected vehicles) and potential fuel savings?

RESPONSE: Once widely implemented in the vehicle fleet, a variety of crash avoidance technologies (including V2V communications-based warning technologies) have the potential to save fuel for the fleet as a whole. In general, crashes cause congestion, so fewer crashes should equal less congestion, and any technology that helps drivers avoid crashes may help the fleet as a

whole to save fuel. However, for the reasons noted in the response to the following question, NHTSA does not believe that these crash avoidance technologies should be eligible for CAFE credits.

21. At the hearing, you described the credits proposed in Title V as a "trade-off" between safety and fuel economy, but in numerous other public materials, the Department of Transportation has touted the potential environmental and fuel saving benefits of the kinds of technologies that could earn these credits. For example, Secretary Foxx stated in NHTSA's press release accompanying the Advanced Notice of Proposed Rulemaking for V2V, "This technology could move us from helping people survive crashes to helping them avoid crashes altogether - saving lives, saving money and even *saving fuel* thanks to the widespread benefits it offers" (emphasis added). Do you disagree with Secretary Foxx?

RESPONSE: As noted in the response to the previous question, NHTSA agrees that crash avoidance technologies may contribute to fuel savings. The credits proposed in Title V, however, are premised on the assumption that the vehicle that avoids the crash is the one that saves the fuel, when in reality, the fuel savings accrue to the fleet as a whole. NHTSA and EPA have worked hard in the CAFE and GHG programs to ensure that vehicle manufacturers have to make real improvements to their fuel economy and GHG emissions, and we are concerned that the specific credit values provided for in Title V do not have a sound scientific basis and could reduce overall fuel economy improvements.

22. Are you familiar with the "Applications for the Environment: Real-Time Information Synthesis (AERIS) Program" within the Intelligent Transportation Systems Joint Programming Office? If so, what is its purpose?

RESPONSE: The objective of the multi-modal AERIS research program is to focus on technologies and applications that generate, obtain and use environmentally relevant real-time transportation data that could provide environmental benefits such as fuel use reductions and emission reductions. More details on this program led by ITS-JPO can be found at <http://www.its.dot.gov/aeris/>

23. In your oral testimony, you stated, "New, used, or rental vehicles that have a known defect should be remedied before they're on the road." You later stated, "I will repeat to be clear, new, used, and rental -- if it has a defect it should be off the road."

A. There are an estimated 46 million vehicles on the road under open recall today. Should all those vehicles "be off the road"?

RESPONSE: Any vehicle under a safety recall presents a risk to public safety. The only acceptable goal is repair of 100 percent of defective vehicles, and the agency will not be satisfied until we reach that goal. That is why we held an all-day event on April 28, 2015 to solicit ideas from industry, safety advocates, Congress and the public on how to

improve recall completion rates. Requiring that used cars and rental cars with open recalls are repaired before they are sold or rented is an essential element of our plans to boost recall completion rates. It is simply unacceptable for dealers or rental agencies to put the keys of a recalled vehicle in the hands of a consumer before the vehicle is repaired, which is why GROW AMERICA includes that prohibition. GROW AMERICA also proposes a pilot grant program to explore using State motor vehicle departments to inform consumers at the time of registration if their vehicle is under recall. NHTSA is engaged in a broad range of additional activities to boost recall completion rates and will continue to seek new ways to meet the goal of 100 percent completion for all safety recalls.

**The Honorable Brett Guthrie**

In your testimony before the Subcommittee, you stated: "In the GROW AMERICA Act, Secretary Foxx proposed significant enhancements to NHTSA safety authorities, including ... authority to prevent rentals or used-car sales of vehicles under safety recall ... [Sec. 4109]". As NHTSA is a data-driven agency that bases its policy decisions on hard data and facts, I would appreciate a chance to review the data and analyses NHTSA relied on to support the inclusion of Sec. 4109 in the GROW AMERICA Act. Specifically, I would request that you provide the analyses and methodologies you used in answering the following questions:

1. How many lives does NHTSA estimate will be saved if every rental vehicle under open recall is grounded by rental companies as required by Sec. 4109(a) of the Grow America Act?
2. How many injuries does NHTSA estimate will be prevented if the rental car grounding requirement in Sec. 4109(a) is enacted?
3. What will be the annual cost to the economy if Sec. 4109(a) is enacted?
4. In the latest year for which figures are available, how many fatalities were there in which the occupant died in a rental vehicle that was under open recall, and the defect or non-compliance was the cause of the crash?

**RESPONSE:** The data for the requested estimates do not exist because, in general, data sources do not track a vehicle's rental status. However, the U.S. rental fleet numbers several million vehicles, and there is no reasonable safety justification to treat this universe of vehicles differently than new car sales, where a known defect must be remedied. A consumer renting a vehicle is not well situated to know the recall status of that vehicle, and is therefore especially vulnerable in this situation.

5. How many lives does NHTSA estimate will be saved if Congress enacts Sec. 4109(b) of the Grow America Act which prohibits the sale by dealerships of all used vehicles under open recall?

6. How many injuries does NHTSA estimate will be prevented if the used car sales prohibition in Sec. 4109(b) is enacted?

7. What will be the annual cost to the economy if Sec. 4109(b) is enacted?

RESPONSE: The data for the requested estimates do not exist because, in general, data sources do not track the recall remedy status of vehicles offered for sale. However, with tens of millions of used cars sold annually in the U.S., there is no reasonable safety justification to treat this universe of vehicles differently than new car sales, where a known defect must be remedied.

8. Has NHTSA studied the likelihood that enactment of Sec. 4109(b) may reduce, instead of increase, recall completion rates because trade-in values of recalled vehicles will be diminished under this section and more vehicles will be sold in the unregulated private market?

RESPONSE: We do not believe that recall completion rates would be reduced. Manufacturers are required to provide a recall remedy free of charge for vehicles that are at 10 years old or less and customarily provide such remedies for free when vehicles are older than 10 years.

9. Does every vehicle recalled for non-compliance (such as a wrong phone number in an owner's manual) present an unreasonable risk to actual safety that warrants the vehicle's immediate grounding?

RESPONSE: No. Vehicles are recalled because they either do not comply with Federal motor vehicle safety standards (FMVSS) or because they have a safety-related defect creating an unreasonable risk. Non-compliance with the FMVSS does not necessarily present an unreasonable risk. In circumstances where an instance of non-compliance such as a labeling or marking issue occurs, manufacturers may petition NHTSA for a determination that the non-compliance is inconsequential. If that petition is granted, no recall occurs.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Ms. Maneesha Mithal  
Associate Director, Privacy and Identity Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Ms. Mithal,

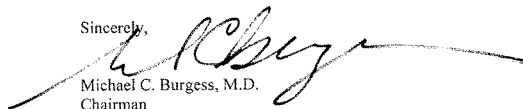
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Questions for the Record for Maneesha Mithal  
Hearing on “Examining Ways to Improve Vehicle and Roadway Safety”  
House Committee on Energy and Commerce  
Subcommittee on Commerce, Manufacturing and Trade  
October 21, 2015

**Questions from Chairman Burgess:**

1. **You testified that the FTC has had several meetings with NHTSA staff related to data privacy and security issues. Please provide the names and titles of the individuals at NHTSA that the FTC has met with on data privacy and security issues.**

FTC staff has met with NHTSA on a number of connected car issues as they relate to consumer privacy and data security, including Event Data Recorders (“EDRs”), vehicle-to-vehicle (“V2V”) and vehicle-to-infrastructure issues, the FTC’s Internet of Things workshop, and cybersecurity concerns. These meetings have included many NHTSA and FTC representatives. Some of the NHTSA representatives include the following:

- David Strickland, then-NHTSA Administrator
- Chan Lieu, then-Director, Office of Governmental Affairs, Policy and Strategic Planning
- Dana Sade, Senior Attorney, Legislation and General Law Division, Office of the General Counsel
- Thomas Healey, Attorney Advisor, Office of General Counsel
- Alison Pascale, Director, Governmental Affairs, Policy and Strategic Planning
- Frank S. Borris, II, Director, Office of Defects Investigation
- Justine S. Casselle, Trial Attorney, Litigation and Enforcement, Office of Chief Counsel
- Nathaniel Beuse, Associate Administrator, Office of Vehicle Safety Research

2. **You testified that the FTC uses Section 5 of the FTC Act to determine whether an auto manufacturer has tested the security of a car appropriately before putting it on the market for public consumption. What constitutes an unfair security practice that could cause or likely cause substantial consumer injury in the automotive sector?**

Under Section 5 of the FTC Act, the Commission has authority to challenge companies’ data security practices that are unfair or deceptive. A company engages in unfair acts or practices if its data security practices cause or are likely to cause substantial injury to consumers that is neither reasonably avoidable by consumers nor outweighed by countervailing benefits to consumers or to competition. Whether a particular practice is unfair under Section 5 will depend on the facts and circumstances of each case. In determining whether a company’s security practices are unfair, the Commission looks to the reasonableness of its security, in light of harms associated with potential vulnerabilities, the size and complexity of the company’s data operations, and the cost of available tools to improve security and reduce vulnerabilities. The Commission has emphasized a process-based approach to data security that includes designating an individual or individuals responsible for data security; conducting risk assessments; designing a security program to address risks, including administrative, physical, and technical safeguards; and adjusting the program to address changes. A company’s failure to implement these processes – whether in the retail, financial, software, or automotive sectors – can be unfair.

3. **How does the FTC define reasonable data privacy and security practices with respect to motor vehicles?**

Reasonableness is not a one-size-fits-all approach. As noted above, what is reasonable will depend on harms associated with potential vulnerabilities, the size and complexity of a company’s data operations, and the cost of available tools to improve security and reduce vulnerabilities. The Commission has

emphasized a process-based approach to data security that includes designating an individual or individuals responsible for data security; conducting risk assessments; designing a security program to address risks, including administrative, physical, and technical safeguards; and adjusting the program to address changes.

