

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**October 19, 2015**

**To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Examining Ways to Improve Vehicle and Roadway Safety”**

On Wednesday, October 21, 2015, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “Examining Ways to Improve Vehicle and Roadway Safety.”

**I. BACKGROUND**

In the first six months of 2015, traffic fatalities in the United States increased by 14 percent after declining for a number of years.<sup>1</sup> In 2014, vehicle manufacturers overseen by the National Highway Traffic Safety Administration (NHTSA) recalled nearly 64 million vehicles for safety defects, more than double the previous record for recalls in a year.<sup>2</sup> As of early August 2015, more than 32.4 million vehicles had been recalled this year.<sup>3</sup>

Volkswagen (VW) is expected to recall about 480,000 vehicles in early 2016, in the wake of reports that VW installed defeat-device software into engine control systems on certain diesel

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<sup>1</sup> *Why This Could Be the Deadliest Driving Year in Nearly a Decade*, Fortune (Sep. 15, 2015) (online at [fortune.com/2015/09/15/auto-fatalities-increase/](http://fortune.com/2015/09/15/auto-fatalities-increase/)).

<sup>2</sup> *A Record Year of Recalls: Nearly 64 Million Vehicles*, New York Times (Feb. 12, 2015) (online at [www.nytimes.com/2015/02/13/business/auto-safety-recalls-set-record-of-nearly-64-million-vehicles-in-2014.html?\\_r=0](http://www.nytimes.com/2015/02/13/business/auto-safety-recalls-set-record-of-nearly-64-million-vehicles-in-2014.html?_r=0)).

<sup>3</sup> *More Stringent Auto Recalls for 2015 Are ‘New Normal,’* Detroit News (Aug. 16, 2015) (online at [www.detroitnews.com/story/business/autos/2015/08/16/stringent-auto-recalls-new-normal/31834869/](http://www.detroitnews.com/story/business/autos/2015/08/16/stringent-auto-recalls-new-normal/31834869/)).

engine cars to fraudulently pass emissions tests.<sup>4</sup> That recall is expected to affect as many as 11 million vehicles globally.<sup>5</sup>

## **II. FEDERAL LEGISLATION AND REGULATION ON AUTO SAFETY**

Partially in response to a wave of major recalls of the past year and the recent increase in traffic fatalities, there has been increased attention on auto-safety legislation and regulation. A number of auto safety bills were introduced in Congress this year.

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

On February 27, 2015, Subcommittee Ranking Member Jan Schakowsky, Full Committee Ranking Member Frank Pallone, Jr., and other Committee members introduced H.R. 1181, the Vehicle Safety Improvement Act (VSIA). The bill requires that manufacturers' communications regarding safety-related defects be made public on NHTSA's website; improves the Early Warning Reporting system by requiring manufacturers to submit additional information on fatal incidents that may have been caused by a defect; and eliminates regional recalls. The bill also gives NHTSA imminent hazard authority to expedite recalls in certain cases; prohibits dealers from selling or leasing a used vehicle subject to a recall if the defect has not been repaired; increases civil penalty amounts and eliminates most statutory maximum penalties for violations of federal motor vehicle safety laws; and requires NHTSA to establish new standards to improve pedestrian safety.

### **B. H.R. 2410, the Grow America Act**

On May 19, 2015, Rep. Peter DeFazio introduced H.R. 2410, the Grow America Act, which is the Administration's long-term surface transportation reauthorization bill.<sup>6</sup> Provisions in the bill that address motor vehicle safety would improve administrative management of the motor vehicle recall process; clarify safety recall-related information available to consumers before and after purchasing a vehicle; require franchise dealers to check for open recalls every time a vehicle is brought in for service; prohibit the ability of dealers and rental car companies to sell or rent vehicles under open recalls to consumers; and give NHTSA imminent hazard authority to expedite recalls in certain circumstances. The bill also raises civil penalties for certain violations under the Transportation Code, and creates criminal liability for willful tampering with a safety device on a motor vehicle.

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<sup>4</sup> *Volkswagen Recalling Diesels in January for 'Defeat Device'*, NBC News (Oct. 7, 2015) (online at [www.nbcnews.com/business/autos/volkswagen-recalling-diesels-january-defeat-device-n439956](http://www.nbcnews.com/business/autos/volkswagen-recalling-diesels-january-defeat-device-n439956)).

<sup>5</sup> *Id.*

<sup>6</sup> House Committee on Transportation and Infrastructure, *DeFazio, T&I Democrats Introduce Grow America Act to Set Robust Long-Term Surface Transportation Investment Levels* (May 19, 2015).

