

October 4, 2001

Docket No. NHTSA-2001-9599
U.S. DOT Dockets, Room PL-401
U.S. Department of Transportation
400 Seventh St., SW
Washington DC 20590

Re: Limitations on Sale and Lease of Noncompliant and Defective Motor
Vehicles and Items of Motor Vehicle Equipment: Notice of Proposed Rulemaking
66 FR 38247 *et seq.*, July 23, 2001

Public Citizen is pleased to submit these comments to the docket with regard to the National Highway Traffic Safety Administration's proposed rule regarding the sale and lease of defective vehicles and equipment.

As the agency's Notice of Proposed Rulemaking (NPRM) makes clear, the proposed rules reflect two gaping statutory loopholes left unfilled by the recent Transportation, Recall Enhancement, Accountability and Documentation (TREAD) Act. While the rulemaking appears to signify the agency's resignation regarding these loopholes, we believe it would be irresponsible for NHTSA to allow these senseless gaps in protections for the public to be perpetuated without protest. We are therefore sharing the following analysis with appropriate legislators and with the Administrator of NHTSA, Dr. Jeffrey Runge.

NHTSA should seize this opportunity to approach Congress during the coming reauthorization of the agency and ask for the statutory authorization to remedy the two gaps described below, which will greatly diminish the efficacy and power of the agency's current rulemaking effort if left unimproved. Consumers and the public will remain unprotected from defects in sold or leased equipment unless the agency acts decisively to address these remaining issues:

- 1) As noted in NHTSA's NPRM, "the proposed requirements relating to section 30120(i) would not apply to used motor vehicles and used replacement equipment." Licensed auto dealers sell over 30 million used automobiles in the U.S. each year and they should be held accountable, as are new vehicle and equipment dealers, for knowingly selling defective vehicles. As the agency itself argued in submissions to Congress regarding the TREAD Act, in which it requested the authority to require used car and equipment dealers to notify purchasers of defects, notices of defects and recalls are listed on the agency's Web site and are otherwise made available to the public by the vehicle and equipment manufacturers. The agency observed that "[m]ost defects and noncompliances are remedied at the behest of vehicle owners before the vehicle comes into the possession of a used motor vehicle dealer. . . . If the remedy had not been performed, the used motor vehicle dealer could present the vehicle to the manufacturer's franchised dealer for repair of the defect or noncompliance without charge." There is no logical reason why the agency should not again, at the earliest opportunity, ask Congress to extend the notice and remedy law to cover used car dealers and vendors of used automotive equipment. It should be noted that damage from this loophole will disproportionately affect lower-income Americans, millions of whom patronize used car

and automotive equipment dealers because new cars and equipment are not within their budget.

- 2) The agency's NPRM also stated, "[Section 30120(j)] would not prohibit a person from selling or leasing a new or used vehicle with defective or noncompliant equipment or tires. . . Similarly, motor vehicle lessors and motor vehicle rental companies would not be subject to the rule because these groups are selling and leasing vehicles, not equipment or tires for use on motor vehicles." The kinds of protections contemplated in the agency's instant rulemaking should be extended to include those who lease or rent vehicles. Again, many working people of low income lease vehicles as income protection against the unpredictable financial impacts of automotive repair costs. The automobile rental industry is a lucrative business, with the ability to monitor NHTSA's notices of defects in vehicles and equipment, and should be a recipient, along with other vehicle owners, of notices of defects from manufacturers. Manufacturers and rental companies often have close business relationships – Hertz, for one, is a subsidiary of Ford. Renters and lessees deserve to be subject to the same protections as those that can afford a new car, as a defective vehicle poses the same increased risk of serious injury or death to them as it does to other drivers.

We ask that the agency request legislative action by Congress to close these unconscionable gaps in the current law, and to provide equal protection to all Americans from the risk of defective vehicles and equipment.

Sincerely,

Joan Claybrook
President
Public Citizen

cc: The Honorable Ernest Hollings
The Honorable W.J. "Billy" Tauzin
The Honorable John McCain
The Honorable Ken Mead
National Highway Traffic Safety Administrator Dr. Jeffrey Runge