4. **In title three, Section 301, the staff discussion draft proposes that an auto manufacturer will be liable to a civil penalty of up to \$5,000 per day with a maximum penalty of \$1 million if it does identify that it will meet all seven of the requirements in its privacy policy or is found to have violated any of the terms of its privacy policy. How does the FTC currently enforce reasonable data privacy practices among auto manufacturers? What is the process the FTC must undertake to impose a civil penalty against an auto manufacturer that does not maintain reasonable data privacy practices? What is the maximum penalty the FTC can impose against an auto manufacturer found to have unreasonable data privacy practices?**

Under Section 5 of the FTC Act, a company acts deceptively if it makes materially misleading statements or omissions about a privacy practice, and such statements or omissions are likely to mislead reasonable consumers. Further, a company engages in an unfair privacy practice if the practice causes or is likely to cause substantial injury to consumers that is neither reasonably avoidable by consumers nor outweighed by countervailing benefits to consumers or to competition. If an auto manufacturer were to engage in an unfair or deceptive privacy practice, the Commission could seek injunctive relief against the manufacturer, along with equitable monetary remedies, such as redress to injured consumers or disgorgement of ill-gotten gains. Injunctive relief could include, among other things, a prohibition on future misrepresentations, requirements to provide choices, or corrective disclosures. If a manufacturer were to violate an existing FTC order, it could be subject to civil penalties in the amount of up to \$16,000 per violation per day.

Even though the FTC cannot obtain civil penalties for an initial violation of Section 5, I do not believe the bill would provide greater protection for consumers than under current law. Indeed, as noted in the Commission's written testimony, because the bill contains a safe harbor exempting a manufacturer from FTC oversight, and Section 32402(d)(2) provides a separate exemption from civil penalties, a manufacturer that submits a privacy policy that meets the requirements of Section 32402(b) but does not follow it would not be subject to any enforcement mechanism. Furthermore, although the privacy policy requirements only apply to information collected from vehicle "owners, renters, or lessees," the safe harbor would immunize manufacturers for privacy practices related to other types of consumers – such as collecting information from vehicle shoppers through manufacturers' websites. Thus, for example, the Commission could be precluded from bringing a Section 5 case based on any privacy and data security-related misrepresentation on a manufacturer's website, even if the misrepresentation is unrelated to vehicle data.

Moreover, even in the limited circumstances where the discussion draft would make the auto manufacturer liable for civil penalties, these civil penalties would not serve as a strong disincentive for law violations because the maximum penalty is only \$1 million. A data security violation could easily result in consumer injury in excess of \$1 million."

5. **In the FTC's view, how should Congress penalize malicious hackers from exploiting cybersecurity vulnerabilities in vehicles without impeding the work of "white hat hackers" and good actors within the security research community who make responsible disclosures and help to improve vehicle security?**

I strongly support the goal of deterring criminals from accessing vehicle data. However, security researchers provide an important role by uncovering vulnerabilities that companies can then voluntarily fix, thereby protecting consumers. Ideas to balance these interests include the possibility of penalizing only those hackers who access systems with "malicious intent" and including a specific exemption for researchers who disclose vulnerabilities to companies before making them public. Of course, I understand that protections for researchers must be carefully tailored so that illegal conduct is not immunized. FTC staff would be pleased to work with subcommittee staff to try to balance the interests involved.

- A. **How should white hat hackers and good actors within the security research community disclose cyber security vulnerabilities "responsibly"?**

In my experience, security researchers that wish to disclose vulnerabilities responsibly reach out to a business privately and give the entity an opportunity to voluntarily address the vulnerability prior to publishing their findings. I believe this would be a good approach.

6. **You testified that the FTC has focused on process with respect to maintaining cyber security across all industries and sectors. Should those processes be any different to secure critical safety systems in vehicles compared to other critical infrastructure? If yes, how so? If not, why not?**

As discussed above, companies should be required to implement reasonable data security measures. In its guidance to businesses, the Commission has emphasized a process-based approach to data security that includes, among other things, conducting risk assessments and designing a security program to address those risks. Certainly, the specifics of a risk assessment will differ depending on the risks (e.g., safety concerns or the types of information collected), the types of vulnerabilities that have been known to target a particular industry, the size and complexity of a company's operations, and the availability of tools to address the risks.

7. **Connected cars are a part of a larger Internet of Things ecosystem. Should the governance of connected cars be any different from other connected things?**

Earlier this year, Commission staff issued a report summarizing its November 2013 workshop and outlining policy recommendations on the Internet of Things ("IoT").<sup>1</sup> The recommendations included, among other things, encouraging companies to implement data minimization by taking a privacy-by-design approach, continued use of notice and choice, and implementing reasonable security for IoT devices. While the implementation of these recommendations may need to be tailored for specific industries, such as connected cars, the broader principles apply across the Internet of Things ecosystem. For example, the report encourages companies developing IoT products to implement reasonable security by building it into their devices at the outset, promoting it through hiring and training, and overseeing service providers. Companies should also conduct a risk assessment, and if the assessment identifies significant risks, they should implement a defense-in-depth approach, in which they consider security measures at several levels. These recommendations apply equally to connected cars as well as other connected devices. The report also emphasized that in the Internet of Things, companies need to address physical security and safety risks, not just risks associated with sensitive information. This point applies with particular force in the context of connected cars.

8. **Does the FTC believe that the privacy principles developed by the Alliance of Automobile Manufacturers and the Association of Global Automakers adequately protect customers' data privacy?**

I support the goals of the privacy principles developed by the Alliance of Automobile Manufacturers and the Association of Global Automakers. While these principles are a good first step to protecting consumer privacy, there is room for improvement. For example, the principles do not require affirmative express consent before any collection of precise geolocation information. As the Commission has stated previously, because geolocation information can reveal a consumer's movements in real time, as well as provide a detailed, comprehensive record of a consumer's movements over time, use of this sensitive information can raise privacy concerns.

<sup>1</sup> See *FTC Staff Report on the Workshop "Internet of Things: Privacy and Security in a Connected World"* (Jan. 27, 2015), available at <https://www.ftc.gov/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things>.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3841  
November 6, 2015

Mr. Mitch Bainwol  
President and CEO  
Alliance of Automobile Manufacturers  
803 7th Street, N.W., Suite 300  
Washington, DC 20001

Dear Mr. Bainwol,

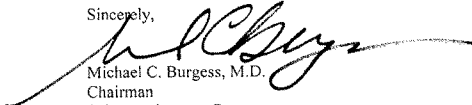
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment



**AUTO ALLIANCE**  
DRIVING INNOVATION®

11/20/2015

**Questions for the Record**

**Mr. Mitch Bainwol on behalf of the Alliance of Automobile Manufacturers  
October 21, 2015 Subcommittee on Commerce, Manufacturing, and Trade Hearing entitled  
"Examining Ways to Improve Vehicle and Roadway Safety"**

The Honorable Michael C. Burgess, M.D.

- 1. You testified that the Auto Alliance would consult with NHTSA and NIST in the development of cybersecurity best practices within the Auto-ISAC. Are there plans to consult with any other federal agencies or standard-setting bodies, such as the International Organization for Standardization or SAE International in the development of the cybersecurity best practices?**

The development of cyber resiliency best practices is underway. Members of both the Auto Alliance and Global Automakers are working to develop industry-wide guidance that addresses current and future cybersecurity challenges. During this process and as the product evolves, members plan to look to experts across all fields.

The Alliance recognizes that the NIST Cybersecurity Framework is a highly regarded approach to cybersecurity and anticipates looking to the NIST Framework to inform our efforts.

- A. How long do expect it to take for the Auto-ISAC to develop cybersecurity best practices once the Auto-ISAC is fully operational?**

The auto industry is working diligently towards the development of cyber resiliency best practices. Over the coming months, we anticipate reaching our initial benchmarks. We also anticipate that our Auto-ISAC will be a key voice for the ongoing development of best practices. The Auto-ISAC will have initial operating capability by the end of 2015 and a complete information-sharing portal in the next few months thereafter.

- B. You testified that the Auto-ISAC will eventually include suppliers among its membership. Will membership on the Auto-ISAC be extended to third-party security researchers?**

We anticipate opening up membership to suppliers early in 2016. Many individual automakers are already working with responsible members of the security research community. Automakers recognize the importance of working with these stakeholders and will continue to do so in the future.

---

**Alliance of Automobile Manufacturers**

**BMW Group • Chrysler Group LLC • Ford Motor Company • General Motors Company • Jaguar Land Rover •  
Mazda • Mercedes-Benz USA • Mitsubishi Motors • Porsche • Toyota • Volkswagen • Volvo**  
803 7<sup>th</sup> Street N.W., Suite 300, Washington, DC 20001 • Phone 202.326.5500 • Fax 202.326.5567 •  
[www.autoalliance.org](http://www.autoalliance.org)

- 2. How would a requirement on vehicle manufacturers to submit specific part numbers, names, and descriptions of all parts affected by a safety recall impact the manufacturer's ability to identify all affected VINs in a timely manner? What additional costs would this type of requirement impose on manufacturers?**

To the extent that part number data may be useful in the repair of a recalled vehicle, the part number is typically identified not only in repair instructions but also on the defect information report submitted by the manufacturer to NHTSA. As you know, vehicles are comprised of over 30,000 different parts, so creating a data base of part numbers on affected and non-affected vehicles is an overly broad and burdensome approach to ensuring the removal of defective parts from the stream of commerce. Not only would this have a decimating impact on NHTSA's resources but it also would provide little to no safety benefit.

- 3. How often do regional recalls occur? What impact would the elimination of regional recalls have on the manufacturer's ability to prioritize repair parts to populations or geographic areas that are more vulnerable to a safety defect than others?**

Regional recalls are a very small minority of those conducted by the industry. An analysis of NHTSA recall data commissioned by the Alliance determined that only about three percent of the light passenger vehicle recalls conducted between 2000 -2013 were regional recalls. There are reasons why, in some instances, a regional recall makes sense; therefore, continuing to have that capability is appropriate. For one, elimination of regional recalls would adversely impact a manufacturer's ability to prioritize repairs to areas where the need is greatest. That said, it is an industry practice that any vehicle subject to a regional recall will be repaired, even if brought to a dealer, outside of the region where the recall is active. In addition, we understand that the concern of those wanting to do away with regional recalls is that a vehicle may "travel" over its life –it may visit or be sold into an area where a recall was deemed appropriate, but which did not include that vehicle since it was not in the region at the time the recall occurred. Automakers carefully consider the proper expanse of the recalls they undertake – and work hard to assure all potentially affected vehicles are included.

- 4. Within your membership, do you know how many automakers have one senior official responsible for safety within their corporate organization structure? If so, how does that individual currently interact with the rest of the organization and work to ensure that information submitted to NHTSA on safety issues is accurate?**

It is our understanding that all Alliance members have a senior official responsible for the oversight of safety issues within their organizational structure. The Alliance is not in a position to describe the company-specific interactions, internal or with NHTSA, of the various member companies.

