



**ADVOCATES
FOR HIGHWAY
& AUTO SAFETY**

STATEMENT OF JACQUELINE S. GILLAN

**PRESIDENT
ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

ON

**“OVERSIGHT OF THE NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION”**

BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

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Introduction

Good morning Chairman Burgess, Ranking Member Schakowsky and members of the Subcommittee. I am Jackie Gillan, President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, insurers and insurance agents that promotes highway and auto safety through the adoption of safety laws, policies and regulations. Advocates is unique both in its board composition and its mission of advancing safer vehicles, safer drivers and safer roads.

Motor Vehicle Deaths are Climbing and the Safety Agenda Languishes

According to the federal government, each year motor vehicle crashes kill nearly 33,000 people and millions more are injured at a cost to society of over \$800 billion.¹ 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 nine months of 2015 increased by 9.3 percent compared to that same time frame the previous year.² Moreover, the National Safety Council estimates that motor vehicle deaths were up 8 percent in 2015 compared to 2014, representing the largest year-over-year percent increase in 50 years.³

The good news is that we have solutions on hand to reduce this unacceptable increase in needless deaths and injuries on America's roads. There is an unfinished and overdue agenda in ensuring the safety of drivers and vehicles.

Earlier this year Advocates released our 13th annual *Roadmap of State Highway Safety Laws*.⁴ The Roadmap Report serves as a “report card” for all 50 states and the District of Columbia, grading them on enactment of 15 basic traffic safety laws. It can be a valuable “playbook” for state lawmakers to assess safety shortcomings in states and advance needed bills to save lives and prevent injuries. The report covers: occupant protection including seatbelts, child restraints and motorcycle helmets; Graduated Driver Licensing (GDL) programs for novice teen drivers; impaired driving; and, distracted driving.

The theme of this year’s Report, “Missing in Action,” was chosen because every state is still missing critically important safety laws, yet state elected officials are frequently missing in action. Last year, the fewest number of states enacted safety laws since Advocates began publishing the report in 2004.⁵ A total of 319 laws still need to be adopted in all states and D.C. to fully meet Advocates’ recommendations for optimal safety laws.⁶ State legislatures, as well as Congress, must be willing to use tools that have been proven to effectively reduce the death and injury toll on our nation’s roads.

Vehicle Safety Recalls are a Serious Threat to Public Safety

The grim statistics about far too many deaths and injuries resulting from crashes comes at a time when Americans are also facing a record number of recalls for safety-defective motor vehicles. In 2015, nearly 900 vehicle recalls involving 51 million vehicles were issued eclipsing the previous record set in 2014.⁷ 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 Explorer

defective tire fiasco. Again, in 2009, families were put at unacceptable risk due to the Toyota sudden acceleration problem. In the past two years, the public has learned about the cover-ups and deception by General Motors (GM) which knowingly used faulty ignition switches that have been linked to at least 169 deaths,⁸ and many more injuries. Furthermore, the defective air bags manufactured by Takata have resulted in millions of vehicle recalls and has caused at least 10 deaths and 100 injuries.⁹

Moreover, the rate that NHTSA has issued recalls for vehicles that contain these exploding air bags is deeply disturbing. The agency first issued a recall in May of 2015 but it failed to cover all of the vehicles that contained Takata air bags. In fact, the agency has yet to identify all the vehicles that are equipped with these deadly devices.¹⁰ These defective air bags are still killing drivers long after they should have been removed and replaced – and not with airbags that may also be defective.

Some examples of the most recent problems include NHTSA's confirmation that a 17-year-old girl from Texas was killed on March 31, 2016, less than two weeks ago, after her car was involved in a low speed crash and the malfunctioning air bag activated.¹¹ On March 24, 2016, BMW informed NHTSA that it will be unable to meet its March 31 deadline to acquire a sufficient supply of remedy parts for a Takata inflator under recall. The alternate inflator that BMW's supplier had developed failed during recent testing. NHTSA has now given BMW until August 31, 2016, to replace the defective air bags.¹² Also, on February 12, 2016, BMW, Daimler Vans, Ford, Honda, Mazda, Mercedes-Benz and Volkswagen expanded their Takata recalls to include vehicles equipped with driver-side air bag inflators that Takata has declared defective.¹³

By entering into voluntary agreements with manufacturers to recall defective vehicles instead of issuing official recalls enforced by a federal court, NHTSA is encouraging manufacturers to slow walk recalls with deadly consequences as demonstrated by the ongoing fiasco involving Takata airbags. This seemingly never-ending nightmare will not be resolved until the agency recalls every vehicle that contains a deadly Takata air bag and they are replaced with air bags that have been proven to be safe.

