Testimony of Joan Claybrook, President, Public Citizen,
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Thank you, Mr. Chairman and members of the Senate Competition, Foreign Commerce and Infrastructure Committee, for the opportunity to offer this written testimony on the importance of improvements in 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. We represent consumer interests through lobbying, litigation, regulatory oversight, research and public education.

I am testifying before you with shocking news that has, over time, sadly become hum-drum fact. 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. The National Highway Traffic Safety Administration (NHTSA) estimates the direct cost in economic losses from vehicle crashes is $230 billion each year (in 2000 dollars), or $820 for every man, woman and child in the U.S.[1]

Dr. Jeffrey Runge, Administrator of 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, called the 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 killing the people inside.

In the two months before Congress adjourned in November 2000, it held numerous hearings and passed legislation. Members were upset that auto safety regulators had been asleep on the beat, and that automakers had covered up the problem, and reacted swiftly with new authority for NHTSA. The major thrusts of the new law were to secure an early warning of safety defects by requiring automakers to submit defect information to NHTSA and enhancing crash avoidance, or pre-crash, factors — such as a requirement for new tire standards, tire pressure monitoring systems and better consumer information on rollover stability.

Yet the TREAD Act left the core problems in vehicle design untouched, and 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 – a 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 highway funding bill. The bi-partisan, reasonable McCain-Hollings-Snowe-DeWine vehicle safety provisions in Title IV of S.1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 (SAFETEA), would prevent thousands of these needless deaths on the highway each year.

The bill focuses on crash survival, and includes rollover survivability safeguards, and ejection prevention and vehicle compatibility measures. Also important are crucial new protections for 15-passenger vans and child safety in and around vehicles. All of these areas provide obvious, common-sense fixes where many precious lives may be saved cost-effectively with readily available safety technology and design improvements. In addition, the bill would require NHTSA to push forward with its work on the most well-established of any 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 phase-in period for all rules is 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. Our scorecard on key TREAD rulemakings evaluated in this testimony is below.

Not At the Head of the Class: NHTSA's TREAD Report Card

Timeliness of issuance of rules:	**A-**
Major crash avoidance and consumer information rules:	
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:	**C-**
(Note: *Companion rule on vehicle handling as yet un-issued*.)	
New tire safety standards:	**D**
Average for Implementation of these Major Safety Rules from TREAD:	**D**

In many cases, the agency punted on the issues that would have greatly increased the benefits from the rule; in others, the agency used arcane reasoning to undermine the protection the rule could have provided. In several cases, NHTSA had to be taken to court on the merits of a rule by Public Citizen and other consumer groups. In general, the rules NHTSA has developed are characterized by more responsiveness to auto industry objections than public safety.

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 NHTSA, in a separate rulemaking which utterly contradicts the clear intent of Congress and the President upon signing TREAD, as well as the agency's early statements in the record and its then-current policies, deemed the vast majority of information collected for the database to be "proprietary" and therefore exempt from all disclosure to the public.

Congress, in passing the TREAD Act, was certainly incensed about the agency's failure to act in a timely manner in discovering safety defects, and required the creation of an early warning database as a public resource that would also provide a much-needed check on the industry's information monopoly concerning developing defects. 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. 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 in motor vehicles as reported by manufacturers.

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, officials in the General Counsel's office told us that a revised final rule would be soon forthcoming. 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, and have attached that letter and its response. The rule would save 142 lives a year, according to the agency's own analysis, making this further delay unconscionable.

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 below.

Early Warning Database Turned Into an Industry-Agency Secret

The TREAD Act's new authority for NHTSA to collect "early warning" safety defect information was the result of a clear determination by Congress to make the automotive industry publicly accountable for its decisions not to recall dangerous and defective vehicles by mandating disclosure of potential safety defects to both the agency and public.

The law followed upon shocking media and Congressional revelations of secret company memoranda and actions, including communications to dealers in foreign companies and foreign recalls that should have been given to U.S. regulators. Congress also called in the NHTSA Administrator for hard questions, upset that the federal auto safety watchdog was asleep on the beat. A State Farm investigator had given the agency a slew of fatal cases from Ford/Firestone rollovers in 1998, but the agency had done nothing to investigate. Nearly 200 people died and 700 people were badly injured from the defects in the U.S. alone.

The public availability of information in that case would have saved lives and prevented a catastrophic loss of faith in both the industry in general and the reputation of Ford and Firestone specifically. The solution in the TREAD Act was to require automakers to submit information as it develops to a new NHTSA early warning database showing the industry knowledge of, and the consumer's experience with, vehicle safety. Like adverse drug reaction information collected by the Food and Drug Administration, the information was intended to be available to the public.

In working on the TREAD Act, Public Citizen and the many Ford/Firestone survivors who bird-dogged the bill anticipated that the industry would attempt to maintain the secrecy of the information, and raised several concerns about the disclosure provision in the proposed bill, predicting that the industry would attempt to use the proposed new language to undercut the scope of authority clearly granted by Congress. We protested the possible misuse of the statute vigorously to the Congress and to the agency.

In order to assure that this interpretation of the pending law was a consensus opinion with the committee and was one held by its Chairman, Rep. Markey (D.-Mass.) conducted a colloquy on the subject with Rep. Billy Tauzin (R-LA) on the floor of the House during debate on the bill. In that colloquy, Rep. Tauzin affirmed Rep. Markey's statement that the "special disclosure provision for new early stage information is not intended to protect [information] from disclosure that is currently disclosed under existing law." *See* 146 Cong. Rec. H9629 (Oct. 10, 2000). In addition, when signing the law on November 1, 2000, the President stated that he was directing NHTSA "to implement the

information disclosure requirements of the [TREAD] Act in a manner that assures maximum public availability of information."

The disclosure provision, Section 30166(m)(4)(C), as enacted, states that:

> None of the information collected pursuant to the final rule promulgated under paragraph (1) [the early warning rule] shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 3011(b) and 30118 through 30122 of this title.

Before receiving these assurances, on October 19, 2000, Public Citizen sent a letter to Secretary Slater warning that the industry would very likely attempt to bootstrap a secrecy requirement onto the pending bill.

Following passage of the bill and in an apparent response to our letter raising the issue of a worst-case scenario, the agency issued an interpretive legal memorandum regarding the impact of the new disclosure provision upon the agency's obligations under TREAD and FOIA. In light of the legislative record, the President's statement upon signing the bill, and the legal meaning of the statute, the Senior Assistant Chief Counsel, officially reviewed the TREAD Act provisions and concluded, from a legal perspective, that the section "will have no effect on the disclosure of documents received by NHTSA."