- 5. How do auto manufacturers currently coordinate with NHTSA on publicizing vehicle safety recall notices? How typical is it for NHTSA to publicize a recall notice before the manufacturer has identified all affected VINs?**

Once a determination has been made to conduct a safety recall, actions to implement that recall are done with the oversight or coordination of the agency.

The Alliance continues to work with NHTSA to develop strategies to increase recall completion rates. The Auto Alliance, Global Automakers, and the National Automobile Dealers Association commissioned extensive national research conducted by Public Opinion Strategies to gain insight into what motivates consumers to have a recall completed and what causes consumers to choose not to have a recall completed. This information has been shared with NHTSA and the agency is currently planning an advertising campaign to promote recall completion.

**6. Are there certain regulatory barriers in place right now that are preventing car companies from fully investing in crash avoidance technologies and other next-generation safety features?**

The research and development of vehicle safety systems can easily outpace the ability of regulators to address these new systems. The industry works with the agency through the petition and comment process but recognizes this process does not always yield timely and adequate guidance or reaction by the agency. An example of this is a petition filed by Toyota with NHTSA in 2012 seeking amendment to the agency's lighting standard to allow advanced adaptive high beam systems already allowed in Europe and elsewhere. An analysis by the Insurance Institute of Highway Safety (IIHS) found property damage liability claims fell as much as ten percent (10%) with adaptive headlights. NHTSA has not responded to Toyota's petition.

**A. How should we expect consumers to embrace advanced automotive technologies? Do consumers face any obstacles to adoption, such as cost?**

The more advanced systems being developed today involve very sophisticated sensors and elaborate software controls that are needed to register, understand and react to the environment being faced. Once consumers are educated on the benefits of technologies, they tend to welcome the safety benefits these new systems can provide. According to the J.D. Power 2015 U.S. Tech Choice Study, three of the top five technologies consumers most prefer in their next vehicle are related to collision protection. J.D. Power further reports that price is the most important consideration for consumers when considering advanced technology features.

**B. What types of education should be provided to consumers to increase their awareness, understanding, and trust in crash avoidance technologies?**

There are several education initiatives underway to educate consumers about new crash avoidance technologies. The Alliance, through our "Overview of Driver Assists" channel on YouTube, helps to provide the public with helpful information on the new crash avoidance technologies available on vehicles. Automakers, through their advertising and in their showrooms, also provide information to consumers on new technologies being deployed. The National Highway Traffic Safety Administration, through [www.safercar.gov](http://www.safercar.gov), provides consumers

a brochure entitled "Buying a Safer Car" that provides consumers helpful information on technologies to look for when making a new vehicle purchase. The National Safety Council also has a website that aims to inform consumers of the technologies available on vehicles. The website is called: "My Car does What?" and is available at the following web address: <https://mycardoeswhat.org/>

**7. Security researchers can play a valuable role in the discovery and mitigation of cybersecurity vulnerabilities in vehicles. What is the auto industry doing to work with the security research community to help identify and remediate cybersecurity threats in vehicles?**

Security research is an integral part of providing safe automobiles. Individual automakers set their own policies and have their own programs for security testing. Many individual automakers have longstanding engagements with responsible members of the research community, and many have plans to further increase and strengthen these relationships.

Auto manufacturers engage both individually and industry-wide with third party security technologists, multi-stakeholder and auto-centric collaboratives, government programs and working groups, universities, and Science Technology Engineering and Mathematics (STEM) initiatives. These relationships help automakers develop vehicle-specific security technologies and practices.

Currently, the Auto Alliance is participating in NTIA's Multi-stakeholder Process on Research Vulnerability Disclosure. This effort seeks to find common ground between industry and security researchers on responsible vulnerability disclosure, in order to maximize vehicle security and safety.

**The Honorable Jan Schakowsky**

1. On July 24, 2015, General Motors, one of your members, announced that Chevrolet, Buick, GMC and Cadillac will offer 22 different crash avoidance technologies across their 2016 model year U.S. lineups. Under Section 502 of the discussion draft, GM could receive three or more grams per mile in greenhouse gas (GHG) emissions credits for each of those technologies. That would mean that a GM vehicle that carries all 22 active safety technologies could receive at a minimum 66 grams per mile in GHG credits.

Similarly, Section 503 of the draft would grant manufacturers Corporate Average Fuel Economy (CAFE) credits in exchange for installing certain safety technology onto their vehicles. It seems to me that the combined environmental impact of 66 grams per mile in GHG emissions credits and equivalent credits toward meeting CAFE standards for every one of those vehicles could be significant.

- A. For each of your member companies, how many crash avoidance technologies per vehicle model are planned to be offered each model year from 2016 through 2021?

The Alliance is not privy to the product plans of our member companies, so we are unable to provide company-specific data. However, the Insurance Institute for Highway Safety (IIHS)

estimates that seven percent (7%) of model year (MY) 2015 vehicles have forward collision warning as a standard feature and four percent (4%) of MY 2015 vehicles have advanced automated braking as a standard feature. Title V would complement automakers market push with a market pull by consumers that would help accelerate the deployment of these potentially life-saving technologies as standard features in vehicles at all price points.

**B. Should the number of GHG and CAFE credits that manufacturers receive under Title V of the bill be capped at a particular number of credits? If so, what should the cap be for GHG credits and for CAFE credits?**

The Alliance supports Title V because it will help accelerate the deployment of these life-saving technologies. The benefits of crash avoidance technologies are unprecedented – a 2015 study by the Boston Consulting Group found advanced driver-assistance systems, upon achieving mass implementation, could prevent nearly 10,000 fatalities and save the U.S. \$251 billion annually. Additionally, NHTSA estimates that connected vehicle technology could potentially mitigate or eliminate up to 80% of crash scenarios involving non-impaired drivers. The environmental benefit is clear as well. There is a direct link between unnecessary fuel consumption and traffic congestion. In its 2015 annual report, the Texas A&M Transportation Institute estimated that travel delays due to traffic congestion caused drivers to waste more than 3 billion gallons of fuel last year.

The Alliance welcomes the opportunity to work with the Committee on the specifics of this provision. The credits outlined in Title V are modest and comparable to other available CAFE/GHG emissions credits – such as those given for Flexible-Fuel Vehicles (FFVs), electric vehicles, and even those given for greener refrigerants and active grill-shutters. To help put these credits in perspective, the average Tesla Model S vehicle currently generates credits equivalent to 302 grams per mile. Beginning in MY 2017, battery electric vehicles, plug-in hybrid electric vehicles, and fuel cell vehicles will be eligible for a credit multiplier, allowing each vehicle to be counted more than once. As a result, the Tesla Model S credit equivalent will be 604 grams per mile. This number is significant when compared to the 3 grams per mile per advanced vehicle technology credit or 6 grams per mile per connected vehicle technology prescribed in Title V.

**C. In your testimony, you state that Title V of the discussion draft would “incentivize the adoption of these advanced technologies.” GM, however, has already elected to offer 22 different crash avoidance technologies on thousands of its vehicles without the possibility of GHG or CAFE credits as an incentive. Please explain why GHG and CAFE credits are necessary to incentivize safety when vehicle manufacturers are already including advanced technologies in their vehicles?**

Automakers continue to develop and install crash avoidance technologies in their vehicles. The Insurance Institute for Highway Safety (IIHS) estimates that seven percent (7%) of MY 2015

vehicles have forward collision warning as standard feature and four percent (4%) of MY 2015 vehicles have advanced automated braking as a standard feature (<http://www.iihs.org/iihs/ratings/crash-avoidance-features>). Title V would add a consumer market pull to automakers market push of these potentially life-saving technologies and will help to accelerate widespread deployment across the entire fleet, in vehicles at all price points.

**The Honorable Lois Capps**

1. During the hearing, I asked you if the Alliance of Automobile Manufacturers (Alliance) still opposed H.R. 2198, the Raechel and Jacqueline Houck Safe Rental Car Act, despite General Motors' support for the bill. You responded that "the Alliance does not have consensus" on this bill, but provided no further explanation.
  - A. Please explain why the Alliance still does not have a consensus on the bill despite the addition of Section 9 in H.R. 2198, which was added to the legislation to address General Motor's concerns about "loss of use" liability.

As a trade association, the Alliance operates on a consensus basis. We do not have consensus among our members on this bill. However, the Alliance has previously proposed language to address this issue. We remain willing to work with all parties that so that all vehicles under recall are repaired expeditiously.

- B. Does Section 9 of H.R. 2198 satisfy the concerns of the Alliance given General Motors' support for the legislation? If not, please explain why.

Section 9 of H.R. 2198 preserves the status quo with respect to auto manufacturer's liability for loss of use of a motor vehicle as a result of a safety recall. Rental car companies believe that they may be entitled to compensation for loss of use if they are required by federal law to ground their vehicles pending a safety recall, so preserving the status quo does not sufficiently protect against the possibility of frivolous litigation over this issue.

- C. In your written testimony, you stated "when we perform a recall, we want ALL of our customers to have their vehicles repaired as soon as possible." The rental car companies are the largest purchasers of new vehicles in the nation. They are Fiat-Chrysler, Ford, and GM's biggest customers. Should this principle apply to them, as well as individual consumers? If not, why not, since they rent and sell millions of vehicles to the public?

Rental car companies should have their vehicles repaired as soon as possible. It is the Alliance's understanding that the rental car companies in the U.S. responsible for 95 percent (95%) of all vehicle rentals have adopted policies for the repair of recalled rental vehicles prior to being next rented.

Alliance member companies want all of their customers to have their vehicles repaired as quickly as possible when there is a recall. This is why the Alliance, on behalf of our members and in partnership with the Association of Global Automakers and the National Automobile

Dealers Association, initiated an extensive research effort to understand how we could better motivate customers to bring their vehicles in for repair when under a recall. Our research identified several challenges to getting consumers to repair their recalled vehicles. We learned that many consumers are doing their own risk assessments upon receiving a notice and they are deciding if the recall seems important enough for a response. Many survey respondents showed a reduced likelihood to repair a recalled vehicle if they perceived the recall to be a "low" or "moderate" risk, saying it seemed to be "no big deal." The research also showed that used vehicle owners are less likely to be motivated to respond to recall communications, even when they are aware of a recall on their vehicle.

The survey indicated that many consumers may support state laws that only allow a vehicle's registration to be renewed if all safety recalls have been completed. Survey respondents supported several ways to help convince people to bring their vehicle into a dealership for the free recall repair, including ranking the severity of the recall as "high," making the recall notice stand out while also denoting the repair is free, and providing a reminder of an uncompleted safety recall in their insurance renewal notices.