In addition, the bill includes new obligations for manufacturers who are parties in bankruptcy proceedings and directs the establishment of guidelines or regulations regarding safety-related electronics or software. The Grow America Act also allows NHTSA to initiate a rulemaking expanding current tire registration obligations and extends the period of time for a remedy of tire defects. The bill also establishes a pilot program to evaluate the feasibility and effectiveness of a State-based process for informing consumers of auto recalls at the time of vehicle registration.

**C. H.R. 22, the DRIVE Act**

The Senate Highway Bill that was passed by the Senate on July 31, 2015, was originally introduced in the House as H.R. 22. The Senate amended the bill and renamed it the DRIVE Act. No further action has been taken on the DRIVE Act in the House.<sup>7</sup>

Among other provisions, the DRIVE Act increases civil penalties for violations of vehicle safety; prohibits tire pressure monitors to be overridden or recalibrated; prohibits the retrieval of data from vehicle event data recorders (EDRs) except under certain delineated circumstances; and requires independent tire retailers to submit data to a newly-established searchable database of tire recall information. It also requires franchised auto dealers to provide notice of recalls to vehicle owners when they bring their cars in for service if such a provision is included in a franchise or other agreement between the dealer and the manufacturer.

The bill would also direct the Secretary of Transportation to issue a report on the feasibility of an in-vehicle system to indicate when the vehicle is subject to a recall and direct the promulgation of a rule to ensure that crash avoidance information is indicated next to crashworthiness on manufacturer stickers on new cars.

The DRIVE Act also includes the text of S.1173/H.R. 2198, the Raechel and Jacqueline Houck Safe Rental Car Act of 2015, which was introduced by Reps. Capps, Schakowsky, Butterfield, and Jones earlier this year. Among other things, that bill prohibits a rental car company that receives a notification from a manufacturer about any equipment defect or noncompliance with federal motor vehicle safety standards from renting or selling the vehicle unless the defect or noncompliance has been remedied.<sup>8</sup>

**D. NHTSA Proposed Rule on Vehicle-to-Vehicle Technology**

On August 18, 2014, NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM) to establish a federal Motor Vehicle Safety Standard for vehicle-to-vehicle (V2V) technology. The proposed standard requires cars and light trucks to be V2V-enabled and creates

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<sup>7</sup> *Senate Passes Highway Funding Bill*, USA Today (Jul. 30, 2015) (online at [www.usatoday.com/story/news/2015/07/30/senate-passes-highway-funding-bill/30879319/](http://www.usatoday.com/story/news/2015/07/30/senate-passes-highway-funding-bill/30879319/)).

<sup>8</sup> Provisions of the DRIVE Act that similar or identical to provisions of the discussion that is the subject this hearing are noted in the summary of the discussion draft below.

minimum performance requirements for V2V devices and messages.<sup>9</sup> The original rulemaking notice was accompanied by a readiness report, which estimates that Left Turn Assist (LTA) and Intersection Movement Assist (IMA) technology—two types of V2V technology—could prevent up to 592,000 crashes and save over a thousand lives per year.<sup>10</sup> NHTSA is expected to send the proposed rule to the Office of Management and Budget for review by the end of 2015.<sup>11</sup>

### **III. SUMMARY OF THE DISCUSSION DRAFT**

#### **Sec. 101. Required Reporting of NHTSA Agenda**

Under this discussion draft, NHTSA would be required to submit an annual report to Congress on its agenda for the following year, including policy priorities, projected rulemakings, plans to develop guidelines, plans to establish or change any NHTSA working groups, or to restructure NHTSA, and all associated dates and timetables. The draft also requires NHTSA to publish this report on its website.

#### **Sec. 102. Corporate Responsibility for NHTSA Reports**

The draft would require a manufacturer to have a senior executive in the United States certify the accuracy and completeness of all responses to NHTSA's requests for information relating to safety investigations.<sup>12</sup>

#### **Sec. 103. NHTSA Reporting on Implementation of Inspector General Recommendations**

Under this provision, NHTSA and the Inspector General (IG) would be required to submit periodic progress reports on NHTSA's accomplishment of recommendations in the IG report assessing NHTSA's management of recalls that was issued on June 18, 2015.<sup>13</sup>

#### **Sec. 104. Report on Operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies**

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<sup>9</sup> National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards: Vehicle-to-Vehicle (V2V) Communications, Advance Notice of Proposed Rulemaking*, Docket No. NHTSA-2014-0022 (Aug. 18, 2014).