The agency's advance notice of proposed rulemaking (ANPRM) on early warning contained a brief section on the disclosure provision under TREAD, in which the agency noted that "we believe that section 30166(m)(4)(C) will have almost no impact…Historically, NHTSA has not invoked Section 30167(b) in deciding to release information to the public." Although the early warning rule expanded the universe of information available to NHTSA, principles governing its disclosure would be similar to those applying to information already collected in the course of defect investigations, which is routinely disclosed by NHTSA:

> The primary differences between pre-TREAD and post-TREAD Act reporting are likely to be in the mechanisms for reporting and amount of information reported. Before the TREAD Act, other than material submitted pursuant to 49 CFR 573.8, information in NHTSA's possession relating to a possible defect that was not the subject of an ongoing investigation was primarily in the form of consumer complaints. Under the TREAD Act, information will also be generated through periodic reports to NHTSA of information that a manufacturer might not otherwise have disclosed unless specifically asked by NHTSA to provide it. However, most of this information is likely to be similar to the types of information that NHTSA regularly obtained during its investigation pursuant to information request or special orders.

In our comments to the ANPRM, Public Citizen stated that the agency should address the issue of manufacturer and agency secrecy in the rulemaking, asking that "the agency's disclosure policy…be treated as a critical part of its obligation to honor the objectives of Congress and the President in making the TREAD Act a law."

The agency's notice of proposed rulemaking (NPRM) on early warning also unequivocally supported the public disclosure of early warning information. Although the agency stated that "TREAD does not affect the right of a manufacturer to request confidential treatment for information that it submits to NHTSA," the agency went on to review the categories of information that would likely be submitted under the agency's final rule and noted that:

> Historically, these types of information generally have not been considered by the agency to be entitled to confidential treatment, unless the disclosure of the information would reveal other proprietary business information, such as confidential production figures, product plans, designs, specifications, or costs. Light vehicle production information is generally not confidential, unlike production data on child restraint systems and tires.

The agency continued, stating that, "[a]ccordingly, the agency does not expect to receive many requests for confidential treatment for submissions under the early warning requirements of the TREAD Act."

In its ANPRM and NPRM, NHTSA also reduced the scope of the information it would require automakers to submit for the database. In its final form, the database will include summaries of the numbers of consumer complaints submitted to the manufacturer, deaths and injuries, field reports by dealers, warranty claims and past production numbers by make and model.

The secrecy issue was even more important to industry. Seeing that the early warning docket was rife with statements upholding disclosure, the agency pulled a bait and switch. Without any notice in the early warning docket, and prior to issuing the final rule on early warning, on April 30, 2002, NHTSA published a notice in the federal register concerning the agency's *sua sponte* plans to amend the procedures that it uses to process confidentiality requests under 49 CFR Part 512.

At first glance, this arcane rulemaking notice barely appeared to affect the early warning rulemaking, as the discussion of the rule was virtually non-existent. Yet the manufacturers seized upon this opening as an opportunity to argue that the information collected as a part of the early warning rule should be kept from the public. And in marked contrast to its notice, NHTSA's final confidentiality rule focuses almost entirely on the secrecy of the early warning database, and announced the agency's policy that all the information – with the exception of deaths and injuries – will remain secret and be withheld from the public even after a specific request under the Freedom of Information Act.

Members of Congress who authored portions of the TREAD Act, such as Rep. Henry Waxman (D.- Calif.), have indicated that the agency's decision to maintain this information in secret gravely undermines the law. This novel use of FOIA to undermine information about public health and product safety is the subject of a petition for reconsideration by consumer groups, which was recently denied y NHTSA, and is now the focus of a lawsuit currently pending in federal court and brought by Public Citizen.

As the agency noted in its rulemakings on early warning, this kind of information has been routinely collected – and publicly released – in defect investigations over almost 40 years by federal regulators. The defect file on the Ford and Firestone investigations contain such detailed information as consumer complaints, warranty claims, production numbers and field reports. For another example, consumer complaints submitted by consumers directly to NHTSA are published on its Web site.

As we anticipated, the most difficult and fundamental struggle over the fair implementation of the TREAD Act concerns the public availability of early warning information regarding defects. Unfortunately, NHTSA has subordinated the interests of the public, who are routinely injured or killed by vehicle safety defects, to the interests of the industry in a cover-up, despite the obvious importance of this assignment from Congress.

Ever since the Ford Pinto case in the late 1970s highlighted the deeply cynical nature of the industry in measuring costs against saving lives, the public has been all too well aware of the practice of bean-counting by automotive manufacturers. Indeed, American motorists have been provided with consistent examples in which the cost of the fix, rather than the seriousness of the safety defect and the risk it poses to human life, determines the automakers' decision-making process on remedies. Good information would be the most effective tool for consumers to defend themselves against this practice.

Now that Congress acted to remedy this tragic information inequity and market failure, the industry and agency have sought to undermine the best of Congressional intentions with subterfuge. Consumers should be empowered to make their own decisions regarding the hazards posed by the products that they use, and yet may only do so with clear and available information on safety.

And NHTSA should be held accountable by the taxpayers for its decisions regarding whether to pursue a defect investigation. The secrecy of the database will do nothing to correct the flaws highlighted in a 2002 DOT Office of Inspector General audit, which concluded that defect investigation methods are unnecessarily haphazard and that agency could use greater transparency.[2]

The secrecy of the information also greatly reduces the effectiveness of the new safety tool, as a public database would serve as an information portal, an invitation to public participation, and a quality improvement program for the industry. Consumers would be both motivated and able to "add their story," making the new database a living resource for the agency and public, instead of an unaccountable black hole.

Tire Pressure Monitoring Systems: Even When Consumers Win, They Lose

The TREAD Act required NHTSA to develop, within one year, a standard for a warning system in new vehicles to alert operators when the vehicle's tires are seriously under-inflated. After extensive study, NHTSA determined that a direct tire pressure monitoring system should be installed in all new vehicles. But in a "return letter" issued after meetings with the auto industry, the Office of Management and Budget (OMB) demurred, claiming its cost-benefit calculations provided a basis for delaying a requirement for direct systems. The final rule, issued May 2002, would have allowed automakers to install ineffective TPMS and would have left too many drivers and passengers unaware of dangerously under inflated tires.

In June 2002, Public Citizen joined with other consumer safety groups to sue NHTSA because its final rule would have allowed manufacturers to choose to install the inferior (indirect) system. A year later, in August 2003, a unanimous three-judge panel of the United States Court of Appeals for the Second Circuit ordered NHTSA to rewrite the rule, agreeing with Public Citizen and others that NHTSA acted contrary to the express requirements of the Act and in an arbitrary and capricious manner by allowing installation of a clearly faulty indirect system.

In its decision, the Court reminded NHTSA that the notion that "cheapest is best" is contrary to Supreme Court precedent that safety improvements are a core responsibility of federal regulators. The court also reminded NHTSA that, in doing its cost-benefit calculations, the agency is supposed to "place a thumb on the safety side of the scale."[3]

In the ten long months since the rule was overturned by the Court, NHTSA has also failed to re-issue the rule, despite the substantial factual record collected by the agency in rulemaking which should make a new final rule an easy matter. NHTSA's internal rulemaking calendar[4] disappointingly indicates that the agency anticipates it will publish a new NPRM, rather than a revised final rule, as agency officials had indicated.