**The Honorable Adam Kinzinger**

**1. Previously your trade association informed me that it is willing to "explore ways to facilitate the removal of defective parts taken from recalled vehicles from the stream of commerce." Can you update the committee on where this exploration exercise stands?**

Alliance staff met with representatives of the Automotive Recyclers Association (ARA) on August 26, 2015 to discuss their concerns. While the ARA was unable to provide clarity on its exact concerns, we remain willing to talk to all parties on ways to remedy vehicles subject to a safety recall.

**2. Earlier this year, Sec. Foxx recommended that automotive manufacturers should provide part number information in an efficient and easy-to-use format directly to recyclers and others who need the information to support auto safety. Do you support this approach? What barriers are there to implementing this recommendation?**

Vehicles subject to a safety recall are identified by their vehicle identification number (VIN); completion rates are also calculated using those VINs. Most safety recalls involve inspecting the vehicle and repairing the vehicle. It is less common to replace a part in its entirety. To the extent that part number data may be useful in the repair of a recalled vehicle, the part number is typically identified not only in repair instructions but also on the defect information report submitted by the manufacturer to NHTSA. Each of these documents is publicly available.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Mr. John Bozzella  
President and CEO  
Global Automakers  
1050 K Street, N.W., Suite 650  
Washington, DC 20001

Dear Mr. Bozzella,


Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment



November 20, 2015

**John Bozzella, Global Automakers' President and CEO, responses to Additional Questions for the Record submitted after the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade October 21, 2015 hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."**

**The Honorable Michael C. Burgess, M.D.**

- 1. Mr. Bozzella, you testified that automakers are working to educate consumers on the cybersecurity and safety implications of after-market or third-party devices being plugged into the vehicle through the OBDII port. Are your members in discussions with any developers of those after-market or third-party devices to address cybersecurity implications of those products?**

At this time, we are not aware of any direct discussions between automobile manufacturers and the developers of such aftermarket products; preliminary work is underway that would make such discussions productive. We believe it is important that developers and third party vendors take appropriate steps to design and manufacture secure products, particularly when providing connectivity to vehicles through the OBD-II port. We also believe aftermarket device companies that use or capture vehicle data should also consider the adoption of privacy principles similar to those embraced by the auto industry last November.

- 2. Are any of your members currently working with State DMVs to help notify vehicle owners of open recalls?**

There is evidence that providing notification to consumers during the vehicle registration process will help increase consumer awareness of the recall status of their vehicle and result in improvements in recall completion rates.

Results from a survey conducted by Global Automakers and the Alliance of Automobile manufacturers show that a strong majority of consumers support this type of approach -- over 70 percent of those asked about this issue supported not only notification at registration, but also a requirement that recalls be remedied prior to registration.

Global Automakers has had initial discussions with several stakeholders including the American Association of Motor Vehicle Administrators (AAMVA) to address some of the practical challenges that may need to be resolved in order to facilitate the provision of vehicle recall information to consumers through State DMVs. In addition to AAMVA, we have also met and discussed this issue with state legislators in California as well as the California DMV.



**3. What are ways the Subcommittee should consider to encourage the fastest deployment of vehicle-to-vehicle communications technology and other crash avoidance technologies?**

There are several ways that the Subcommittee could encourage the deployment of vehicle-to-vehicle communications technologies and other crash avoidance technologies. In the near future, NHTSA is expected to conduct a rulemaking to mandate the installation of Dedicated Short Range Communications (DSRC) technology in new vehicles, an action that Global Automakers supports. The Subcommittee could take additional steps to encourage the accelerated installation of aftermarket DSRC devices to increase the overall 'network effect' and benefits to consumers through this technology. Investments in intelligent infrastructure and connected vehicle pilot programs can be used to provide tangible real world applications and immediate benefits to those early adopters through innovative vehicle-to-infrastructure applications such as smart intersections and roadway departure prevention systems. The Subcommittee could provide a framework and authorize funding for NHTSA to initiate programs to increase public awareness of the benefits that these technologies could deliver. We are supportive of programs to evaluate and improve consumer information so that the benefits of the technologies already being provided on vehicles today can become more widespread. Finally, we believe the Subcommittee could encourage efforts to realize the potential fleet-wide greenhouse gas and fuel economy benefits from widespread DSRC technology penetration.

**4. How would a requirement on vehicle manufacturers to submit specific part numbers, names, and descriptions of all parts affected by a safety recall impact the manufacturer's ability to identify all affected VINs in a timely manner? What additional costs would this type of requirement impose on manufacturers?**

Under current regulations, when an auto manufacturer determines that a safety defect exists it notifies NHTSA and compiles a preliminary list of affected vehicles. Because the manufacturer must notify NHTSA within five days, it may not always be able to confirm the complete vehicle identification number (VIN) range of affected vehicles. In addition, while the suspected cause of the defect may be identified, manufacturers often must continue extensive technical due diligence to identify the root cause of the problem, refine or expand the VIN range and determine the remedy including the need, if any, for re-designed parts and tools to implement the repair. To the extent that the recall involves a specific component that has been determined to be defective, then submissions to the agency will include component information. Currently, this information is available to the public from NHTSA. We support legislation to require the transmission of component information, including parts numbers if available, in the current defect notification report required under section 573.6 of title 49. Such legislation should avoid the imposition of a new and more burdensome process that could impede manufacturers' ability to provide a remedy to the consumer as quickly as possible.

It is important to understand, however, that under the current statutory framework, a safety recall applies to the entire vehicle, not just a specific part. Simply knowing the part



number, name or description is normally not enough to ascertain whether a specific part is affected by a recall. It is often the case that a vehicle recall involving a certain part may actually not affect all parts that share a corresponding part number. As a result, publication of part number information alone may mislead those who try to rely on it. Therefore, it is critical that recyclers maintain the VIN together with the part as it moves through the recycling sales process.

**5. How often do regional recalls occur? What impact would the elimination of regional recalls have on the manufacturer's ability to prioritize repair parts to populations or geographic areas that are more vulnerable to a safety defect than others?**

While motor vehicle safety recalls are generally undertaken on a nation-wide basis, there may be certain circumstances where it is important to target the vehicles that should be remedied based on regional factors. For example, there may be environmental factors (such as temperature, the amount of snowfall, or level of humidity) that have a material impact on the defect at issue, or the defect itself is caused by environmental factors. In such circumstances, it is essential that manufacturers be able to prioritize the recall on those consumers most at risk.

**6. Within your membership, do you know how many automakers have one senior official responsible for safety within their corporate organization structure? If so, how does that individual currently interact with the rest of the organization and work to ensure that information submitted to NHTSA on safety issues is accurate?**

Our members are committed to maintaining a strong safety culture within their respective organizations. Approaches can vary, however, and companies can have either one person, or in some cases, several people closely coordinating to manage safety at all stages of the product lifecycle, from the research and development stage, to vehicle recall identification and remediation. With regard to vehicle recalls, designated safety officers, with advice from legal personnel, work to ensure that all information submitted to NHTSA on safety issues is accurate and submitted in a timely manner.

**7. How do auto manufacturers currently coordinate with NHTSA on publicizing vehicle safety recall notices? How typical is it for NHTSA to publicize a recall notice before the manufacturer has identified all affected VINs?**

In general, the vast majority of vehicle recalls are initiated by vehicle manufacturers. When a manufacturer notifies the agency of a safety related defect, the vehicle manufacturer will begin compiling a list of affected VINs so that it can begin the process of notifying consumers that may be impacted by the recall. Under current NHTSA regulations, notification must be made to consumers within 60 days. If the remedy is not yet available, an interim notification is required advising owners that a further notice will be sent when the remedy is available.



By regulation, manufacturers submit recall reports electronically to NHTSA through a web portal. After NHTSA acknowledges receipt of the report, this information becomes public. When this occurs, it is available to any interested person, including the news media. This often occurs before the manufacturer has completed compiling the information necessary to send its 60-day notices. Some manufacturers also announce recalls, knowing that their reports will be available on NHTSA's website.

**8. Are there certain regulatory barriers in place right now that are preventing car companies from fully investing in crash avoidance technologies and other next-generation safety features?**

It is important that the regulatory environment support the deployment of new and innovative technologies designed to improve safety and the environment. As vehicles become more sophisticated there is increased opportunity to leverage technology to enable drivers to perform the driving task more effectively. However, there may be challenges associated with existing regulations that limit the possible approaches that manufacturers can take to more conventional solutions. For example, it may be possible to use camera systems and in-vehicle screens or heads up displays to replace the functions of rearview/sideview mirrors typically installed on cars today; however, these may be prohibited by existing Federal Motor Vehicle Safety Standards (FMVSS) pertaining to rear visibility. In addition, advanced lighting systems that can improve driver visibility may be restricted due to outdated FMVSS lighting requirements. The regulatory systems should be adaptable to changes brought about through advanced technology.

Global Automakers also believes that the ongoing interest in reexamining the radio spectrum allocation for DSRC technology creates uncertainty and serves as a barrier to the deployment of this life saving technology. We encourage NHTSA and other relevant authorities to coordinate their activities so that the Agency can move forward with its rulemaking to mandate the deployment of this technology as quickly as possible; delays could ultimately deprive the public of these important safety protections.

**A. How should we expect consumers to embrace advanced automotive technologies? Do consumers face any obstacles to adoption, such as cost?**

The demand for advanced automotive technologies is often driven by the perceived benefits that a given technology provides to the consumer, whether it be through increased safety, fuel economy, or convenience. It is also important that consumers trust the technology, believe that the connectivity, which enables many of these technologies, in the vehicle is secure, and have confidence that their personal information is protected.

Increased awareness of the benefits of advanced automotive technologies is an important factor facilitating their adoption. Information about these



benefits and confidence that they will work as intended will enable consumers to determine whether or not to select certain advanced technology features when purchasing a new vehicle.

Of course cost is also a factor. Installing advanced technologies will increase the cost of a vehicle, especially at the outset when the economies of scale and related technology improvements are not yet available. If we want consumers to embrace this technology it will be important to help manufacturers find ways to reduce costs, such as through research and development. It is also important to make the value proposition for consumers more compelling by offering sales incentives, tax credits or other market-driven mechanisms (such as discounted insurance premiums) to increase demand.

**B. What types of education should be provided to consumers to increase their awareness, understanding, and trust in crash avoidance technologies?**

We agree that consumer education is critical to the success of advanced crash avoidance technologies. While manufacturers can provide helpful information on websites and dealers can provide greater instruction to purchasers at the point of sale, it is important to develop additional ways of increasing public awareness. Government programs such as the New Car Assessment Program (NCAP) can be used to highlight the availability of technologies that meet certain performance criteria; however, the information that is available on NHTSA's website must be presented in a way that is more accessible and can be more clearly understood.

