

**Oral Testimony of Joan Claybrook**  
**Senate Committee on Competition, Foreign Commerce and Infrastructure**  
**June 3, 2004**

- Thank you, Mr. Chairman and members of the Senate Competition, Foreign Commerce and Infrastructure Committee, for the opportunity to offer this testimony on the TREAD Act and motor vehicle safety.
- My name is Joan Claybrook and I am President of Public Citizen, a national non-profit public interest organization with over 150,000 members nationwide.
- I bring with me today shocking news that has become sadly hum-drum. Vehicle crashes are the leading cause of death for Americans from 4 to 34 – killing **118 people every day of the year** – the same as a major airline flight crashing each and every day.
- Dr. Jeffrey Runge, Administrator of the National Highway Traffic Safety Administration, or NHTSA, predicted last year that the total dead could reach *50,000 annually* in 2008. “This is a Vietnam War every year,” he said. “That’s just not tolerable.” Mr. Chairman, I agree.
- The Transportation, Recall Enhancement, Accountability and Documentation Act, or TREAD Act, was passed by Congress in November 2000 after a reporter in Houston, Texas, grabbed the attention of the nation with her story that Ford Explorers with Firestone tires were experiencing sudden tire blowouts, rolling over and often killing or injuring the people inside.
- In the two months before Congress adjourned in November 2000, it held the major hearings and passed legislation. Members of Congress were upset that auto safety regulators had been asleep on the beat, and that automakers had covered up the problem, Congress reacted swiftly with new authority for NHTSA.
- The major provisions of the new law were development of an early warning system for safety defects by requiring automakers to submit information showing potential safety defects to NHTSA. The bill also enhanced crash avoidance, or pre-crash, factors with a requirement for new tire standards, tire pressure monitoring systems to alert drivers and better consumer information on rollover stability.
- Yet the TREAD Act left the core problems in vehicle safety design untouched. More than a third of people who die on the roads are still dying in rollover crashes.
- NHTSA’s early statistical assessment for 2003 found that the number of people killed in motor vehicles increased once again to the highest level since 1990.

- A major source of this increase was deaths in rollovers in SUVs, which increased 10 percent from 2002 to 2003.
- In fact, between 2000, when the TREAD Act was passed, and the end of 2003, 41,462 people lost their lives on American roads in rollover crashes alone – an entire stadium full of people – **and more than 200 times the number of people killed when Congress jumped into action in 2000.**
- As Sen. John McCain (R.-AZ), Chairman of the Commerce, Science and Transportation Committee, said on the floor on October 11, 2000 during the close of debate on the TREAD Act, major safety issues would have to be revisited.

*I say to my colleagues again that this issue isn't over. Tragically, I am in fear that there will be more deaths and injuries on America's highways before we finally make it much safer for Americans to be on America's highways.*

- The Chairman's words were tragically prophetic. And his call to action is being answered by this Congress as part of the pending highway funding bill. The bi-partisan, reasonable McCain-Hollings-Snowe-DeWine vehicle safety provisions in Title IV of S.1072 would prevent thousands of these needless deaths on the highway each year.
- As sister legislation to TREAD, the bill focuses on crash survival, and includes rollover survivability safeguards, ejection prevention and vehicle compatibility measures. Also important are crucial new protections for 15-passenger vans and child vehicle safety.
- In all of these areas obvious, common-sense fixes are readily available with safety technology and design improvements.
- In addition, the bill would require NHTSA to push forward with its work on the most well-established of the new crash avoidance technology through an evaluation of electronic stability control, in keeping with Dr. Runge's recent interest in this area.
- The priorities in S. 1072 are nearly identical to those highlighted in NHTSA's own priority plans, and are the right priorities given the level of preventable death on the road today. The bill's deadlines provide a framework for action by NHTSA by a date certain, while the content and effective dates for all rules left to the expertise of the agency.
- At a recent press event, Dr. Runge noted the agency's response to the clear timetable provided in TREAD for its **21 rulemakings in two years**, saying that NHTSA had completed its new proposed side impact standard in record time because the agency was in “the TREAD mode of turning out rules.” We envision similar success with the timetable in S. 1072.