Until a rule is again made final, the agency's delay means that no rule is on the books, despite very clear directions from Congress to protect consumers from the harmful effects of tire under inflation. For each year of continuing obfuscation and delay, NHTSA's own cost-benefit analysis shows that 142 lives are needlessly lost on the highway.

Dynamic Rollover Consumer Information Tests Used by NHTSA to Pad Industry's Scores

Following passage of the TREAD Act, in January 2001, NHTSA for the first time began to publish a rollover rating as part of its Web-based New Car Assessment Program (NCAP) star rating program.[5] The 2001 scores were based on a static metric called "static stability factor" that is essentially a ratio of a vehicle's track width and height. While the auto industry had protested for years that SSF had no bearing on rollover propensity, the agency's final rule established a clear correlation between SSF and rollover in real-world crashes.

The agency, however, stopped short of setting a minimum safety standard, or "floor," for rollover propensity. Unlike the other ratings that are part of NCAP, including frontal and side crash tests, which award stars to vehicles which perform over and above a minimum standard, the absence of a minimum standard means that even the tippiest vehicles start out with an inflated score of at least one star. In comments, Public Citizen has also pointed out that NHTSA's use of stars, rather than another metric, such as "A through F" letter grades, is inherently inflationary and far less informative for consumers.

The TREAD Act required NHTSA to conduct an additional rollover consumer information dynamic test. In its rulemaking, NHTSA developed an on-road driving test mimicking emergency maneuver driving conditions, called a "fishhook maneuver." A two-wheel lift of two inches or more is a failure on the test; however, the manner in which the test is combined with the static metric fundamentally undermines its usefulness for consumers.

In the final scores awarded to vehicles, the dynamic test results are a one-way ratchet only — meaning that tip-up in the test has no negative impact on test results, while the absence of tip-up is, according to NHTSA, "worth half a star." As Rae Tyson, NHTSA spokesman, explained, "If there's no tip-up, you get a benefit, but if there is tip-up, there's no penalty."[6] While many commenters, such as Public Citizen, favored combining the static and dynamic metrics into a single score, to ease use by consumers, we never anticipated that NHTSA would use the dynamic test to inflate the already-misleadingly inflated NCAP scores, and that the major indicator of rollover propensity – tip-up of vehicles – would be undermined in the score.

NHTSA also has yet to issue a critical second stage rulemaking for vehicle handling. In its dynamic test rulemaking, the agency expressed clear concern that automakers would comply with the new consumer information test by tweaking vehicle suspension, tire inflation or other areas, thereby improving test performance at the expense of real-world safety in the vehicle's handling for consumers. The agency is now behind the schedule it outlined in the final rule for its dynamic test. Timely issuance of the handling test is needed to assure that manufacturers do not make dangerous changes to vehicle handling just to earn the half-star now available on the dynamic NCAP test.

Reimbursement Rule Undermined by Arcane, Anti-Consumer Restrictions; Public Citizen's Petition for Reconsideration of Rule Unanswered by NHTSA since January 2003

In the TREAD Act, Congress amended the Motor Vehicle Safety Act to extend the time from 8 years to 10 during which manufacturers of motor vehicles or motor vehicle equipment must provide a remedy without charge. The expanded period was a direct response to manufacturers' failure to adequately address the need for a recall in the Ford/Firestone case.

In a similar vein, the TREAD Act also required manufacturer to reimburse an owner who has already incurred the cost of a repair prior to being notified of a defect. By expanding the Act's original time limits and requiring NHTSA to issue a new rule as to the reimbursement period, Congress clearly intended to expand consumers' rights with regard to both recalls and reimbursement. Providing a consumer with a reimbursement for a repair made *as soon as a safety defect is noticed by the consumer* is the best way to insure that consumers are not killed or injured by vehicle defects.

Yet NHTSA's final rule established an incredibly arcane time schedule for consumer eligibility to be reimbursed. In a typical recall, NHTSA decided, consumers should only be reimbursed for expenses for fixing faulty equipment if the repair is made *after* one of two things occurs: 1) NHTSA opens an engineering analysis into that defect on that make/model; or 2) the repair is one year prior to the date the manufacturer tells NHTSA about the defect (whichever is earlier). To know whether they are eligible, consumers must know the date of the manufacturer's notification to NHTSA of the defect or must know to go to the NHTSA Web site and look up whether an engineering analysis has been opened by the agency.

Of course, most consumers do not know what an engineering analysis is, much less that its opening date affects their pocketbooks. Under NHTSA's rule, they must know to go to NHTSA's monthly report and keep checking it as it is updated. A recent search on May 28th of defect investigations added since April 27, 2004 indicated that 231 new records had been added since that time.

In contrast to this absurd exercise, a vehicle's manufacture date is obvious and clear to consumers. Consequently, the 10-year limit on a manufacturer's responsibility to provide a remedy without charge should be the only applicable time limit.

Congress intended to provide options for consumers and encourage timely recalls by removing a financial incentive for manufacturers to save money from delay, not cause consumers further headaches, as NHTSA has done here. Under NHTSA's new rule, the industry actually has a new, additional financial incentive to delay notification of the defect.

Hundreds of consumers send letters to Public Citizen every year concerning possible defects in their vehicles. Below is our best attempt to explain the workings of this obscure rule in a typical response. It is a sad day when consumers must contact a public interest group to secure a decent explanation of their own rights under the law.

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Reimbursement Information Given to Consumers by Public Citizen

In November 2000, following the highly publicized Ford/Firestone debacle, Congress passed a law requiring establishment of a manufacturer reimbursement program. This law called on NHTSA to issue a regulation to assure consumers would be reimbursed if they fixed a defective vehicle or piece of equipment that was later included in a recall. In October 2002, NHTSA issued a final rule that Public Citizen believes is only a partial and begrudging response to this command from Congress.

The rule went into effect on January 5, 2003. You and other consumers could potentially now claim a reimbursement for repairs made to your vehicle if you follow the specific guidelines set out in the rule. Essentially, the rule says that once NHTSA or the manufacturer announces a defect recall, you can submit documentation of your repair and be reimbursed. Keep your eyes open for communications from the manufacturer of your vehicle – the communication should tell you where to send this reimbursement information.

The information you will need to provide the manufacturer to receive your reimbursement is:

1. Your name and address.
2. Identification of your product – either the vehicle or the piece of equipment.
3. Proof of the recall. This can be, for example, a photocopy of the notice sent to you by the manufacturer or a printout of the recall notice from the NHTSA website. (NHTSA recalls can be found at http://www.nhtsa.dot.gov/cars/problems/)
4. The receipt for the work you had done on your vehicle or piece of equipment. This could be, for example, a photocopy of an invoice from the mechanic or the receipt from an auto parts store.
5. Proof of ownership of the vehicle. This could be, for example, a photocopy of the title for the vehicle or a photocopy of the insurance for the vehicle with your name listed as owner.
6. If the remedy was obtained within the period you were covered by the manufacturer's warranty, you must explicitly document why the repair was not/could not have been done under the warranty. For example, you could provide a copy of a denial of warranty service from a dealership or some paperwork explaining why the warranty work did not fix the problem addressed in the defect (that was fixed by work you had done beyond the warranty.)