We expect that NHTSA will issue a final decision proposing near term upgrades to the NCAP program based on feedback received from the public in response to an April 5, 2013 request for comment.

In addition, informational websites such as "[mycardoeswhat.org](http://mycardoeswhat.org)" can provide consumers with useful background information on some of the features that they may want to look for in a new car.

**9. Security researchers can play a valuable role in the discovery and mitigation of cybersecurity vulnerabilities in vehicles. What is the auto industry doing to work with the security research community to help identify and remediate cybersecurity threats in vehicles?**

Vehicle manufacturers engage with third party security vendors, government programs and working groups, universities, and other research consortia. These relationships help automakers develop vehicle-specific security technologies and practices. In particular, Global Automakers and other auto industry representatives are engaging in the National

## GlobalAutomakers

Telecommunications and Information Administration's (NTIA) Multi-stakeholder Process to Promote Collaboration on Vulnerability Research Disclosure that is working to develop voluntary principles guiding collaboration between vendors and researchers about vulnerability information and coordinated disclosure. Furthermore, the recently-established Automotive Information Sharing and Analysis Center (Auto-ISAC), once fully operational, will provide an additional mechanism through which cybersecurity researchers can submit vulnerability information.

In addition to the NTIA process and the formation of the Auto-ISAC, additional industry activities and partnerships include:

- Auto-specific hackathons such as the annual Battelle-SAE International CyberAuto Challenge;
- Participation in vehicle cybersecurity events such as the DEF CON, Black Hat, and Embedded Security in Cars (ESCAR) Conferences;
- The SAE Vehicle Electrical System Security Committee, which was created to help ensure electronic control system safety;
- The Automotive Consortium for Embedded Security (ACES), organized and operated by the Southwest Research Institute (SwRI);
- The auto industry has also engaged with the National Institute of Standards and Technology (NIST) National Cybersecurity Center of Excellence to develop research needs for vehicle cybersecurity. Automakers are working with DHS and DOT to develop an Automotive Cybersecurity Industry Consortium.

### The Honorable Jan Schakowsky

1. **On July 24, 2015, General Motors announced that Chevrolet, Buick, GMC and Cadillac will offer 22 different crash avoidance technologies across their 2016 model year U.S. lineups. Under Section 502 of the discussion draft, GM could receive three or more grams per mile in greenhouse gas (GHG) emissions credits for each of those technologies. That would mean that a GM vehicle that carries all 22 active safety technologies could receive at a minimum 66 grams per mile in GHG credits.**

Similarly, Section 503 of the draft would grant manufacturers Corporate Average Fuel Economy (CAFE) credits in exchange for installing certain safety technology onto their vehicles. It seems to me that the combined environmental impact of 66 grams per mile in GHG emissions credits and equivalent credits toward meeting CAFE standards for every one of those vehicles could be significant.

- A. **For each of your member companies, how many crash avoidance technologies per vehicle model are planned to be offered each model year from 2016 through 2021?**



Global Automakers' members are among the industry's leaders in pioneering the life-saving technologies addressed in Title V of the Discussion Draft. Global Automakers believes that finding ways to democratize these technologies across vehicle fleets is a worthwhile discussion to have. However, it would not be appropriate for Global Automakers to collect future product planning information from our members who are marketplace competitors; therefore, we are unable to provide a specific answer to this question.

**B. Should the number of GHG and CAFE credits that manufacturers can receive under Title V of the bill be capped at a particular number of credits? If so, what should the cap be for GHG credits and for CAFE credits?**

Global Automakers believes it is important to recognize that widespread penetration of vehicle-to-vehicle communications technology and other crash avoidance technologies may yield significant improvements in fleet-wide fuel consumption and hence greenhouse gas emissions. However, we have no position on the credit program or cap, as outlined in the Discussion Draft, at this time.

**C. In your testimony, you state that Title V of the discussion draft would "incentivize the adoption of these advanced technologies." GM, however, has already elected to offer 22 different crash-avoidance technologies on thousands of its vehicles without the possibility of GHG or CAFE credits as an incentive. Please explain why GHG and CAFE credits are necessary to incentivize safety when vehicle manufacturers are already including advanced technologies in their vehicles?**

Automakers must make numerous decisions regarding vehicle planning and the deployment of new technology. There are many reasons automakers may elect to offer certain features in a vehicle model at a particular time. The draft bill describes one way to accelerate the deployment of advanced vehicle technologies across the entire vehicle fleet. Global Automakers agrees with the concept of encouraging the rapid deployment of vehicle technologies; specifically we support policies that encourage the expedited installation of DSRC.

**The Honorable Adam Kinzinger**

**1. Previously your trade association informed me that it is willing to "explore ways to facilitate the removal of defective parts taken from recalled vehicles from the stream of commerce." Can you update the committee on where this exploration exercise stands?**

Global Automakers remains committed to this objective and to that end has had discussions at the staff level and one CEO-level meeting with the Automotive Recyclers



Association (ARA). We felt the meeting was productive, and we agreed to engage further with the ARA on this important question.

2. **Earlier this year, Sec. Foxx recommended that automotive manufacturers should provide part number information in an efficient and easy-to-use format directly to recyclers and others who need the information to support auto safety. Do you support this approach? What barriers are there to implementing this recommendation?**

Global Automakers believes all defective parts should be removed from the stream of commerce.

Under current regulations, when an auto manufacturer determines that a safety defect exists it notifies NHTSA and compiles a preliminary list of affected vehicles. Because the manufacturer must notify NHTSA within five days, it may not always be able to confirm the complete vehicle identification number (VIN) range of affected vehicles. In addition, while the suspected cause of the defect may be identified, manufacturers often must continue extensive technical due diligence to identify the root cause of the problem, refine or expand the VIN range and determine the remedy including the need, if any, for re-designed parts and tools to implement the repair. To the extent that the recall involves a specific component that has been determined to be defective, then submissions to the agency will include component information. Currently, this information is available to the public from NHTSA. We support legislation to require the transmission of component information, including parts numbers if available, in the current defect notification report required under section 573.6 of title 49. Such legislation should avoid the imposition of a new and more burdensome process that could impede manufacturers' ability to provide a remedy to the consumer as quickly as possible.

It is important to understand, however, that under the current statutory framework, a safety recall applies to the entire vehicle, not just a specific part. Simply knowing the part number, name or description is normally not enough to ascertain whether a specific part is affected by a recall. It is often the case that a vehicle recall involving a certain part may actually not affect all parts that share a corresponding part number. As a result, publication of part number information alone may mislead those who try to rely on it. Therefore, it is critical that recyclers maintain the VIN together with the part as it moves through the recycling sales process.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Ms. Ann Wilson  
Senior Vice President  
Motor & Equipment Manufacturers Association  
1030 15th Street, N.W., Suite 500  
Washington, DC 20005

Dear Ms. Wilson,


Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

**Motor & Equipment Manufacturers Association**  
1030 15th Street, NW Suite 500 East Washington, DC 20005  
Tel 202.393.6362 Fax 202.737.3742 E-mail [info@mema.org](mailto:info@mema.org)



November 20, 2015

The Honorable Michael C. Burgess, M.D.  
Chairman, Subcommittee on Commerce, Manufacturing, and Trade  
Committee on Energy & Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Burgess:

Below are MEMA's responses to your questions for the record from the hearing held on October 21, 2015.

We appreciated the opportunity to testify, and look forward to working with you on these issues in the future.

Sincerely,

L. Ann Wilson  
Senior Vice President,  
Government Affairs

**MEMA responses to Questions from the Honorable Michael C. Burgess, M.D.**

1. Ms. Wilson, you testified that the Motor & Equipment Manufacturers Association is working with auto manufacturers to create an ISO standard for third-party or aftermarket devices that are plugged into the OBDII port. When will that standard be completed?

**A: MEMA has approached automakers about working together in developing a Vehicle Station Gateway (VSG), which will replace the existing OBD2 port. Discussions are in the early stages, and the timing for the VSG completion is currently unknown. The VSG will address common wireless communication**





**protocols and allow for multi-client access; franchised dealers, independent repair facilities, and the aftermarket will have common protocols for open access to vehicle systems.**

2. Do the part suppliers and independent aftermarket community represented by MEMA abide by a formalized set of data privacy and security practices, akin to the Auto Alliance and Global Automakers privacy principles? If not, are there plans to create data privacy or security principles among part suppliers and the independent aftermarket?

**A: Suppliers are committed to principles of data privacy as outlined by the Alliance of Automobile Manufacturers and Global Automakers. However, there is no formal aftermarket set of principles (or document), primarily due to the fact that the aftermarket does not have the ability to, nor has it been granted by manufacturers, access to vehicle data. With respect to cyber security, suppliers are able to join with automakers and participate in the automotive industry Information Sharing & Analysis Center (ISAC), which is designed to share information and best practices on existing cyber threats, effective responses, and enhancing vehicle systems against future threats.**

3. How do part suppliers currently work with vehicle manufacturers during a safety recall when a part has been identified as defective?

**A: Once a defect has been identified, NHTSA's Office of Defect Investigation (ODI) typically works directly with the automaker, who in turn works with the supplier(s) to gather information about specific part(s) needing replacement. Automakers often add their own part number to a part with a supplier generated number. NHTSA also contacts suppliers directly when investigating a defect. The contract between the automaker and supplier provides the terms for replacement parts; contract provisions for a recalled part may include the engineering, testing, production, and quantity needed for replacement parts, as well as the respective financial obligations for the replacement parts by the automaker and/or the supplier.**

4. How do part suppliers work with NHTSA during motor vehicle or motor vehicle equipment recalls?
  - A. Do part suppliers currently provide part numbers of the defective parts or components to auto manufacturers and NHTSA during a recall?
  - B. Do part suppliers work with auto recyclers during recalls?



**A: When a recall is issued, part numbers are provided to NHTSA by the automaker. Recalled vehicles are searchable (by VIN) on automaker websites and on NHTSA's website. Auto parts recyclers, auto parts retail stores, and independent repair facilities do have access to published and electronic catalogs that list vehicle part numbers, which they can reference when there is a recall. MEMA has provided NHTSA with additional information (attached) about additional products & solutions to better identify specific parts in a recall in order to increase recall completion rates.**

5. Making sure remedy and repair parts are available in the event of a recall is essential to keeping vehicles safe and achieving a 100% recall completion rate. How are part suppliers working to address part availability issues that have been faced in the past to be better prepared for any future safety recalls?