The dangers posed by these record high levels of safety recalls are exacerbated by the disturbingly low rates for remedying safety defects. A 2012 report from NHTSA found that over one quarter of vehicle recalls were not completed between the years 2006-2010.¹⁴ Moreover, the recall completion rate dropped to 48 percent from 56 percent in 2013, according to the consumer website Autotrader.¹⁵ These bleak statistics indicate that manufacturers and NHTSA are not adequately informing the public about safety recalls and are not effectively motivating vehicle owners to remedy safety defects as required by federal regulations. Congress sought to address this problem in Section 24105 of the FAST Act which establishes a pilot program that provides grants for as many as six states to inform consumers of an open safety recall at the time of vehicle registration.¹⁶ However, the threat to the public posed by vehicle safety recalls requires a much more vigorous and comprehensive response from Congress and NHTSA than a limited pilot program. NHTSA should be directed immediately to work with stakeholders in all states to ensure that consumers are informed about pending safety recalls at the time of vehicle registration, and to develop a program that would make vehicle registration or re-registration contingent upon having safety recalls remedied. Just as many states require vehicles to pass an annual safety or emissions inspection in order to remain on the road, vehicles subject to an open

safety recall should not be permitted to travel on public roads. Cars with serious defects pose an unnecessary safety threat not only to the vehicle operator but to others as well sharing the road.

Furthermore, Congress needs to close the loophole that allows auto dealers to sell used vehicles to consumers that have unrepaired safety defects. The FAST Act prohibits automobile dealers from renting any vehicles that are subject to a safety recall until they are fixed.¹⁷ However, there is no such restriction on the sale of “used” vehicles even when they have the exact same defects such as defective brakes, faulty steering, or malfunctioning air bags and seat belts. 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 2014.¹⁸

Sufficient NHTSA Resources are Critical to Ensure the Safety of the Car of Today and the Car of Tomorrow

NHTSA’s funding and staffing levels have suffered over the years and while the FAST Act did provide some additional resources it is still inadequate to deal with the myriad of challenges facing the agency. Today, 95 percent of transportation-related fatalities, and 99 percent of transportation injuries,¹⁹ involve motor vehicles on our streets and highways and yet, NHTSA receives only one percent of the overall U.S. Department of Transportation (DOT) budget.²⁰ NHTSA is responsible for the safety of over 316 million Americans who drive or ride in more than 269 million registered motor vehicles.²¹ Motor vehicle crashes are a 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.²² 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 expected challenges in the future, 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 \$152.8 million for Fiscal Year (FY) 2016.²³ This funding level is grossly insufficient 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 nine years.²⁴ 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 \$153 million equates to NHTSA receiving less than 60 cents for each of the 269 million registered vehicles on the road in the U.S.²⁵

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 2013.²⁶ NHTSA remains woefully under-resourced and the agency's ability to keep up with technology developments, vehicle safety rulemakings and crash and injury trends is imperiled by the lack of sufficient resources. This inadequacy 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.²⁷ The situation continues to be unacceptable. Today, in light of the dramatic increase in vehicle electronics, communications, software, new technology and the advent of autonomous vehicles,

the agency's lack of resources and sophisticated expertise threatens to undermine the essential lifesaving mission of this agency now and into the future.

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 an estimated 613,501 lives from 1960-2012.²⁸ NHTSA's funding for vehicle operations and research should acknowledge the daunting challenges the agency faces and the tremendous workload NHTSA undertakes to ensure the safety of millions of Americans every day of the year.