There is a small window of time during which repair work will be eligible for this reimbursement program. There are two 'openings' to this window:

1. The most common defect is one in which the vehicle or equipment has a safety-related problem. In case of a safety-related defect, the reimbursement window is opened when NHTSA opens an engineering analysis – or – one year prior to the date the manufacturer tells NHTSA about the defect (whichever is earlier). To determine whether or not an engineering analysis has been done on the defect in your vehicle, visit NHTSA's "Monthly Defect Investigations Report" website at http://www.nhtsa.dot.gov/cars/problems/defect/monthly/. There, engineering analyses (action #'s beginning with the letters "EA") are listed along with the dates they were opened and any comments that NHTSA has collected on them regarding status of recalls.

2. A less likely defect scenario involves a vehicle or piece of equipment that fails a NHTSA standard. In this situation, the reimbursement window is opened after the observation of this failure by either NTHSA or the manufacturer.

Similarly, there are two 'closures' of this reimbursement window:
1. If the defect was in your vehicle, the reimbursement window is open until ten days following the date the manufacturer mailed the last of its notices to owners about the defect.
2. If the defect was in a piece of equipment, the reimbursement window is open until ten days following the date the manufacturer mailed the last of its notices to owners about the defect – or – 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance (whichever is later.)

Omitting Key Safety Issues from a New Standard for Tires

In June 2003, in response to a mandate in the TREAD Act, NHTSA issued a rule updating safety performance standards for tires, the first major action on tire safety since the late 1960s, when the safety standard was initially issued, and prior to widespread use of radial tires. However, counter to Congressional intent, NHTSA left serious holes in the updated standard. Despite the clear mandate, the new rule failed to adequately address tire strength and road hazard protection, or to establish minimum standards for bead unseating resistance and aging. S. 1072 would upgrade the tire standards to respond to the TREAD directives by requiring NHTSA to improve tire resistance to bead unseating and aging.

Key shortcomings and omissions included:

- No upgrade to the road hazard impact test, despite a proposal in the NPRM;
- No test for tire strength included in the final rule;
- Retention of the old test for resistance to bead unseating, yet results from the agency's 1997-1998 rollover testing provided a strong rationale for upgrading this area of the standard; and
- The effect of tire aging over use and time remains unaddressed pending further research.

In all of the above areas, proposals in the NPRM met with substantial protest by industry. The agency's progress on the omitted priorities remains slow. Members of Congress specifically raised the issue of tire aging and the resulting degradation in safety during the Ford/Firestone hearings, yet the agency is still conducting research as a precursor to a rulemaking, promised in the tire standards final rule to occur within two years.

TREAD Act's Criminal Penalties Ridiculously Ineffective, as NHTSA Agrees

The new criminal penalties created by the TREAD Act are useless by Congressional design, not NHTSA's, due to the enormous "safe harbor" provision ensconced in the statute by the House Energy and Commerce Committee. Essentially, the burden of proof needed to prosecute under this provision is unreasonable in the extreme, rendering any prosecution both untenable and highly unlikely.

As NHTSA noted in its interim final rule on the provision, little use, if any, is expected to be made of the provision, which is already a virtual dead-letter:

> We believe that there will be very few criminal prosecutions under section 30170, given its elements. Accordingly, it is not likely to be a substantial motivating force for a submission of a proper report.

Under the law, the penalties would apply only to persons who violate section 1001 of Title 18, an existing criminal statute and applies to only a very small class of actions. To prosecute, the state must prove that someone: 1) violated 18 U.S.C. 1001 (meaning that the lie or cover-up to the government was both knowing *and* willful); 2) violated 18 U.S.C. 1001 in reporting as required by the early warning rule; 3) had "the specific intention of misleading the Secretary" about a motor vehicle or motor vehicle equipment safety defect (not noncompliance with a safety standard or recall directive); and 4) the defect *had already* caused death or grievous bodily harm to someone at the time of the false report or failure to report. In addition, the law created a huge safe harbor, providing that no penalties will apply if the perpetrator "corrects any improper reports or failure to report within a reasonable time."

In short, while the section increases the rarely-applied maximum penalty for a violation of federal law concerning reports made to the government, at the same time it completely undercuts this new authority by prohibiting application of criminal penalties if the person who lied eventually recants. Because prosecutors always retain the ability to grant immunity, and to place case-specific limits on that immunity for witnesses or participants to secure testimony, the broad language of the "safe harbor" provision creates a much larger window for illegal activity than existed under current law. In addition, this law requires a request from the DOT to the Justice Department prior to prosecution, a highly unusual potential pitfall for enforcement of any criminal liability.

One of the great losses in the negotiations between the two houses of Congress in 2000 was the Senate bill's very workable approach to a new criminal penalty authority for NHTSA. Those provisions, authored by Sen. McCain, were far superior because they did not create an additional form of immunity, applying criminal penalties to a knowing failure to recall a defective vehicle or part prior to its introduction into interstate commerce, if that defect later causes grievous harm to a person. This statute would have been an effective deterrent to cover-ups on defects, in contrast to the language in the TREAD Act, which, as NHTSA has made clear, accomplishes nothing.

***Conclusion*: 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:

- **A new roof crush resistance standard:** 1,400 deaths and 2,300 severe injuries, including paraplegia and quadriplegia, would be prevented each year by a more stringent standard.[7]
- **Improved head protection and side air bags:** 1,200 lives saved, and 975 serious head injuries prevented, would be saved by a new requirement each year.[8]
- **Side window glazing ("safety glass"):** A requirement would save 1,305 lives and prevent 575 major injuries each year.[9]
- **Upgrade to door locks and latches standard:** An upgrade would prevent hundreds of the 2,500 door-related ejection deaths each year.[10]
- **Rollover prevention standard that examines use of electronic stability control (ESC):** Several comprehensive studies estimate that ESC technology reduces deaths and injuries by as much as *one-third* by preventing crashes for occurring in the first place.[11]
- **Compatibility standards for light trucks:** NHTSA research estimates 1,000 lives a year could be saved.[12]
- **Stronger seatback design:** 400 lives saved, and 1,000 serious injuries prevented, each year.[13]
- **Effective seat belt reminders in all seats:** 900 lives each year would be saved by such a requirement.[14]

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 consumer groups, including Public Citizen, have raised objections to the implementation of rules under the TREAD Act, we still believe that this agency could, if given sufficient direction and focus by Congress, marshal its expertise to accomplish "Phase Two" of the safety goals highlighted by the Ford/Firestone tragedy, but as yet unaddressed and unresolved.

Below I have included some details on the core facts that support passage of S. 1072.

It is time to ask American automakers to build a safer, better vehicle. Thank you, Mr. Chairman, for the opportunity to testify on these life and death matters.