**A: In most circumstances the capacity exists to manufacture replacement parts and make them available for repairs. Recent media reports indicate that the Takata airbag case was an exception because initially Takata was the only identified manufacturer of those particular airbag inflator parts. The sheer number of recalled vehicles initially led to a shortage of replacement parts, however now there are other manufacturers producing replacement inflators needed for repairs.**

6. What new technologies are part suppliers developing to help auto manufacturers meet more efficient fuel economy and greenhouse gas emissions standards?

**A: There are several advanced technologies now available to help meet fuel economy standards; they include but are not limited to: Start-Stop technology, Adaptive Cruise Control, electronic control of fuel consumption, light weighting and greater use of aluminum and composite materials, and multi-speed transmissions.**

**In addition, suppliers have developed and manufacture enabling technology which are necessary to allow vehicles to work with a component or system to provide the measured fuel economy under real world conditions. Enabling technologies make it possible for component systems and/or components to achieve better efficiencies. Some examples of enabling technologies currently in the marketplace include:**

- Emissions control systems enable diesel engines to meet stringent US tailpipe criteria emissions regulations, allowing the high efficiency diesel to be sold in the U.S. market.
- Electric air conditioning compressor operate in a gasoline-electric hybrid vehicle when the internal combustion engine is "off," allowing a hybrid vehicle to operate in



“engine-off” mode at low speeds and in traffic while still providing passengers a cool cabin.

- Regenerative braking allows a vehicle to recapture and store part of the kinetic energy that would otherwise be lost to heat when braking. This energy is used to recharge the electric batteries to enable the vehicle to achieve a substantial increase in fuel efficiency.
7. We have seen that when a car’s cybersecurity defenses are breached, there is confusion as to whether the parts supplier is at fault or the auto manufacturer. For example, the part of the car that was breached was built by a supplier. But the supplier was building to the auto manufacturer’s specifications, so there is this accountability loop. How do parts suppliers work with automakers to build cybersecurity into auto parts?

**A:** Like other industries, the automotive industry is quickly being transformed through greater use of technology and wireless communications capabilities. Suppliers work with automobile manufacturers to protect systems, however vehicles present additional challenges because while the in-vehicle software is owned by the manufacturer, vehicle owners and users often wirelessly connect their vehicles to phones and other portable devices, increasing risks cyber vulnerabilities. Security protocols for vehicles address the in-vehicle systems, which are often produced by multiple suppliers but integrated by the automakers. The automotive industry ISAC provides a good framework for automakers and suppliers to address cybersecurity issues, including in-vehicle systems and how they are impacted by wireless personal devices.

8. What safety incentives should the Committee consider for suppliers of Heavy-duty vehicles?

**A:** MEMA has long supported the passage of incentives to encourage the purchase and installation of advanced safety technologies by fleets and owner-operators. Heavy vehicle parts manufacturers develop and manufacture a variety of advanced safety technologies with demonstrated safety benefits, including brake stroke monitoring systems, lane departure warning (LDW) and blind spot detection systems, automatic emergency braking (AEB) systems, trailer-based stability control systems, and electronic stability control systems (ESC). These technologies could mitigate or avoid many of the types of incidents identified in the 2006 Large Truck Crash Causation Study (LTCCS), which was published following an in-depth study into the causes and contributing factors of large vehicle crashes. The LTCCS found that more than 60 percent of incidents involving heavy vehicles were the



result of rear-end collisions, side-swipes, loss of control, and/or running off the road or out of the lane. Also, brake problems were factors in about 30 percent of cases studied.

Both the House and the Senate have passed language in H.R. 22 that provide regulatory incentives for commercial vehicle fleets that install these advanced vehicle safety technologies. That language is included in Sec. 5222 of the House version and Sec. 32002 of the Senate version. This language allows for fleets that go "Beyond Compliance" in the existing Compliance, Safety, and Accountability (CSA) program at the Federal Motor Carrier Safety Administration (FMCSA) to earn credit towards improved CSA scores.

MEMA strongly supports the passage of this language and encourages the Committee to support these provisions in the conference committee. MEMA also encourages the Committee to work with the House Transportation and Infrastructure Committee and the Senate Commerce Committee to encourage FMCSA to quickly implement this program and conduct oversight once the program is fully functional.

Additional information referenced in answer to question # 4:



#### **CONNECTING NHTSA TO THE AFTERMARKET IN THE RECALL PROCESS**

MEMA and its members serve a broad range of market segments, product types and customers providing parts and information for the more the 250 million light vehicles on US roads. MEMA and its members have solutions that have the potential to assist NHSTA in increasing recall completion rates. MEMA looks forward to an open dialog with NHTSA on the potential opportunities to address this critical need.

#### **OptiCat LLC**

OptiCat, a supplier owned data services company, validates and delivers aftermarket supplier vehicle application data to parts distributors and their customers that allows the accurate



matching of replacement parts to the correct vehicles. This information is used and accessible by thousands of auto parts stores and independent service and repair providers. Through OptiCat, suppliers could potentially assist NHTSA and the motor vehicle industry in the completion of recalls by some or all of the following actions:

- Alerting motorists (via the OptiCatOnLine.com web site), repair technicians, distributors and others regarding parts recalls and, depending on available data, relate the information to alternative aftermarket parts;
- Linking to the NHTSA data base regarding vehicle and parts recalls to inform suppliers quickly when recalls are occurring;
- Helping parts suppliers, through more effective information, to address parts that are similar, or related to, the recalled original equipment part in order to encourage parts design improvements, clearing parts from the marketplace and other appropriate activities.

#### **Monitoring Salvage Yards**

RAS, a member of MEMA, has created a unique solution that may also help original equipment vehicle manufacturers (OEMs), suppliers and NHTSA locate and procure automotive parts from salvage facilities that are subject to a safety recall. Working closely with vehicle manufacturers, RAS is able to locate the exact part in the inventories of over 4,000 salvage yards throughout North America, reimburse the salvage for the part (as funded by the OEM), and transport into their central location in RI for further disposition. The program could:

- Help remove safety recall parts from the market, thereby reducing the chances of a safety recall part being re-sold and re-used by the public;
- Increase the completion rate for OEMs and parts manufacturers on a safety recall;
- Provide VIN traceability and validation for the OEM and parts manufacturer;
- Aid OEMs and suppliers in their reporting requirements to NHTSA.

Once a program is in place with the OEM, there is a daily push of every part and every VIN to an FTP site for customer use.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Mr. Greg Dotson  
Vice President, Energy Policy  
Center for American Progress  
1333 H Street, N.W., 10th Floor  
Washington, DC 20005

Dear Mr. Dotson,


Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Greg Dotson  
Vice President, Energy Policy  
Center for American Progress  
Responses to Questions for the Record  
Hearing on "Examining Ways to Improve Vehicle and Roadway Safety"  
October 21, 2015

Response to Question from the Honorable Jan Schakowsky

*On July 24, 2015, General Motors announced that Chevrolet, Buick, GMC, and Cadillac will offer 22 different crash avoidance technologies across their 2016 model year U.S. lineups. Under Section 205 of the discussion draft, GM could receive three or more grams per mile in greenhouse gas (GHG) emissions credits for each of those technologies. That would mean that a GM vehicle that carries all 22 active safety technologies would receive at a minimum 66 grams per mile in GHG credits.*

*Similarly, Section 503 of the draft would grant manufacturers Corporate Average Fuel Economy (CAFE) credits in exchange for installing certain safety technology onto their vehicles. It seems to me that the combined environmental impact of 66 grams per mile in GHG emissions and equivalent credits toward meeting CAFE standards for every one of those vehicles could be significant.*

*Please put this information in context. What would be the consequences of allowing automakers to obtain 66 grams per mile in GHG credits in exchange for installing crash avoidance technology?*

In May 2010, the Environmental Protection Agency (EPA) and National Highway Transportation Safety Administration (NHTSA) issued greenhouse gas emissions standards and corporate average fuel economy standards for model years 2012 through 2016 light-duty vehicles.<sup>1</sup> On October 15, 2012, the EPA and NHTSA issued the second phase of these standards for model years 2017 through 2025.<sup>2</sup>

These standards are the most important federal action ever taken to reduce greenhouse gas pollution from the transportation sector while making cars more fuel efficient for consumers. In model year 2025, the EPA estimates that the standards will achieve an average fleetwide level of 163 grams of carbon dioxide per mile, which is the equivalent of 54.5 miles per gallon if achieved through fuel economy improvements. Model year 2025 vehicles will emit one half of the greenhouse gas emissions of a model year 2010 vehicle. When combined, the standards for model years 2012-2016 and 2017-2025 will cut 6 billion metric tons of greenhouse gases over the lifetimes of the vehicles, which is more carbon dioxide than the United States released in 2010.<sup>3</sup>

The EPA greenhouse gas standards for light-duty vehicles are based on carbon emissions footprint curves; meaning, each vehicle must meet a different emissions compliance target

adjusted for the footprint or size of the vehicle. For example, a vehicle with a model footprint of 40 square feet, such as today's Honda Fit, would have a 2025 emissions target of 131 grams per mile, whereas a vehicle with a model footprint of 67 square feet, such as today's Chevy Silverado pickup truck, would have a 2025 emissions target of 252 grams per mile.<sup>4</sup> Copied below is a table prepared by the EPA that details standards through 2025 for different vehicle types.

<b>Table 1 - Projected Fleet-Wide Emissions Compliance Targets under the Footprint-Based CO<sub>2</sub> Standards (g/mi) and Corresponding Fuel Economy (mpg)</b>										
	2016 base	2017	2018	2019	2020	2021	2022	2023	2024	2025
Passenger Cars (g/mi)	225	212	202	191	182	172	164	157	150	143
Light Trucks (g/mi)	298	295	285	277	269	249	237	225	214	203
Combined Cars & Trucks (g/mi)	250	243	232	222	213	199	190	180	171	163
Combined Cars & Trucks (mpg)	35.5	36.6	38.3	40.0	41.7	44.7	46.8	49.4	52.0	54.5

SOURCE: U.S. Environmental Protection Agency, "Fact Sheet: EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks," August 2012, available at <http://www3.epa.gov/otaq/climate/documents/420f12051.pdf>.