Overdue Safety Actions and Rulemakings Passed by Congress and Promised by DOT

Advocates commends this Committee for including in the safety title of the Moving Ahead for Progress in the 21st Century Act, or MAP-21, several safety provisions directing agency regulatory actions on overdue lifesaving measures to improve motorcoach safety.²⁹ This mode of transportation is affordable, convenient and growing in popularity. In 2013, according to the American Bus Association Foundation, the motorcoach industry in North America provided 605 million passenger trips.³⁰

Safety deficiencies identified in countless recommendations and crash investigations by the National Transportation Safety Board (NTSB), have 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 statutory deadlines completely ignored. For example, the statutory deadline for a final standard for motorcoach roof strength and crush resistance is October 1, 2014. NHTSA

currently estimates a final rule will not be issued until September, 2016, nearly two years overdue. The rulemaking on anti-ejection countermeasures was also due by October 1, 2014, and has yet to be initiated.³¹

According to NHTSA's November 2015 Motorcoach Fire Safety Report, approximately 160 motorcoach fires are reported every year in the United States. Recently, the NTSB investigated a 2014 motorcoach crash and fire involving high school students on a college trip. The crash occurred in Orland, California and killed 8 motorcoach passengers as well as the driver.³² As a result of its investigation, the NTSB made several safety recommendations including calling for more rigorous performance standards for interior flammability and smoke emissions characteristics, installation of a secondary door for use as an additional emergency exit, and equipping motorcoaches with emergency lighting fixtures and interior luminescent and exterior retroreflective material to mark all emergency exits in order to expedite passenger evacuation.³³ Section 32704 of MAP-21 directed NHTSA to research the causes of motorcoach fires and issue mitigation standards based on such research.³⁴ The agency completed the report on its research as noted above, and found that some actions could improve motorcoach fire safety. However, the agency has failed to issue any prevention and mitigation standards despite the glaring need for these safety improvements that will save lives.

All of these safety advances are critical as millions of passengers are transported by motorcoaches each year. These delays to ensure occupant protections in a crash or a deadly fire would never be tolerated in any other mode of transportation. It is both a safety and an economic

injustice to those who depend on motorcoach travel to ignore these needed basic safety measures.

Unacceptable & Unnecessary Delays in Child Safety Rulemakings

NHTSA delays in issuing rulemakings required by Congress are affecting the safety of children. The Cameron Gulbransen Kids Transportation Safety Act passed by Congress in 2007 with bipartisan support required NHTSA to issue a final rule to expand the required field of view for vehicles to lower the number of tragic backover deaths often involving young children.³⁵ The legislation required the agency to issue a final rule within three years of enactment, by February of 2011.³⁶ Yet, the agency did not issue a final rule until 2014 only after safety groups including Advocates and KidsAndCars.org as well as Cameron's father and other victims, represented by Public Citizen's litigation group, filed a legal action in federal court seeking the long overdue agency action.³⁷ In fact, the rule was not released until shortly before the Court was prepared to hear oral arguments on the matter.

Rear Seat Belt Reminders

The majority of passengers in the rear seats of vehicles are children and teens, and studies have shown that seat belt usage by teens is among one of the lowest segments of society. Further, in 2013, the proportion of unrestrained passenger vehicle occupants killed who were seated in the front seat was 44 percent, as compared to 55 percent for unrestrained rear seat occupants.³⁸ Section 31503 of MAP-21 required NHTSA to issue a rule requiring Seat Belt Reminder Systems for rear seat occupants by October of 2015.³⁹ The agency has yet to even initiate a rulemaking.⁴⁰ Such systems are already required for front seat occupants under FMVSS 208. Rear seat occupants, especially children, deserve the same protection.

Improving LATCH Systems

Section 31502(a) of the MAP-21 requires NHTSA to issue a rule to improve the ease of use of Lower Anchors and Tethers for Children, or LATCH, systems in rear seating positions by October of 2015.⁴¹ The safety benefits of child restraint systems (CRS) are well documented. NHTSA reports that child safety seats saved the lives of 263 children under the age of 5 in 2013.⁴² In addition, from 1975-2013, the agency estimates that 10,421 children under the age of 5 were saved by child safety seats and belt use.⁴³ Furthermore, research has shown that child safety seats reduce fatal injury by 71 percent for infants (younger than 1 year old) and by 54 percent for toddlers (1 to 4 years old) in passenger cars.⁴⁴ In fact, if all children were properly restrained NHTSA estimates that 319 lives could have been saved in 2013.⁴⁵