FACT #1: TITLE 4 OF SAFETEA IS DATA-DRIVEN

Motor vehicle fatalities remain at an historic high and are the leading cause of death for Americans ages 2 to 34 – every 10 seconds an American is injured in a crash and someone is killed every 12 minutes.[15] The death toll on the road is equivalent to two fully loaded 747s (with 400 passengers) going down each week.

The problem is only getting worse. In 2002, highway deaths reached 42,815, the highest level since 1990. An astounding 82 percent of the increase in deaths between 2001 and 2002 occurred in rollover crashes. Rollover-prone SUVs and pickups, combined with vans, now are 49 percent of new passenger sales and 36 percent of registered motor vehicles – *a 70 percent increase between 1990 and 2000*.[16]

A recent federal study found that fatalities in rollover crashes in light trucks threaten to overwhelm *all other reductions in fatalities on the highway*, an astonishing fact when we consider that rates overall are improving: air bags are now a requirement for new vehicles and seat belt use keeps going up. NHTSA explained that "the increase in light truck occupant fatalities accounts for the continued high level of overall occupant fatalities*, having offset the decline in traffic deaths of passenger car occupants*."[17]

Each part of Title 4 – rollover prevention and survivability safeguards, ejection prevention measures, and vehicle compatibility measures, child safety, and 15-passenger vans – targets areas where cost-effective, feasible remedies are currently available to save lives.

Moreover, in many areas the hazards are inter-related— for example, rollover crashes involve interactions among vehicle factors such as rollover stability, ejection, side impact air bags, safety belt pretensioners, and door locks and latches. For that reason, NHTSA should be asked to examine problems as a whole, and to address, at the same time, all of the design and technology issues which can improve the survivability of rollover crashes. A comprehensive approach is also more cost-effective for manufacturers, as any re-design can be phased in at the same time over the life of the model cycles.

In short, Title 4's comprehensive approach will produce the most cost-effective and scientifically sound new safety standards.

Congressional Mandates Are Appropriate

The Administration's plan for reviewing safety standards outside of its "priority areas" is for a cyclical, 7-year review. While a more regular review of standards is a good idea (some have been on the books for more than thirty years!), such an approach is hardly "data-driven."

The number of lives that would be saved by Title 4 dwarfs the still-tragic number of people killed in the Ford-Firestone tragedy, yet NHTSA's Administrator, Dr. Jeffrey Runge, suggested at a Mar. 18, 2004, hearing in the House of Representatives that asking NHTSA to act in a timely way in these areas is unreasonable. In response to questions, Dr. Runge also said that, in contrast, "**[l]egislative mandates are important when we have a crisis situation like in the TREAD [Act]**."

Fact: Between 2000, when the TREAD Act was passed, and 2003, *200 times* that many people were killed in the U.S. in rollovers *alone.*

This situation *is* a crisis.

FACT #2: NHTSA'S PRIORITIES ARE TITLE 4'S

None of the major SAFETEA provisions establishes new priorities for NHTSA – and many are identical to NHTSA's stated goals. The bill merely gives many of NHTSA's already-planned actions a timely certainty. The Administration's per se objection to a requirement in these areas is both misguided and misplaced.

SAFETEA Provision	***NHTSA's Plans: On the Record***
Rollover prevention: A rollover prevention standard to improve vehicles' resistance to rollover and a study of electronic stability control.	Rollover, including prevention, is one of the agency's four major priority areas. NHTSA has plans to research ESC in 2004-05 and will also evaluate a vehicle handling test for the New Car Assessment Program (NCAP).
Rollover survival: An upgraded roof crush standard; improved seat structure and safety belt design (including belt pretensioners), side impact head protection airbags, and side head protection airbags and upgraded door locks.	NHTSA plans to upgrade the roof crush standard soon. NHTSA is currently researching belt pretensioners and side-window ejection mitigation and is plans to upgrade the door lock standard. NHTSA also plans to upgrade the side impact test to require head-protection side-impact airbags.
Front Impact: Upgrade the frontal impact test procedure, consider new barriers and head impact and neck injuries, as well as offset barrier testing.	NHTSA's on-record priorities include an upgrade of crash-test dummies now used in frontal crashes and evaluation of a frontal offset barrier test during 2004.
Side Impact: Upgrade the side impact standard by considering new barriers and measures of occupant head impact and neck injuries and upgrade to dummy tests.	NHTSA's priorities include an upgrade of the side-impact standard to address light trucks and upgrade of injury criteria and data from second-generation side impact dummies.
Aggressivity/Compatibility: Standard to reduce vehicle incompatibility; a standard rating metric to evaluate compatibility and aggressivity and a consumer information program to communicate this information.	NHTSA published a "Priority Plan" on vehicle compatibility, another of the agency's four major priority areas, and plans to evaluate the feasibility of a compatibility requirement by 2004 and to develop an aggressivity metric thereafter.
15 Passenger Vans: Include 15-passenger vans in relevant safety programs, require 15-passenger vans to comply with relevant safety standards, and evaluate technologies to assist drivers in controlling the vans.	NHTSA will continue public education on the hazards of 15-passenger vans, require lap and shoulder belts in the vans, and include them in the upgraded roof crush rule. NHTSA also plans to evaluate ESC for 15-passenger vans.
Tire Safety: Upgrade tire safety to improve strength, road hazard, bead unseating and aging performance criteria – all as asked for once in TREAD, and discarded by the agency.	NHTSA plans to research tire strength and aging (2003-2004).

Child Safety – Booster Seats, Backover Avoidance, Power Windows, Test Dummies and Rollover: Establish a state incentive for booster seat laws. Increase the use of child dummies, develop a new child dummy for rollover testing, develop a consumer information program relating to child safety in rollover crashes, and report on the performance of safety belts for children in rollovers. Report on technologies used to prevent injuries and deaths caused by automatic windows and a standard to ensure safer switches, and study methods to reduce injury and death outside parked vehicles.	NHTSA is developing a 10-year-old child crash dummy and looking into developing a three-year-old child dummy. NHTSA is also establishing performance requirements for booster seats and planning to compile death certificates to look at off-road vehicular deaths, including driveway incidents.
Safety Belt Reminder Systems: NHTSA to address alternate means to encourage increased belt use including consideration of audible or visual reminders.	NHTSA plans a study of the effectiveness of belt minders and evaluation of possible rulemaking (2003-2005).

In fact, there are no surprises in the bill. All the areas highlighted are areas of clear existing need that have been discussed for decades, as NHTSA's plans show.

Yet action is uncertain without deadlines. **As the chart at the end of Chapter One shows**, there is a long history of unfortunate slippage between plans and promises – and *NHTSA's record on all of these issues is one of unreasonable delay and many broken promises to act.* **A mandate will assure that NHTSA's activities achieve the greatest possible savings in lives.**

Some critics of the bill have suggested that safety belt use should be the only focus of efforts to save lives. Critical provisions relate to safety belt and child restraints in the bill, such as; 1) changes regarding safety belt reminder systems; a report on technologies to improve the performance of safety belts for children between the ages of 4 and 8; and establishment of a grant state incentive program for states that enact laws mandating booster seats for children who are too big for child safety seats.