<sup>10</sup> National Highway Traffic Safety Administration, *U.S. Department of Transportation Issues Advance Notice of Proposed Rulemaking to Begin Implementation of Vehicle-to-Vehicle Communications Technology* (online at [www.nhtsa.gov/About+NHTSA/Press+Releases/NHTSA-issues-advanced-notice-of-proposed-rulemaking-on-V2V-communications](http://www.nhtsa.gov/About+NHTSA/Press+Releases/NHTSA-issues-advanced-notice-of-proposed-rulemaking-on-V2V-communications)) (accessed Oct. 7, 2015).

<sup>11</sup> *Obama Administration to Fast-Track "Talking" Car Mandate*, Fortune (May 14, 2015) (online at [fortune.com/2015/05/14/v2v-communication-cars/](http://fortune.com/2015/05/14/v2v-communication-cars/)).

<sup>12</sup> Virtually identical provisions were included in VSIA and the DRIVE Act.

<sup>13</sup> A similar provision was included in the DRIVE Act.

This provision would require NHTSA to submit a report to Congress regarding the role, accomplishments, and priorities for the following five years of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technology established by The Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012.<sup>14</sup>

#### **Sec. 105. Improvement of Data Collection on Child Occupants in Vehicle Crashes**

In cases where a child restraint was in use in a vehicle involved in a crash, NHTSA would be required to collect information on the type of restraint used in its crash investigation data, including whether the child restraint system was forward-facing or rear-facing (in the case of a “five-point” harness). The draft also calls on the Secretary to consult with law enforcement officials, safety advocates, the medical community, and research organizations to improve the recording of child restraint data in police and other incident reports. The Secretary would also be required to report to Congress on child occupant crash data collection.<sup>15</sup>

#### **Sec. 106. Electronic Odometer Disclosures**

This provision would allow states, when implementing car title transfers, to accept electronically submitted odometer disclosures, provided the disclosures comply with all relevant requirements.<sup>16</sup>

#### **Sec. 201. Improvements in Availability of Motor Vehicle Safety Recall Information**

This provision would direct NHTSA to improve its website. The U.S. Government Accountability Office (GAO) would be directed to conduct a study on the use of the NHTSA website and other public recall information by consumers, auto manufacturers, and auto dealers, and ways NHTSA might increase public awareness of the website. The draft would also call on NHTSA to improve public awareness of safety recall information and provide guidance to consumers reporting complaints online, including an explanation of the information that should be included in reports and the possible actions NHTSA can take to address the complaints.<sup>17</sup>

#### **Sec. 202. NHTSA Recall Notification and Coordination**

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<sup>14</sup> A virtually identical provision was included in the DRIVE Act.

<sup>15</sup> A virtually identical provision was included in the DRIVE Act.

<sup>16</sup> A virtually identical provision was included in the DRIVE Act.

<sup>17</sup> A similar provision was included in the DRIVE Act. The DRIVE Act provision also included a study on the feasibility of searching multiple VINs at once to retrieve recall information and making such a search tool publicly available. The VIN database draft bill, that was the subject of the September 25, 2015 Subcommittee hearing, would require NHTSA to allow for searching multiple VINs at once. For additional information, please see the Democratic memo from the Subcommittee hearing held on September 25, 2015, available [here](#).

Under this provision, NHTSA would be directed to issue a rule requiring automakers to notify consumers of recalls by email, if available, and by other electronic means, in addition to first class mail. The provision would also require NHTSA to draft recall notices in coordination with auto manufacturers before a published recall and to notify affected parts suppliers ahead of publication. A recall notice would not be published until all vehicle identification numbers (VINs) for affected vehicles are made available to NHTSA by the auto manufacturer.

Parts suppliers would have three business days from the time of being notified of an upcoming recall to provide NHTSA and manufacturers with the serial numbers of recalled parts. Manufacturers would have five business days from the time of notice to provide affected vehicle identification numbers to NHTSA. The draft would also direct NHTSA to perform a recall completion report on each recall and require the IG to conduct an audit of NHTSA's management of vehicle recalls.

At the time of purchasing a vehicle, consumers would be given the option of providing their email addresses to the manufacturer only for the purpose of recall notifications.