In this context, it is clear that awarding GHG emissions credits—whether it is 6 grams or 66 grams—for technologies that provide no quantifiable or incremental emissions benefit would compromise the integrity of the light-duty vehicle program. As I read the discussion draft, the bill could allow a single vehicle to claim up to 9 grams per mile in credits: 3 grams for a vehicle that is equipped with at least three advanced vehicle technologies and 6 grams to any vehicle that is equipped with a connected vehicle technology. However, Committee staff informed me prior to the hearing that this provision was misdrafted and, in fact, the provision is intended to allow automakers to claim as much as 15 grams per mile per vehicle. If, as in your example, an automaker was allowed to claim 66 grams per mile in credits for a particular passenger car, then that passenger car would be allowed to emit more than 200 grams of carbon dioxide in 2025 instead of 143. A volume of credits this large would erode almost a decade of progress in making passenger cars cleaner and more efficient.

<sup>4</sup> U.S. Environmental Protection Agency and U.S. Department of Transportation, "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule," 75 Fed. Reg. 25324-25725 (May 7, 2010).

---

<sup>2</sup> U.S. Environmental Protection Agency and U.S. Department of Transportation, "2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule," 77 Fed. Reg. 62624-63200 (October 15, 2012) (hereinafter "2017 Light-Duty Vehicle GHG Rule").

<sup>3</sup> U.S. Environmental Protection Agency, "Fact Sheet: EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks," August 2012, available at <http://www3.epa.gov/otaq/climate/documents/420f12051.pdf>.

<sup>4</sup> *Ibid.*

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Mr. Peter Welch  
President  
Automobile Dealers Association  
412 First Street, S.E.  
Washington, DC 20003

Dear Mr. Welch,

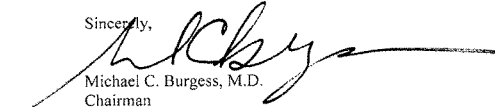
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

In response to the November 6, 2015 letter from Chairman Burgess to NADA President Peter Welch to answer questions for the record regarding the October 21, 2015 House Subcommittee on Commerce, Manufacturing and Trade hearing entitled "Examining Way to Improve Vehicle and Roadway Safety", NADA submits the following responses to questions posed by the Honorable Lois Capps:

**1. At the hearing, I asked you whether auto dealers should be allowed to rent or loan consumers a vehicle with an unrecalled safety recall. You said, "Not if the car is unsafe to drive." According to NHTSA Administrator Rosekind's testimony, all cars under safety recall are deemed "unsafe" to drive. At the hearing the Administrator clearly stated that "if [a car] has a defect it should be off the road." Under what circumstances would it be appropriate for a dealer to rent or loan its customers a vehicle with an unrecalled safety recall?**

**A. In general, should auto dealers be allowed to rent or loan unrecalled recall cars that have the potential to catch fire?**

**B. In general, should auto dealers be allowed to rent or loan unrecalled recall cars with brakes that can potentially fail while driving?**

**C. In general, should auto dealers be allowed to rent or loan unrecalled recalled cars that contain faulty steering wheels, seat belts or airbags?**

Response to Question 1.

In connection with every recall, the National Highway Traffic Safety Administration (NHTSA) and the involved manufacturer make a determination whether vehicle owners should be advised that the vehicles being recalled are unsafe to operate. This has been true ever since the National Traffic and Motor Vehicle Safety Act (the Act) was passed into law some 40 years ago and is true whether the recall is for a safety defect or a noncompliance with a Federal Motor Vehicle Safety Standard (FMVSS). When a vehicle is determined to be unsafe to operate, a "stop drive" admonition is included in the recall notices required by the Act to be sent to vehicle owners and vehicle dealers and in other communications relating to the recall. Once a dealer receives notice of a NHTSA or manufacturer determination that the recalled vehicle is subject to a "stop drive" admonition, it would be inappropriate for a dealer to rent or loan that vehicle, irrespective of the safety defect or FMVSS noncompliance at issue. Dealers rely on the expert judgment of NHTSA and the vehicle manufacturers to determine when a safety defect or FMVSS noncompliance warrants a "stop drive" admonition.

- A. Same answer as (1).
- B. Same answer as (1).
- C. Same answer as (1).

2. You expressed NADA's view that dealers should be allowed to rent or loan unrepaired recalled cars unless those cars are subject to "Stop Drive" notices. To clarify, is it NADA's position that it is an acceptable practice for auto dealers to rent or loan unrepaired recalled vehicles unless they are part of the very small percentage of recalls that are Stop Drive recalls?
- A. The rented PT Cruiser that killed Raechel and Jacqueline Houck had a defective steering component that was not subject to a "stop drive" recall. Should auto dealers be allowed to rent or loan unrepaired recalled cars with defective steering components?
- B. The rented Honda containing an exploding Takata air bag that killed Jewel Brangman was not subject to a "stop drive" recall. Should auto dealers be allowed to rent or loan unrepaired recalled cars with faulty airbags?
- C. The GM Ignition Switch, which was found to be responsible for over 100 deaths and hundreds of injuries, was not a "Stop Drive" recall. In general, should auto dealers be allowed to rent or loan unrepaired recalled cars with a defective ignition switch?
- D. The Toyota unintended acceleration recall was not a "Stop Drive" recall. Should auto dealers be allowed to rent or loan unrepaired recalled Toyota cars with sticking accelerator pedals?

Response to Question 2.

As indicated in response to question (1), it is NADA's view that if NHTSA or the involved manufacturer determines that a vehicle subject to a safety defect or FMVSS noncompliance recall is unsafe to operate and, as a result, issues a "stop drive" admonition in the recall notices it sends to owners and dealers, then the dealer should not rent or loan the vehicle until after it is remedied, irrespective of the reason for the recall. Dealers rely on the expert judgment of NHTSA and the vehicle manufacturers as to when a safety defect or FMVSS noncompliance warrants a "stop drive" admonition and thus the number of recalls and vehicles to which such an admonition should apply.

- A. Same answer as (2).
- B. Same answer as (2).
- C. Same answer as (2). Note that the Department of Transportation was specifically requested by Senators Markey and Blumenthal to issue a "stop drive" admonition with respect to all GM vehicles recalled for a defective ignition switch (No. 14V-047).<sup>1</sup> The agency declined that request, stating: "*In appropriate circumstances,*

---

<sup>1</sup> Attached letter to U.S. Department of Transportation Secretary Anthony Foxx from Senators Markey and Blumenthal (April 28, 2014)

*the National Highway Traffic Safety Administration (NHTSA) may require a manufacturer to advise owners not to drive their vehicles until a safety-related defect or noncompliance is remedied. In this case, however, NHTSA has thoroughly evaluated the interim guidance that GM has issued to all affected vehicle owners and determined that such an action is not necessary at this time.*"<sup>2</sup>  
This position is consistent with NHTSA's long-standing application of its expert judgment to safety recalls.

D. Same answer as (2).

- 3. You stated at the hearing that 6% of recalls are "Stop Drive" recalls. Can you provide the subcommittee with the source for this number?**

Response to Question 3.

The Alliance of Automobile Manufacturers.

- 4. In 2014, there were a record number of safety recalls involving almost 64 million vehicles; so far in 2015, over 40 million vehicles have been recalled. Were any of these recalls in 2014 Stop Drive recalls?**

Response to Question 4.

NADA does not have that information. We recommend asking NHTSA for that information.

- 5. Can you provide for the subcommittee the number of recalls since January 1, 2014 that have been Stop Drive recalls, and how many vehicles were affected?**

Response to Question 5.

NADA does not have that information. We recommend asking NHTSA for that information.

- 6. When a consumer owns a car that has a safety recall without "Stop Drive" instructions, how soon should they get it repaired? And why?**

Response to Question 6.

---

<sup>2</sup> Attached letter to Senator Markey from Secretary Foxx (May 6, 2014)

When an owner of a vehicle receives any safety recall notice, he or she should get the vehicle repaired at his or her earliest convenience. If repair parts and protocols are available, the remedy can be performed as soon as the vehicle is brought to an authorized dealer. Unfortunately, however, it can take weeks, months, or even years between when a safety recall is announced and when the manufacturer provides the parts and protocols necessary to complete the remedy. Fortunately, notices for safety recalls involving “stop drive” admonitions typically detail the process for obtaining a loaner vehicle and for having the recalled vehicles towed to an authorized dealer when appropriate.

7. **You stated during the hearing that NHTSA has the authority to require a manufacturer to issue a "Stop Drive" recall. Will you provide the subcommittee with the citation for that authority?**

Response to Question 7.

See 49 U.S.C. §30118 and 49 C.F.R. §577.6.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
November 6, 2015

Mr. Michael Wilson  
Chief Executive Officer  
Automotive Recyclers Association  
300 New Jersey Avenue, N.W.  
Washington, DC 20001

Dear Mr. Wilson,


Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, October 21, 2015, to testify at the hearing entitled "Examining Ways to Improve Vehicle and Roadway Safety."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, November 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at [Dylan.Vorbach@mail.house.gov](mailto:Dylan.Vorbach@mail.house.gov) and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment



### Additional Questions for the Record

The Honorable Michael C. Burgess, MD

1. If a recycler does not know what part has been recalled, what happens to the vehicle and parts that may be associated with the recall?

ARA Response

As with any owner of a vehicle, if the owner/recycler is not notified or is not given adequate information in order to identify which defective automaker part has been recalled, the owner will not be in a position to know if any part associated with a vehicle is recalled. That is the reason recyclers need VIN specific part number data in a recall notice.

2. If legislation prohibited dealers and others from selling cars under recall, including those sold for scrap, what would the effect be on auto parts recyclers?

ARA Response

If legislation prohibited dealers from selling used cars with non-remedied recalls to professional automotive recyclers, it would have a significant impact. While the volume of vehicles automotive recyclers receive from dealers is relatively low, there would be a huge impact if motor vehicles at salvage auctions were classified as used vehicles.

ARA believes that if such used car legislation is considered, it should provide an exemption for motor vehicles sold to professional automotive recyclers similar to the language contained in current Rachel and Jacqueline Houck Safe Rental Car Act legislation (H.R. 2198/S.1173).

3. Do automotive recyclers follow motor vehicle equipment standards that are in place for new motor vehicle equipment?

ARA Response

The National Highway Traffic Safety Administration has a legislative mandate under Title 49 of the United States Code, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards (FMVSS) and Regulations to which manufacturers of motor vehicle and equipment items must conform and certify compliance. These Federal safety standards are regulations written in terms of minimum safety performance requirements for motor vehicles or items of motor vehicle equipment. These requirements are specified in such a manner "that the public is protected against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury in the event crashes do occur."