And while increasing safety belt use is a critical goal, the statistics do little to explain the high death rates in SUVs. In fact, SUV occupants are just as likely as car occupants to wear safety belts:

- NHTSA statistics show that 78 percent of SUV and van occupants, and 77 percent of passenger car occupants, wear their belts.[18]
- In fatal rollovers, the most deadly of crashes, SUV and passenger car belt-use rates are virtually identical, *yet these crashes are 61 percent of SUV occupant deaths but comprise only 24 percent of car occupant deaths*.[19]

In the face of preventable suffering, there is no good reason for delay.

FACT #3: MAJOR TITLE 4 MEASURES ARE THIRTY YEARS OVERDUE

*As demonstrated by the **10 chronologies in Chapter Two,** NHTSA and the auto industry have known about the risks areas addressed by Title 4 for more than thirty years.*

CASE STUDY: ROLLOVER

Despite years of improving belt use, rollover fatalities are at their highest level in a decade, mostly due to the rising rates of rollover deaths.

- Vehicle rollovers cause more than 10,000 fatalities each year— a full *third* of vehicle occupant deaths. [20] [21]
- The 2002 highway death toll was the highest in over a decade — and rollover crashes accounted for over 80 percent of these increased deaths.[22]
- SUV and pickup rollovers account for nearly half of the increase in annual occupant fatalities.[23]
- Sixty-one percent of sport utility vehicle occupant fatalities occur in rollover crashes,[24] and SUVs roll over in fatal crashes at 3 times the rate of cars.[25]
- Shockingly, more than 20 percent of people killed in rollover crashes *were restrained* by safety belts at the time of the crash.[26]

Rollover: Stymied Efforts Since 1973

In April 1973, NHTSA first proposed a rulemaking for a rollover resistance standard, which was never finished.

Thirteen years later, in September of 1986, Congressman Tim Wirth called on NHTSA to pass a life-saving rollover standard. His petition to the agency was denied. In 1988, Consumers Union and the Center for Auto Safety again asked NHTSA to act, as rollovers killed 9,500 people each year.

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act, which required NHTSA to address means of protecting motorists from "unreasonable risk of rollovers" in passenger vehicles.[27]

But in 1994, the agency terminated its work on a rollover propensity minimum standard, promising that a series of new standards for rollover crashworthiness and a consumer information program were forthcoming.[28]

The rules promised in 1994 included: advanced window glazing to prevent ejections, and stronger roofs; in addition, NHTSA stated publicly that it would also require improvements in door latches and hinges and upper side-impact protection.

None of the promised regulations on rollover crashworthiness has since been issued, but all are contained in Title 4.

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The More Things Change…

The *New York Times* reported in September 2000 that:

[R]egulators have been studying rollovers for 27 years, but industry lobbyists have appealed to members of Congress from auto-producing states to block periodic efforts to adopt rules that would address the problem.

CASE STUDY: VEHICLE COMPATIBILITY

The design of light trucks — and large SUVs and pickup trucks in particular — with a high center of gravity, high bumpers, and steel bars and frame-on-rail construction, makes these vehicles act like battering rams in a crash.

The problem is a serious one:

- When an SUV strikes the side of a passenger car, the car driver is *22 times* more likely to die than is the driver of the SUV. When the striking vehicle is a pickup, the car driver is *39* times more likely to be killed.
- NHTSA's Administrator estimated as long ago as 1997 that the aggressive design of light trucks kills 2,000 additional people needlessly each year.[29]
- Another analysis found that 1,434 passenger car drivers who were killed in collisions with light trucks would have lived if they had been hit instead by *a passenger car of the same weight as the light truck*.[30]

Yet, auto manufacturers continue to build ever-more heavy and aggressive SUVs and to market them as such. The chief designer of the 2006 Toyota Tundra recently bragged that his threatening design for the huge pickup truck is intended to highlight "the power of the fist."[31]

Despite shocking highway statistics and mounting research, in its June report NHTSA focused on only the struck vehicle — *bulking up protection in cars, but ignoring the equally important challenge of changes to reduce the aggressiveness of pickups and SUVs*. While improving occupant protection is critically important, the total crash dynamic can and must be considered.

Resisting Real Action: Promises, Promises by Manufacturers, Ratified by NHTSA

In December 2003, auto manufacturers announced a voluntary initiative to address incompatibility and aggressivity. The plan, currently to be phased-in on *most* vehicles by September 2009, would add side-impact air bags and lower the bumpers of SUVs or add a barrier to prevent them from riding over cars.

Yet the Alliance makes no specific commitments to redesign vehicles to be less aggressive. *Moreover, there is no requirement that all vehicles become compliant with the plan, and no outside body will verify vehicle compliance.* Voluntary "commitments" violate core principles of democratic accountability and transparency by involving closed, secret deliberations, no procedural or judicial oversight, no mechanisms for accountability, and no baseline for safety.

Even this new set of promises is only the latest in a series on compatibility issues. In 1998, the auto industry promised NHTSA Administrator Dr. Ricardo Martinez that it would make modifications to achieve safer designs, mainly by adjusting vehicle suspension. The industry refused to provide any details of their plans *and there is little evidence that any substantial design changes were made*. Consequently, the latest set of industry promises also raises questions, as vehicles continued to be designed to be large and aggressive, and the highway carnage continues.

As NHTSA states in the conclusion to its report making vehicle compatibility one of its four major priority areas, **"[v]ehicle compatibility has been a concern for NHTSA since the 1970s."**

The time for action is now.

FACT #4: TITLE 4 CLOSES SAFETY "DESIGN GAP" WITH FEASIBLE AND AVAILABLE SOLUTIONS

In spite of the absence of federal standards to improve occupant protection, there is a wide array of cost-effective safety technologies already available from automotive suppliers that could reduce deaths and injuries in crashes.

Chapter Three of this report contains supporting detail on the range of safety equipment available for 2004 model year vehicles, including: side impact airbags, laminated side-window safety glass, rearview cameras, backover prevention technologies, and rollover safety belt pretensioners.

Forty-seven percent of 2004 model-year vehicles offered head-protection side air bags, but only 27 percent offered the protection as standard equipment.[32] In the 2003 model year, 40 percent of vehicle models offered head-protection side air bags, but only 24 percent offered it standard.[33]

Of model year 2003 cars tested by NHTSA in the New Car Assessment Program (NCAP), electronic stability control (ESC) was standard on 22 percent of cars and optional on 17 percent. At least six model year 2004 cars offer a rearview camera as an option, and at least one 2004 model offers as standard a rollover safety belt pretensioner in all seating positions.

Safety technologies that are already widely available to luxury car buyers should not be limited to those consumers who can pay a premium — and requirements that enable technologies to become standard will lower prices for all consumers. A decent baseline for safety should not be available only to the rich.