The draft would also direct the Secretary to report to Congress on vehicle safety recall completion rates, including annual completion rates by manufacturer, model, and vehicle type for the five years leading up to the report, as well as possible means for NHTSA to improve recall completion rates.<sup>18</sup>

### **Sec. 203. Recall Notification at State Vehicle Registration**

This provision would require states to establish a process for informing consumers about open recalls at the time of registration at no cost as a condition for participation in the National Driver Registry.<sup>19</sup>

### **Sec. 204. Recall Obligations Under Bankruptcy**

Under the draft, manufacturers in bankruptcy would be required to uphold their safety obligations even in the case of liquidation. Current law applies only to manufacturers engaged in a bankruptcy reorganization.<sup>20</sup>

### **Sec. 205. Application of Remedies for Defects and Noncompliance**

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<sup>18</sup> The DRIVE Act also included a provision requiring recall notification by electronic means. It also required biennial reports on recall completion rates and an IG audit of NHTSA's management of vehicle recalls.

<sup>19</sup> The DRIVE Act contains a provision that would establish a pilot program to evaluate the feasibility and effectiveness of a State-based process for informing consumers of recalls at the time of vehicle registration. The DRIVE Act would also provide grants for states that participate in the pilot program. A similar pilot program would be established under Grow America.

<sup>20</sup> Virtually identical provisions were included in VSIA and the DRIVE Act.

Auto manufacturers would be required to provide remedies for defects in vehicles free of charge for 15 years after the model date, instead of the 10 years currently required.<sup>21</sup>

### **Sec. 301. Vehicle Data Privacy**

The draft would require automakers to develop a privacy policy outlining company practices with respect to the collection, use, and sharing of information; the choices available to consumers about that information; how information is collected; company practices regarding retention of information, security of information, maintenance of the accuracy of the information; and the extent to which the company ensures that third parties comply with the privacy policy. Manufacturers would not be required to have any minimum requirements or take any particular action apart from noting their policies. NHTSA would then publish these policies on its website.

If a manufacturer fails to submit a privacy policy, it would be subject to a fine of \$5,000 per day up to a maximum of \$1 million. However, a manufacturer that submits a privacy policy that simply addresses each element—regardless of whether it actually provides any privacy protections or whether it complies with its own privacy policy—would not be subject to civil penalties. Additionally, a manufacturer with privacy policies that would provide consumers with all of the items described in the draft would be given safe harbor from any Federal Trade Commission (FTC) enforcement actions for unfair or deceptive acts or practices related to privacy, even if the manufacturer does not comply with its own privacy policy.

The provision would also require NHTSA to file a report to Congress on EDRs, including the amount of time necessary to record data, and how data from an EDR can be transmitted to first responders in the case of a vehicle crash.<sup>22</sup>

### **Sec. 302. Motor Vehicle Data Hacking**

Unauthorized access of vehicle control systems subjects the hacker to a civil penalty of \$100,000 per violation. Each vehicle hacked would be a separate violation.

### **Sec. 303. Cybersecurity**

NHTSA would be required to establish an Automotive Cybersecurity Advisory Council, which would develop best practices on cybersecurity for auto manufacturers. The Council would meet on at least a quarterly basis in closed meetings.

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<sup>21</sup> A similar provision is included in VSIA. However, VSIA would eliminate the limit on the number of years an automaker is required to provide a remedy at no cost.

<sup>22</sup> In addition to the prohibition on EDR data transfer discussed Section II.C. above, the DRIVE Act also includes a provision requiring a similar report regarding EDRs, but directs the promulgation of regulations based on the findings of the report.

The Council would be made up of the NHTSA Administrator, as well as at least one representative each from the Department of Defense, the National Institute of Standards and Technology, and NHTSA (in addition to the Administrator). The Council would also include one representative from an organization representing franchised car dealers, consumer advocates, academics, security researchers, and standards setting bodies. Each automaker selling more than 20,000 vehicles or more in the U.S. per year would be required to appoint a representative to serve on the Council. Representatives of auto manufacturers must make up at least 50 percent of the Council's members.

Best practices developed by the Council would be reviewed annually, but updated only should the Council deem it necessary. The bill enumerates eight items that may be included as part of the best practices, but are not required to be included.

After the best practices are established by the Council, each automaker would be permitted to file a Vehicle Security and Integrity Plan (VSIP) with NHTSA for approval. VSIPs would include the manufacturer's procedures for implementing and maintaining best practices. These plans would be exempt from disclosure under the Freedom of Information Act. If NHTSA rejects a VSIP, the manufacturer must revise and resubmit the plan until it complies with the established best practices. A manufacturer that violates its VSIP is subject to civil penalties, but a manufacturer that submits a VSIP and adheres to the best practices identified in the plan would not be subject to civil penalties. The failure to submit a plan cannot be used as evidence in a legal action against a manufacturer related to cybersecurity. The provision also provides a safe harbor from FTC enforcement actions relating to the cybersecurity best practices for manufacturers that submit a VSIP.