- In fact, TREAD is a terrific example of the agency's efficiency in accomplishing many complex assignments from Congress within an exceedingly short time-frame.
- S. 1072 similarly would address vehicle safety priorities that have long languished, some for more than three decades, such as rollover prevention, rollover survival and ejection mitigation, and would produce a timetable for action valuable to both the agency and industry by setting a clear and reliable agenda for the future.
- But while the TREAD Act rulemakings were accomplished mainly within their statutory deadlines, the content of the rules actually is a case study in the grave importance of clear and precise direction from Congress.
- While we would award the agency an “A-“ on its relatively quick turnaround of rules, many of the major rules, as issued, fall far short of their real potential for improving safety, in part because of directions from the OMB which interfered with NHTSA’s planned actions.
- Our scorecard on key TREAD rulemakings gives the government very low grades on the major crash avoidance and consumer information rules.

### **Not At the Head of the Class: NHTSA’s TREAD Report Card**

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| Timeliness of issuance of rules:   | A- |
| <b>Major crash avoidance and consumer information rules:</b>   |    |
| Early warning information system to alert consumers of defects:  | F  |
| Tire pressure monitoring system to alert consumers of under-inflated tires:  | F  |
| Consumer reimbursement for defective vehicles or parts that are later recalled:  | D  |
| Rollover propensity consumer information program:<br><i>(Note: Companion rule on vehicle handling as yet un-issued.)</i> | C- |
| New tire safety standards:   | D  |
| <b>NHTSA’s Average for Implementation of Major Safety Rules from TREAD:</b>  | D  |

- For example, the new early warning database for submission of information by manufacturers on developing defects, which was the heart and soul of NHTSA’s new authority under TREAD, is plagued with mismanagement and cost over-runs.
- Yet real oversight of the program is virtually impossible because DOT, in a separate rulemaking which utterly contradicts the clear intent of Congress and the President upon signing TREAD, decided that the vast majority of information

collected in the database is “proprietary” and therefore exempt from all disclosure to the public.

- Even the information on deaths and injuries, which *was* deemed publicly releasable by NHTSA, still remains unavailable, showing a lack of competent management of the database a year after the program was expected to be operational.
- We are currently suing the agency over its distortion of the Freedom of Information Act to withhold consumer complaints and other information concerning the public’s experience with motor vehicle defects. (Ex: Adverse drug reaction database maintained by FDA)
- In another ongoing and egregious example, after Public Citizen sued the agency, three judges on the Second Circuit Court of Appeals agreed unanimously in August 2003 that the agency had badly botched the rule on tire pressure monitoring systems that tell car owners whether their tires are dangerously under inflated with a warning light on the dashboard.
- Under pressure from the Office of Management and Budget (OMB) and the auto industry, NHTSA had crafted a standard that permitted installation of shoddy systems.
- In November 2003, officials in the General Counsel’s office told us that a revised final rule would be soon forthcoming.
- But seven months later, a revised rule has not yet been issued, meaning that no rule is currently in force, and the agency’s internal calendar indicates that the agency intends to re-issue a notice of proposed rulemaking, rather than a new final rule.
- We recently complained in a letter to Secretary Mineta about the unreasonable delay in re-issuing a new, legitimate final rule.
- The rule would save 142 lives a year, according to the agency’s own analysis, making this further delay deadly.
- Even the rule on reimbursing consumers who fix defective equipment before the manufacturer announces a recall is in limbo, with no answer to our petition for reconsideration after 18 months.
- In general, the record on the agency’s implementation of TREAD reflects an effort to undermine the lifesaving possibilities of the mandates given to the agency by Congress. Details on each of these disappointments are provided in my written testimony.

## Congress Now Able to Complete TREAD Act’s “Unfinished Business”

- While the TREAD Act focused on information collection on defects and other crash prevention measures, such as upgrades to the tire safety standard, fixing the tires was not even half of the battle.
- Many serious vehicle-related hazards remain unaddressed. The vehicle safety provisions in Title 4 of SAFETEA 2004 would establish rollover prevention and protection standards, anti-ejection standards, a standard to prevent the extensive harm from vehicle mismatch, and other crucial, long-overdue safeguards.
- The measures in the Senate highway bill would save thousands of lives. Preventing these deaths would save taxpayers billions of dollars in direct costs alone, and prevent untold trauma and suffering.
- Requirements for the issuance of new and upgraded rules in all of these areas are contained in the lifesaving NHTSA Reauthorization bill in S. 1072 that passed the full Senate and is now pending in conference.
- Too many decades have passed without any meaningful action on these practicable safety provisions.
- While we are critiquing about the implementation of rules under the TREAD Act, we still believe that NHTSA could, if given sufficient direction, funding and focus by Congress, accomplish “Phase Two” of the safety goals highlighted by the Ford/Firestone tragedy.
- **It is time to assure that automakers to build a safer, better vehicle.**
- Thank you, Mr. Chairman, for the opportunity to testify on these life and death matters.

## **Endnotes**