CASE STUDY: THE MIRACLE OF ESC

Electronic stability control (ESC) is an active safety system that helps drivers to maintain control of the vehicle and stay on the road. The system's sensors compare the vehicle's behavior in relation to the steering wheel position. When ESC detects a discrepancy, it intervenes to bring the vehicle's direction back into line by transmitting the right commands to the antilock braking system and sometimes reducing the engine torque.

The core benefit of ESC is increased driver control, which translates into crash prevention. Studies conducted by DEKRA Automotive Research, DaimlerChrysler, Toyota, the University of Iowa and others indicate that ESC could positively influence *as much as 25 to 43 percent of fatal rollover crashes in the U.S.,* not to mention lives saved other crash types.

For example, one study showed a 27-percent reduction in fatalities in single-vehicle rollover crashes when vehicles had ESC, meaning that **installing ESC in all vehicles could save more than 2,100 lives in the U.S. annually in rollovers alone, *not* including fatalities that could be prevented in other types of crashes.**

Even with all this evidence, Title 4 allows NHTSA to draw its own conclusions on ESC, asking that NHTSA **issue** a rollover resistance standard, but merely **consider** additional technologies to improve vehicle handling, **including electronic stability control systems**.

CASE STUDY: THE FEASIBILITY OF A SUPERIOR DYNAMIC ROOF CRUSH TEST

The image above depicts the fixture used to conduct roof crush dynamic testing in a testing laboratory in Salinas, California. The road surface moves along the track, contacting the roof of the vehicle as it rotates on the spit. The test surface impacts both *sides of the roof on a single run*, imitating the first roll of a vehicle in a rollover crash. The picture shows a 1994 Chevrolet Suburban (*vehicle in white*).

The current federal test is a static test using a platen, or plate, on the roof, and measures the impact of force *on only one side of the roof* with the steady exertion of pressure.

A dynamic test is far superior because:

1) It measures the survivability of the rollover crash — the human impact;
2) It includes the lateral, or sliding, velocity of the road as it moves beneath the vehicle;
3) It tests *both sides* of the roof – the current test only tests one side, with the windshield intact. Yet research shows that passengers sitting in the seat below the second, or trailing edge, of the roll, are the ones severely injured or killed. At the second impact, the roof, already weakened, crushes downwards toward the occupants' heads.
4) It shows the harm after the windshield shatters in the first impact. Although a windshield breaks on the first impact with the roof, it typically provides up to one-third of the roof's strength in the static test.
5) The test shows the real dynamic of crush as a function of roof geometry (roundness, curvature, etc.). Because the static test is not designed to include roof geometry, it omits a major factor for survivability.

While a static test measures the strength of the roof, a dynamic test measures injury to people.

Dynamic drop tests for roof strength are repeatable. As a 2002 engineering paper states:

The automotive industry and researchers have used drop testing for years to evaluate roof strength. In the late 1960s, SAE developed a standardized procedure to perform full vehicle inverted drop testing. Many domestic and import auto manufacturers have utilized the inverted drop test technique as far back as the 1960s and 1970s to evaluate roof strength.[34]

Dynamic Tests *Are* Repeatable

The auto industry first protested the "repeatability" of dynamic tests in the late 1960's in opposition to NHTSA's then-new frontal crash barrier tests – now a standard compliance test. Industry lodged similar objections over the crash test parameters for NHTSA's New Car Assessment Program, now an accepted measurement.

In each case, the industry claimed that a repeatable dynamic test could not be formulated — and yet one was developed and used.

FACT #5: TITLE 4 WILL SAVE JOBS AND MONEY

"Overall, the U.S. automotive supplier industry employs approximately two million workers with operations and facilities in nearly all 50 states. Sales in the U.S. automotive supplier industry totaled approximately $370 billion in 2002."
-- Testimony of Jason Bonin, V. P. of Lighting Technology, Hella North America, before House Subcommittee on Commerce, Trade, and Consumer Protection.[35]

Job Creation Benefits

An analysis of SAFETEA by the Enhanced Protective Glass Automotive Association (EPGAA) concluded that between 10,000 and 12,000 jobs would be created by the bill at both major manufacturers and safety suppliers.

Enhanced safety will also help to assure the longer-range competitiveness of the automotive industry. Recent books, such as *The End of Detroit*, by Michelin Maynard, point out that unless the domestic auto industry acts quickly to improve safety and quality, they will keep losing market share to foreign manufacturers.

American Consumers Value Vehicle Safety

- According to a JD Power and Associates 2002 study, nine of the top 10 features consumers most desired for their next new vehicle improve vehicle or occupant safety.[36]
- A study by Maritz Research found that more than two-thirds of consumers say they would definitely or probably buy high-tech safety equipment on their next vehicle.[37]
- "We've learned that safety sells. It sells today. It clearly will sell tomorrow," National Transportation Safety Board vice chairman Mark Rosenkar told automakers in January 2004.[38]

It is nearly always far cheaper to prevent harm in the first place. For families of crash victims, the most difficult fact is often how little it would have cost to build safety protections into the vehicle.

A Comprehensive Approach Lowers Costs for Consumers and Society

Highway crashes cost the U.S. economy, in direct costs only, $230.6 billion a year (in 2000 dollars), or $820 for every man, woman and child in the U.S. The average direct economic cost to society of each death is over $977,000 and is $1.1 million for each critically injured member of society.[39] The figures do not include the costs to families, the untold suffering, or stress of family dissolution following the death of a child.

Society pays nearly three-quarters of all crash costs, primarily through insurance premiums, taxes and travel delay. In 2000, these costs totaled over $170 billion.

*Improved Safety Costs **Pennies** Per Vehicle*

Some safety improvements, such as enhancing roof strength, cost very little, because they require mere improvements in design, rather than any new technologies. Others cost mere pennies. In contrast, automaker profit on SUVs is very high, as much as $8,000 for each Ford Explorer.

$ Dollars and Sense --
Wholesale Safety Costs per Vehicle

- ¢ *Belt pretensioners:* **$2.00**
- ¢ *Laminated safety glass:* **$1.40/ window**
- ¢ *Cables to enhance door latch protection:* **$1.70**
- ¢ *Automatic door locking via software to reduce ejection:* **free** (programming change only)
- ¢ *Roof strength reinforcements:* **$8 to $27**

FACT #6: TITLE 4 DEFERS TO NHTSA'S JUDGMENT ON THE SUBSTANCE OF SAFETY RULES

The clear language of SAFETEA invests NHTSA with substantial discretion over the content of tests to meet safety goals and recognizes the agency's expertise.

While Title 4 does specify *goals,* such as improving the safety of occupants in rollovers, **nothing in Title 4 predetermines an outcome or baseline for the new studies, test or safeguards.** The heart and soul of each new standard is entrusted to NHTSA. For example:

On ejection: "The Secretary of Transportation *shall prescribe a safety standard … to reduce complete and partial occupant ejection* from motor vehicles. . .In formulating the safety standard, the Secretary *shall consider* the ejection-mitigation capabilities of safety technologies, such as advanced side glazing, side curtains, and side impact air bags."