Research has also shown that the use of the LATCH system improves the rate of proper CRS installation.⁴⁶ However, consumers are not using the LATCH system because they find the attachment connectors either difficult to use or hard to locate.⁴⁷ There are simple solutions that can make LATCH more user-friendly. It is imperative that the agency meets the congressional requirement to issue a rule that will make these systems easier to use. Yet, NHTSA has once again failed to meet the congressional deadline of issuing a rule by October of 2015. Instead, the agency issued a Notice of Proposed Rulemaking in January of 2015 and has failed to undertake any subsequent action.⁴⁸

Other Child Occupant Protection Standards Needed

Unattended Children in Vehicle Reminders

Adults unintentionally leaving infants and young children in child restraint systems in the rear seats of passenger vehicles tragically leading to death has been, and continues to be, a known safety problem. Exposure of young children, particularly in extreme hot and cold weather, leads to hyperthermia and hypothermia that can result in death or severe injuries. From 1998 to 2014, 636 children were killed because of heatstroke,⁴⁹ and at least 30 children in the U.S. died of heatstroke in 2014 alone.⁵⁰ Of these needless deaths, more than half (53 percent) occurred when children were forgotten in the vehicle.⁵¹ The risk of heatstroke is higher among children than adults because a child's body temperature heats up three to five times faster and the risk is exacerbated if the child is too young to communicate.⁵²

Advocates supported Section 24114 of the FAST Act that requires NHTSA to conduct research on effective ways to minimize the risk of heat stroke to children left unattended in a vehicle. This research should be completed promptly as Congress originally called for such research to be undertaken by NHTSA in Section 31504 of MAP-21.⁵³ Moreover, this research should be the basis for a rulemaking that leads to a sensible safety standard. 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. 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. Surely, we can find a technological reminder to prevent parents, grandparents, childcare givers and others from committing a fatal mistake.

Rear Seatback Strength Standard

Parents have long been advised that the safest place for a child is in the rear seat. Yet, NHTSA has failed to adequately protect a child in the rear seat when the front seatback fails or collapses in a crash. This is a safety threat to both front and rear seat passengers. Unfortunately, the safety standard for seatback performance has not been upgraded since it was first adopted in 1967 – nearly 50 years ago. Regulatory compliance rear impact crash tests for fuel system integrity (Federal Motor Vehicle Safety Standard (FMVSS 301), conducted by NHTSA, revealed that almost every seatback fails, allowing a front seat occupant to be propelled into the rear seating area. Seat belt systems that are effective in frontal crashes are not designed to keep front seat occupants from slipping out of the belt system when the seatback collapses, leading to an increase in the risk of injury to the front seat occupant, including paraplegia or quadriplegia.

The Children’s Hospital of Philadelphia (CHOP) has determined that collapsing seatbacks are a serious threat to children seated behind adult occupants in the front seats. Many children were found to have been injured in crashes in which seatbacks collapse or there is excessive seat deformation. The failure of a seatback directly in front of a child places the child at risk, and when there is an occupant in the seat that fails there is double risk of injury to the child.⁵⁴

NHTSA noted in a 1997 study that an examination of the interaction between front seatback failures and injuries to rear seat occupants may be important to assess the entirety of the occupant protection implications of seatback failure.⁵⁵ Additionally, NHTSA has stated that the weight of a passenger when added to the weight of the seatback itself will, even in a low severity crash, produce forces exceeding the level required by FMVSS 207.⁵⁶

Advocates supports the petition filed with NHTSA by the Center for Auto Safety in March of 2016 asking that the agency modify its child seating recommendations to warn parents of the dangers associated with setback failures.⁵⁷ In addition, NHTSA cannot ignore this problem any longer and must upgrade the performance of vehicle seatbacks, including head restraints, to increase the protection of children and adults in passenger motor vehicle crashes.