Professional automotive recyclers sell original equipment manufacturer (OEM) used (recycled) parts and assemblies to its customers. OEM recycled parts have the original factory corrosion protection. They have proper mounting locations and fit properly. They are OEM parts, designed by the OEM, and built to meet the OEM requirements for fit, finish, durability, reliability and safety. Professional automotive recyclers do not alter the recycled OEM parts they sell. They effectively are the same parts, but are simply distributed in different channels — new versus used versions of the same parts.

A. How do automotive recyclers ensure the safety and reliability of a recycled part or component before it is marketed or sold to a consumer?

ARA Response

Professional automotive recycling facilities follow industry established best management practices and methodologies to provide quality OEM recycled parts to consumers. There are at a minimum, three separate evaluations of any OEM recycled part before it is sold.

These facilities maintain multi-step inspection and quality control systems to ensure that the recycled parts and assemblies provided meet appropriate grade and condition requirements. These systems include, among other things, i) pre-purchase inspection of the salvage vehicle; ii) further inspection of the vehicle, damage, and point of impact analysis of the vehicle at the recycling facility before disassembly; iii) further inspection and grading of the condition of the part or assembly after disassembly has occurred at the facility; and iv) further inspection before delivery to customers to meet their specific order requirements.

Professional automotive recyclers acquire motor vehicles from various sources, including salvage auctions, dealers and direct purchases from insurers and vehicle owners. After the vehicles are acquired, professional automotive recyclers make a careful assessment of the vehicle to determine which parts and assemblies will be removed from the vehicle for disassembly and which parts will be scrapped. Established methodologies for vehicle evaluation and inventory analysis can include processes such as:

- Imaging the vehicle and its component parts and track to the vehicle part record
- Reviewing the vehicle's build codes (if available)
- Imaging the build codes and capture build date (if available)
- Decoding vehicle line and drive train configuration
- Identifying assemblies and parts
- Verifying interior colors and maintain conditions and option lines (seats, dashboard, door parts)
- Verifying condition of core support, bumper reinforcement, head light mounting panel and frame rails
- Assigning condition codes, assess extent and type of any damage, and identify the primary damage field

November 20, 2015

Page 3

- Starting vehicle and test mechanical and electrical parts (*e.g.*, fuel pump, alternator, transmission, power windows, mirrors, power seats, power antennae, AC compressor system)
- Logging on the individual part record that the part has been tested
- Engine-oil and compression testing to learn if mileage exceeds certain mileage

Data is recorded in respect to both the vehicle and disassembled parts and assemblies, and part tags with bar codes are assigned to each disassembled part/assembly.

In 1997, ARA established its Gold Seal Certification Program that defines standards for recycled parts quality assurance, customer service, parts descriptions and other facets of quality control. This program continues to grow and is recognized by the Automotive Service Association and other industry partners.

4. How are recyclers monitoring counterfeit automotive parts in the marketplace and ensuring that they are not being sold to consumers?

ARA Response

ARA has a long history of speaking out against counterfeit automotive parts and warning the automotive repair industry community and consumers about the dangers such parts pose and their increasing prevalence. ARA urges customers to utilize quality, recycled original equipment manufacturer (OEM) parts supplied by professional automotive recyclers because it is the professional automotive recycling operations that have robust product assurance and quality control procedures in place to help identify parts that do not meet industry accepted standards.

Most professional automotive recycling facilities employ multi-step quality control precautions that help to identify counterfeit parts. The industry employs sophisticated methods to process, inspect, evaluate and analyze OEM parts harvested from vehicles. For example, at a typical professional automotive recycling facility, these processes may include a review of the vehicle's build codes (if available), capturing images of the vehicle and its component parts to track the vehicle part record, verification of interior colors, conditions and option lines (seats, dash board, door parts) and checking the vehicle identification number. As a result of these quality control processes, parts found to be of a substandard condition grade, rusted, non-repairable or otherwise suspect, such as possible counterfeit parts, are not listed as available on estimates or sold to customers.

ARA is working on many fronts to ensure that counterfeit parts are not being sold. At the state level, ARA has supported legislation making it a crime to knowingly manufacture, import, install, reinstall or sell a counterfeit or nonfunctional airbag. In addition to meeting with NHTSA staff about this issue, at the government's request, ARA also met with senior policy staff from the Administration responsible for coordinating the federal government's efforts on intellectual property (IP) enforcement issues to discuss the issue of counterfeit airbags.

November 20, 2015

Page 4

Preventing the spread of counterfeit automotive parts and targeting criminals who engage in that type of activity also is a priority for the National Intellectual Property Rights Coordination Center (IPR Center) which is a joint task-force agency led by Homeland Security Investigations, a component of the Immigration and Customs Enforcement (ICE) agency. According to the IPR Director, the use of illegal counterfeit automotive parts is increasing in the U.S and automakers and automotive recyclers both can and need to help with this problem. The Director further stated that "automotive recyclers know their business and can recognize when a part seems out of place, or doesn't seem right." In addition, he suggested that consumers should only "do business with reputable repair shops, the manufacturer's dealership repair network, or legitimate automotive recyclers selling used OEM parts." ARA is working with many different sectors to help reduce the incidence of counterfeit automotive parts in the replacement parts marketplace.

5. Section 202 of the discussion draft requires part suppliers to provide part numbers to NHTSA and automakers in circumstances where a recall involves a defective part. Will this help recyclers determine which parts are subject to a recall, if publicized by NHTSA or the automakers? What efforts have recyclers made in the past to obtain part numbers from part suppliers, automakers, franchised dealers, and NHTSA in the event of a recall?

#### ARA Response

The language in Section 202 of the discussion draft requiring part suppliers to provide part numbers to NHTSA and automakers in circumstances where a recall involves a defective part does not go nearly far enough and is significantly deficient. The key deficiencies center on the fact that the language does not require manufacturers to provide their part numbers in a format that is electronically integratable into inventory management systems.

For years, professional automotive recyclers through their industry trade association - ARA, have sought access to original equipment part numbers on behalf of the industry. We have appealed to all sectors of government, automakers, related industry sectors and worked with consumer groups to obtain part data from automakers. Our efforts have resulted in a much better educated public about OEM recycled parts and the significant role they play in the replacement parts market; however, the automakers continue to restrict access to their part data and policymakers continue to permit them to act in this manner.

Regrettably, automakers have a long history of erecting barriers to further monopolize their hold on the vehicle parts replacement market. From withholding essential Vehicle Identification Number (VIN) information tied to part name, description and numbers to the full court negative press campaign on the integrity of recycled OEM parts - components they themselves originally manufactured - the automakers stand as a road block to fair competition in the markets for replacement parts and equipment to ensure efficient repair and maintenance of motor vehicles.

November 20, 2015  
Page 5

In its comments submitted to NHTSA on the Motor Vehicle and Equipment Safety Recall Rule in November 2012, ARA agreed with the Agency that the automobile manufacturers are critical to the development of a comprehensive, centralized recall database. ARA specifically requested NHTSA to require that manufacturers provide data such as Original Equipment numbers, Part ID numbers, build sheets with textual part descriptions, published service and recall bulletins, remedy/repair procedures, along with all current and superseded numbers on recalled items.

ARA further noted that NHTSA should make sure this data is available via batch access so that the entire recall database is available for download to third parties for integration in their locally installed inventory management systems. ARA stated that under this system, particular users would be able to incorporate this data into their individual inventory management systems so that this information would reach all levels of the automotive supply chain in a streamlined manner.

ARA has repeatedly noted that while very few of the hundreds of millions of recycled OEM parts sold annually could be subject to a recall, OEMs should not be allowed to block information about those items. ARA holds that it is especially troublesome when manufacturers reference the lack of a systematic recall tracking system and use that as a marketing tool against consumers' utilization of recycled OEM parts.

ARA is working beyond our borders to get parts data as well. At the 14th International Automotive Recyclers Congress in Brussels, Belgium in March 2014, ARA urged the automotive manufacturing community to provide professional automotive recyclers with access to crucial original equipment manufacturers (OEM) parts data. ARA was quoted as stating that "the industry must be provided with safety information that can be automatically synchronized with recycled parts inventories so that important recall and service bulletin information is seamlessly integrated into the inventory management systems utilized by the automotive recycling industry."

The Honorable Adam Kinzinger

1. My office has received responses from a few auto manufacturers following previous hearings on this subject. In their responses, they highlighted that the necessary parts number information is available today, via subscription such as Honda's Service Bulletin. Do resources like these provide the information your member companies need? How is the information you're requesting different from what auto manufacturers' claim is already available?

ARA Response

Regrettably, automakers have a long history of withholding essential Vehicle Identification Number (VIN) and part number information. The specific parts number information is not available today to the professional automotive recycling industry. If automakers are pressed to answer the question, they tend to point to information that is not available and/or

November 20, 2015  
Page 6

provided in formats that cannot be efficiently integrated into professional automotive recycling industry inventory management systems (IMS), such as .pdf files of technical service bulletins.

As mentioned in my testimony, automakers are accountable for the safety of all original equipment parts throughout their life-cycle and should be required to share whatever parts information is necessary to identify and locate recalled defective parts within the recycled original equipment parts population. This practice of sharing original equipment parts numbers with professional automotive recyclers should not be an anomaly, rather it should be a standard automotive industry practice, especially in light of the new "safety norm." Consumer demand for a safe and vibrant replacement parts market makes it imperative that Congress include language that would require automakers to remove the barriers they have constructed so that all of the parts data is available to the professional automotive recycling industry.

In addition, ARA strongly believes that U.S. policymakers should follow the lead of the European Commission which has adopted regulations that require automakers to provide independent operators with the VIN, OE parts numbers, OE naming of the parts, and validity attributes. Only with this data can the automotive parts supply sector efficiently identify the automakers defective parts.

This vehicle part information (part name, part description and part number) must be tied to specific Vehicle Identification Numbers (VINs) data for all motor vehicles. It is only with access to specific VIN numbers tied to the parts information (part names, part descriptions, part numbers) that the industry's commercial inventory management system (IMS) providers will have the ability to develop software to automatically and electronically identify the defective recall parts in the automotive supply chain, significantly helping NHTSA reach its 100% recall remedy goal.

It is important to note that six to eight major inventory management system entities handle 95 percent of the parts inventoried by automotive recycling facilities. Only an estimated 5 percent of parts in the marketplace fall outside of the IMS platforms. These percentages support the need for NHTSA to provide the IMS entities with access to this critical parts and VIN data.

ARA also concurs with NHTSA's statement included in the proposed Rule for Map 21 dated September 10, 2012 in which the Agency stated that, "We (NHTSA) believe safety critical information, such as recall information, should be provided to the public without charge."