On compatibility: "The Secretary of Transportation shall issue motor vehicle safety standards *to reduce vehicle incompatibility and aggressivity…In formulating the standards*, the Secretary *shall consider factors such as* bumper height, weight, and any other design characteristics necessary *to ensure better management of crash forces …in order to reduce occupant deaths and injuries.*"

On rollover: "The Secretary of Transportation *shall prescribe a motor vehicle safety standard* …for rollover crashworthiness… In formulating the safety standard, *the Secretary shall consider*...a roof strength standard based on dynamic tests . . .*and shall consider* safety technologies and design improvements *such a*s (A) improved seat structure and safety belt design, including seat belt pretensioners; (B) side impact head protection airbags; and (C) roof injury protection measures."

The clear language of the provisions enacts performance standards, and not technology requirements.

Title 4 does not dictate effectiveness dates for any rule, *allowing NHTSA to write phase-in schedules that allow manufacturers considerable lead time to integrate changes into their platform re-design plans*. Wherever safety technologies are mentioned in the bill, Title 4 asks only that NHTSA *consider or evaluate* them. Whether to require the use of any technology is, in each instance, left to the agency's judgment and discretion.

Many vehicle safety issues, in the real world, are interrelated. For example, occupant protection in a rollover crash is related to: rollover propensity; ejection; side-impact airbags; window glazing; belt performance; and door latch and lock performance. *For this reason, Title 4 contemplates a holistic approach to vehicle safety, to encourage the agency to resist tradeoffs that compromise occupant problems, and to reduce the risk of unintended consequences.* The agency is also invited to apply current and available science on crash protection.

In short, a clear Congressional mandate on the inter-related priorities in Title 4 will avoid a piecemeal, scatter-shot approach by NHTSA, and allow vehicle manufacturers to most cost-effectively design safer vehicles. Agency discretion is actually enhanced by legislation which enables NHTSA to target safeguards that have long been the focus of concerted opposition from the auto industry.

Lastly, setting priorities for executive agencies is a core democratic responsibility of elected officials in Congress. Congress has fulfilled its duty in many recent laws, including ISTEA, and TEA-21. The history of ISTEA is instructive: **when Congress failed to direct NHTSA to issue a final rule, the result was either no rule or a very weak one, diminishing the impact of the law.**

FACT #7: RELIANCE ON VOLUNTARY SAFETY STANDARDS PROVIDES NO ASSURANCE OF SAFETY AND IS ANTI-DEMOCRATIC

Give us a "Commitment" Instead of a Rule

In December 2003, automakers announced a voluntary initiative to address incompatibility and aggressivity. The plan, currently to be phased-in on *most* vehicles by September 2009, would gradually increase the numbers of side impact air bags in vehicle and lower the bumpers of SUVs or add a barrier to prevent them from riding over cars.

Yet the Alliance made no specific or time-bound commitments to redesign these stiff vehicles to protect consumers, despite the fact that light trucks act as battering rams in crashes, and that the height and stiffness of SUVs makes them devastating on the highway.

Moreover, there is no requirement that all vehicles become compliant with the plan, and no outside body will verify vehicle compliance. While the commitment may increase occupant protection, it does little to address the violence that will be inflicted by the striking vehicle in crashes, ignoring the need to reduce stiffness and address ever-larger vehicle weights.

A voluntary "commitment" is a particularly inapt solution where, as here, thousands of lives are at stake. In fact, Congress rejected them almost three decades ago when it passed the National Traffic and Motor Vehicle Safety Act in 1966.

As the Senate Committee Report stated:

> *The promotion of motor vehicle safety through voluntary standards has largely failed. The unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll.*[40]

The 1966 Congressional legislators were right. The historical path of automakers' voluntary efforts is paved with broken promises.

From General Motors' promises in 1970 to voluntarily put air bags in all its vehicles by the mid-1970s (GM installed just 10,000 in model year 1974 and 1975 vehicles, and then discontinued the program), to Ford, DaimlerChrysler and GM's recent recanting of their widely publicized 2001 promises to voluntarily improve the fuel economy of their light trucks by 25 percent (withdrawn after the threat of Congressional action on fuel economy receded), "voluntary" is often just another name for tactical maneuvering and delay.

Moreover, government reliance on voluntary "commitments" violates core principles of democratic accountability and transparency, because such voluntary agreements:

- **Contain no mechanisms for accountability**: If the program proves dangerously deficient, there is no recourse for injured consumers, nor for the government to initiate a defect investigation or compel the industry to perform a recall;
- **Involve closed, secret processes and meetings**: The public, which is at risk, is shut out of development of the proposal, which is in secret by industry working groups not subject to oversight, compliance with statutory requirements, a responsibility to explaining their decisions, or judicial review of decisions;
- **Lack transparency**: The public has no means to secure an independent evaluation of the quality of the industry's voluntary tests or standards. The public gets no verification that a particular vehicle complies with the voluntary tests, unlike a government standards;

- **Lack a baseline for safety**: High-income purchasers, who can afford safety extras may be protected, but low-income purchasers remain vulnerable to cost-related decisions by manufacturers;
- **Produce weak and non-binding results**: Proposals are invariably weak because they represent the lowest common denominator among companies looking out for their own costs and product plans, and there is no obligation to be or remain in compliance, so companies may change their minds at will and withdraw any protection offered;
- **Are replete with exemptions and limited remedies:** Voluntary "commitments" usually have exemption clauses permitting manufacturers to opt out of "compliance" because of marketing considerations, costs, or for other reasons. Voluntary "fixes" also do not help many drivers. For example, the Ford Explorer 2-door "Sport" was never re-designed to lower its rollover propensity, although it is more popular and more rollover-prone than the 4-door model which was subject to a well-publicized re-design.
- **Undermine the efforts of regulatory agencies:** Voluntary efforts often sideline agency involvement and research into safety policy by allowing willing agencies to defer or avoid regulation in a timely and vigorous manner.

###

While automakers have spoken ominously about delay in their voluntary "commitments" if standards are enacted, **withdrawing safety protections from consumers, once they have been made available, would be both unwise and uncompetitive, in view of the strong consumer demand for safety technologies.**

In addition, Title 4 asks NHTSA to handle related vehicle safety issues as a package, and outlines a vigorous rulemaking schedule, to ensure that there will be little delay in achieving these crucial steps forward in safety.

SUV Owners Speak Out

Casey Ryan of Widlomar, CA father of 3 and driver of a 2003 Land Rover Discover:

If Americans can put a man on the moon during in the 60's and develop abstract topics like artificial intelligence, computer science, bioinformatics and genomics, then Americans can do anything they put their minds to. We need to be putting those minds to work for something that affects Americans on a daily basis; more relevant and practical for those who pay taxes and work hard like myself: Build a better SUV. We are the customers. They are the servers. Let's see some real customer service.

Endnotes

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