#### **Sec. 401. NHTSA Report on Seat Belts for School Buses**

This provision directs NHTSA to conduct a study on the use of seat belts and advanced technology safety features in school buses.

#### **Sec. 402. Rulemaking on Rear Seat Crashworthiness**

The bill directs NHTSA to conduct a study on the development of safety standards, performance requirements, and safety technology for rear seat crashworthiness, and to initiate a rulemaking if appropriate.<sup>23</sup>

#### **Sec. 403. Retention of Safety Records by Manufacturers**

The bill would require auto manufacturers to retain safety records pertaining to defects in vehicles for 10 years.<sup>24</sup>

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<sup>23</sup> A virtually identical provision was included in VSIA.

<sup>24</sup> A similar provision was included in VSIA. However, VSIA required the retention of safety-related documents for 20 years.

#### **Sec. 404. Nonapplication of Prohibitions Relating to Noncomplying Motor Vehicles to Vehicles Used for Testing or Evaluation**

Vehicles that are not ready for sale would be permitted to be tested on roads, provided they meet all federal motor vehicle safety standards.

#### **Sec. 405. Treatment of Low-Volume Manufacturers**

This section would create an exemption from federal motor vehicle safety and emissions standards for up to 500 replica cars per year manufactured or imported by a low-volume manufacturer, with no limit on the number of manufacturers. This provision was previously passed through this Subcommittee as H.R. 4013 in July 2014.<sup>25</sup>

#### **Sec. 406. No Liability on the Basis of NHTSA Motor Vehicle Safety Guidelines**

Section 406 prohibits NHTSA from bringing enforcement actions based on a violation of guidelines or from using violations of guidelines as evidence of liability. However, defendants would be permitted to use compliance with guidelines as evidence of compliance with statutes or regulations.

#### **Sec. 501. Metrics for Advanced Automotive Technologies**

This provision would direct NHTSA to establish an Advanced Automotive Technology Advisory Committee, made up of representatives from NHTSA, auto manufacturers, and standards setting bodies including the International Standardization Organization, and SAE International. The Committee would be responsible for establishing performance metrics for V2V and crash avoidance technology as well as test procedures for reaching those metrics.

The provision would also establish additional labeling requirements. If NHTSA determines that at least 35 percent of all new U.S. cars in a model year have a particular safety technology feature, the feature would be added to safety rating labels. Under the bill, if NHTSA has not yet established a performance metric for a particular technology, auto manufacturers may list that technology on their labels as a special feature until a performance metric is established.

#### **Sec. 502. Credits for Advanced Automotive Technology**

This section amends the Clean Air Act to provide auto manufacturers with greenhouse gas emissions credits in exchange for producing new vehicles with connected vehicle technologies and advanced automotive technologies. A vehicle with at least three advanced automotive technologies would receive three or more grams per mile of greenhouse gas credits for each technology, which would provide a minimum of nine grams per mile of credits. A vehicle in which V2V technology is installed as original equipment would receive six or more

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<sup>25</sup> For additional information regarding this provision, please see the Democratic memo from the Subcommittee markup of H.R. 4013 held on July 9-10, 2014, available [here](#).

grams per mile of greenhouse gas credits. NHTSA would conduct a periodic review to determine whether credits for a particular safety technology should be increased.

### **Sec. 503. Fuel Economy Credits for Advanced Automotive Technologies**

Auto manufacturers would be able to receive fuel economy credits in exchange for producing new vehicles after model year 2018 with connected vehicle technology and/or three or more advanced automotive technologies. The draft lists advanced automotive technologies that would initially qualify for credits, such as forward collision warning, adaptive brake assist, and lane departure warnings, among others. It also includes a process for any person to petition the Secretary to add an advanced automotive technology to that list.

#### **IV. WITNESSES**

##### **Panel I**

###### **Maneesha Mithal**

Associate Director, Division of Privacy and Identity Protection  
Federal Trade Commission

###### **Mark Rosekind, Ph.D.**

Administrator  
National Highway Traffic Safety Administration

##### **Panel II**

###### **Mitch Bainwol**

President and CEO  
Alliance of Automobile Manufacturers

###### **John Bozzella**

President and CEO  
Global Automakers

###### **Joan Claybrook**

Consumer Co-chair  
Advocates for Highway and Auto Safety

###### **Greg Dotson**

Vice President, Energy Policy  
Center for American Progress

###### **Peter Welch**

President  
National Automobile Dealers Association

**Ann Wilson**

Senior Vice President

Motor & Equipment Manufacturers Association

**Michael Wilson**

CEO

Automotive Recyclers Association