Automated Vehicle Technology Potentially Holds Promise but also Potential Problems Without Rigorous NHTSA Oversight

In our efforts to significantly reduce the carnage on our roads and highways, Advocates is hopeful that automated vehicle technology will make a major contribution. However, Advocates is concerned about unsupported and uncertain statements by NHTSA and others about the potential safety benefits of this technology to the public. In the past, DOT predictions regarding the safety benefits of emerging technologies, such as those related to the Intelligence Transportation System (ITS) initiative of the early 1990s, were exaggerated and erroneously optimistic.⁵⁸ Inaccurate and overreaching assessments of the potential safety benefits of automated vehicles could mislead the public and reduce funding for the development of other potential safety technologies and applications.

Automated vehicle technology must be subject to an effective regulatory framework that provides a level playing field for developers and manufacturers and guarantees public safety. NHTSA must be a safety regulator not a submissive spectator as this technology continues to develop. Strong oversight by NHTSA is needed in order to ensure that American families are not guinea pigs for the testing and deployment of this technology. The agency must establish

uniform testing and minimum performance standards to ensure that all driverless car manufacturers are playing by the same set of rules.

Undoubtedly, automated vehicle technology will not prevent every crash and will not be infallible. Software problems affecting thousands of vehicles could result in crashes, deaths and injuries. Thus, the current lack of transparency in the development of automated vehicles is most concerning. Moving forward, both NHTSA and the public must have the opportunity to evaluate the basic technology from sources other than corporate promoters and those with an economic stake in the outcome. Only a full vetting of this technology by all interested stakeholders including NHTSA will ensure that the technology is ready, reliable and safe before it is deployed on public roads or the results could be catastrophic.

Demonstrations and limited trials by companies with a deep financial interest in rushing the technology to market as soon as possible should not be a substitute for rigorous testing, thorough review of data and performance standards. This is crucial in light of recent record recalls for safety defects and corporate cover-ups, as well as current identified problems affecting the reliability of automated vehicles. For example, presently certain automated vehicles cannot perform in adverse weather conditions such as rain and snow as well as in certain urban settings. America's crumbling infrastructure also presents a serious challenge for automated vehicles. At a press event at the Los Angeles Auto Show, a self-driving vehicle was unable to operate because it could not detect sufficient lane markings.⁵⁹ Additionally, another manufacturer noted that faded lane markings have confused their company's automated vehicles.⁶⁰ In July 2015, Secretary Foxx reported that 65 percent of America's roads are in poor condition.⁶¹ Thus,

significant investment in our nation's infrastructure will be required to ensure it is ready for automated vehicles. These pressing safety issues must be resolved before NHTSA certifies automated vehicles for public use.

Furthermore, cyber-attacks of automated vehicles are also a serious and real danger. Last year, hackers demonstrated their ability to take over the controls of a sport utility vehicle (SUV) that was traveling 70 miles-per-hour on an Interstate outside of St. Louis.⁶² By accessing the vehicle's entertainment system using a laptop computer, hackers located miles away from the vehicle were able to send disruptive commands to the SUV's dashboard functions, steering, brakes, and transmission.⁶³ In order to ensure that this technology operates as intended, without interference and with appropriate security of the system, vehicle communications systems must retain the dedicated 5.9 Gigahertz (GHz) frequency or spectrum. Interference with the frequency utilized by automated vehicles through error or intentional conduct could present a significant threat to public safety.

Finally, the interaction between driverless vehicles and those operated by a driver must be addressed. Significant fleet penetration for automated vehicles is likely decades away.⁶⁴ As a result, automated vehicles and driver operated vehicles will be sharing the road for many years to come. Current testing has already revealed that automated vehicles will face a myriad of challenges interacting safely with other cars, trucks and buses as well as bicyclists and pedestrians. Advocates believes automated technology holds great promise to advance safety; however, federal oversight and minimum performance standards will be essential in achieving this brave new world of computer driven motor vehicles.

Provisions Essential to Advancing Safety

Unfortunately, the FAST Act represented a missed opportunity for Congress to advance all of the needed solutions to advance safety. Advocates is concerned that those safety provisions that were included in the legislation will also be delayed by NHTSA inaction as is the case with many of the MAP-21 safety provisions noted above.

Moving forward, Advocates urges Congress to provide NHTSA with enhanced authority to address existing and future safety challenges. For these reasons Advocates continues to support enactment of several important provisions in the Vehicle Safety Improvement Act of 2015, H.R. 1181 that were not included in the safety title of the FAST Act. Improvements in early warning reporting, consumer information, giving NHTSA imminent hazard authority and the ability to impose larger financial penalties are prudent measures to also guide the development and deployment of autonomous vehicles in the years ahead. Enacting these provisions is an opportunity to be proactive on public safety and automaker accountability as opposed to reactive when a deadly problem occurs.

Early Warning Reporting of Fatal Incidents by Manufacturers

The intent of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act⁶⁵ (2000) 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.⁶⁶ 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.⁶⁷

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 and time-consuming 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:

- 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.⁶⁸
- 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.⁶⁹

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 2009.⁷⁰ This equates to an average of a pedestrian being killed every two hours and a pedestrian being injured every eight minutes.⁷¹ Pedestrian fatalities have increased by 15 percent and the number of pedestrians injured has increased by 12 percent since 2009.⁷² In 2013, the latest year of data available, there were 4,735 pedestrian deaths and 66,000 pedestrians injured.⁷³ 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.⁷⁴ Older pedestrians (age 65+) accounted for 19 percent (896) of all pedestrian fatalities in 2013.⁷⁵ 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).⁷⁶ In 2010, pedestrian crashes resulted in \$65 billion in comprehensive costs.⁷⁷

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.

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.

While the FAST Act included 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 Vehicle Safety Improvement Act of 2015. Section 24403 of the FAST Act requires manufacturers to retain records related to safety issues for a period of not less than 10 calendar years.⁷⁸ However, the Vehicle Safety Improvement Act of 2015 requires such records to be retained for 20 calendar years.⁷⁹ 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,⁸⁰ while Section 24402 of the FAST Act only extends the cap to 15 years.⁸¹ These provisions in the Vehicle Safety Improvement Act of 2015 provide the sensible and optimal protections for consumers and should be adopted to enhance the improvements contained in the FAST Act.

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

The 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 people is a stark reminder of why NHTSA must be given the authority to levy larger monetary fines than currently capped in the law at \$105 million as well as criminal penalties for such grave malfeasance and misconduct. Without this change, the American public will continue to be the unknowing victims of manufacturers that place profits above public safety.

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 air bags. 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 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.

Conclusion

Fifty years ago, Congress passed and President Lyndon B. Johnson signed into law the National Traffic and Motor Vehicle Safety Act of 1966 because of concerns about the death and injury toll on our highways.⁸² The law required the federal government to establish federal motor vehicle safety standards to protect the public against “unreasonable risk of accidents occurring because of the design, construction or performance of motor vehicles.”⁸³ The underlying premise of this prescient law has not changed since its enactment. But in order for the agency to fulfill its clear mission to protect the public it needs sufficient resources and a commitment to implementing its regulatory and enforcement authorities to protect the public.

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

Endnotes

- ¹ 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>.
- ² National Highway Traffic Safety Administration (NHTSA), *U.S. DOT announces steep increase in roadway deaths based on 2015 early estimates and convenes first regional summit to drive traffic safety behavior changes*, NHTSA 02-16 (Feb. 5, 2016).
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- ⁴ Advocates for Highway and Auto Safety (Advocates), 13th Annual Roadmap of State Highway Safety Law (Jan. 2016), available at: <http://saferoads.org/roadmaps/>
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ Mark R. Rosekind, Ph.D., Administrator, National Highway Traffic Safety Administration (NHTSA), Washington Auto Show Keynote Address (Jan. 21, 2016).
- ⁸ Associated Press, *GM ignition switch fund pays out \$594.5 million*, Dec. 20, 2015.
- ⁹ Associated Press, *Honda reports 10th U.S. death from Takata air bags*, Apr. 6, 2016.
- ¹⁰ NHTSA, safercar.gov, vehicle owners, Information for vehicle owners on the Takata air bag recalls (accessed April 8, 2016).
- ¹¹ Angelo Young, *Takata Inflator Linked To 10th US Victim; Teen Bled To Death At Scene Of Minor Accident*, International Business Times, Apr. 6, 2016.
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