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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

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April 24, 2014

The Honorable David J. Friedman
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
West Building
Washington, D.C. 20590

Dear Acting Administrator Friedman:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Tuesday, April 1, 2014, to testify at the hearing entitled "The GM Ignition Switch Recall: Why Did It Take So Long?"

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Thursday, May 8, 2014. Your responses should be mailed to Brittany Havens, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to brittany.havens@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Tim Murphy

1. In April 2009, NHTSA conducted a Special Crash Investigation (SCI) of a fatal accident in Pennsylvania involving a Cobalt. In that crash, the airbags failed to deploy and the vehicle was found in the accessory position. Unlike previous crashes investigated by SCI, this accident did not involve an off-road incident.

    a. In light of previous Special Crash reports had also noted the ignition was in "accessory" and the airbags failed to deploy – and the 2007 proposal to open an investigation that NHTSA ultimately rejected – did NHTSA do anything to follow-up on this SCI investigation? Did it request any information from GM?

    b. Can you confirm today that this report was shared with the Office of Defects Investigation?

    c. Did NHTSA reach a conclusion as to why the airbags failed to deploy in this tragic accident? If not, why not?

    d. Was this accident included in early warning report data provided by GM?

    e. If not, did NHTSA inquire why it was not included in GM's early warning report data?

2. Did NHTSA ever ask GM to provide any follow-up information about the crashes studied in the Special Crash Investigations?

3. When considering a possible investigation in 2007 – did NHTSA ask GM for its service information so it knew how its airbags worked?

4. Was NHTSA aware of GM's 2005 and 2006 Technical Service Bulletins related to "low ignition key cylinder torque/effort?"

    a. At the time, did the agency take any steps to review the underlying problem and GM's proposed solution?

    b. On its own, does NHTSA consider a low torque ignition switch to be a safety defect?

    c. Is NHTSA aware of any accidents that were caused by inadvertent key rotation in GM vehicles?

    d. In NHTSA's opinion, is this an airbag recall or an ignition switch recall?

5. In general, how frequently does NHTSA request additional information from manufacturers based on death and injury reports?

    i. Is this information effective? If so, how? If not, why not?

6. Since 2001, how many investigations has NHTSA conducted involving non-deployment of airbags in frontal impact crashes? Please provide details of these investigations including but not limited to the vehicles involved, the timing and outcome of the investigation.

    a. In that same time period, how many investigations has NHTSA conducted involving unwanted deployment of airbags? Please provide details of these investigations including but not limited to the vehicles involved, the timing and outcome of the investigation.

7. How does NHTSA's new software improve the agency's ability to track and identify defects?

    a. Has NHTSA initiated a recall as a result of the information presented by this software?

    b. Has the agency been able to quantify its benefits, to date?

    c. What is NHTSA doing to improve its ability to leverage the capabilities of this technology?

8. Is the warranty information currently provided to NHTSA through early warning reports valuable to the agency's safety mission?

    a. How frequently does the agency initiate investigation based on the warranty data provided by the manufacturers?

    b. If NHTSA received every specific warranty claim received by manufacturers, how would the agency process this information?

        i. Does the agency have the IT infrastructure to manage this volume of information?

        ii. Would it be of any use to the agency or would it potentially have the adverse effect of drowning investigators in information?

9. NHTSA has unfulfilled 2007 legislative requirements to produce and implement the Tire Fuel Efficiency Consumer Information Program (TFECIP). Despite publishing a proposed final rule in 2010, soliciting and analyzing comments and taking years to conclude work, the agency has failed to finalize the tire labeling requirement. It is my understanding that NHTSA is now drafting a supplemental notice of proposed rulemaking (SNPRM). Please answer whether NHTSA has completed the data gathering and research phase of the rulemaking, and when the supplemental rulemaking will be completed and published.

a. Does NHTSA intend to allow for a public comment period, and if so, for how long?

b. Finally, does NHTSA intend to conduct any pilot programs for evaluating the results of a tire rating label?

The Honorable Henry A. Waxman

1. With passage of the TREAD Act, Congress acknowledged that NHTSA was underfunded and understaffed. NHTSA also needed additional staffing resources in order to implement the Act and establish the Early Warning Reporting system. In 2001, NHTSA' Office of Defects Investigation (ODI) had 52 employees; in 2002, that number increased to 59, and yet now, ODI has one fewer employee than when the TREAD Act passed

   A recent headline for a Bloomberg News article was: "Auto Regulator Has 51 People Tracking 250 Million Cars." ODI is funded at $10.6 million and the Department of Transportation has requested no increase in FY 2015.

   I understand that NHTSA has many important functions. But 51 staff members is low – particularly when only a portion of those 51 are investigators

   a. Please indicate that different offices or divisions composing ODI and state the role of each of its employees.

   b. For a short time, in FY 2002, ODI had as many as 59 employees. Please detail what ODI could do in FY 2015 if it added ten more individuals to its current staff of 51 employees.

   c. As cars have grown in complexity, has NHTSA added staff who understands these advances? How many electrical and software engineers does NHTSA employ?

   While ODI uses a variety of data sources to determine whether a safety-related defect may exist or that an issue may warrant further scrutiny, ODI officials have indicated in bipartisan briefings with Committee staff that the information provided by consumers to NHTSA's consumer complaints database plays a particularly important role. In response to member questioning at the Subcommittee hearing on April 1, 2014, you stated: "Right now, we've got 45,000 complaints. I'd like to see that number get up to 50,000; 60,000; 75,000 complaints relative to safety issues so that we can have more information to be able to track down these problems."

   d. It is my understanding that the NHTSA consumer complaint database represents a sample; i.e. there are many incidents that might involve a potential safety-related defect that are not reported by consumers to the agency. Is that correct?

   e. Please discuss the benefits of an increase in the number of consumer complaints submitted to NHTSA. If NHTSA's consumer complaint database included

75,000 complaints relevant to safety issues, what are likely ways that this development might aid NHTSA in its safety mission?

f. Does NHTSA receive more or fewer potentially safety-related consumer complains, on a per-model basis, when compared to auto dealers and manufacturers? What is the ratio of complaints to manufacturers compared to complaints to NHTSA?

g. Please identify at least the three most consequential steps the agency would need to take to accomplish the goal of substantially increasing the number of consumer complaints in NHTSA's database, and indicate what resources would be necessary to carry out these efforts.

h. Please indicate specific ways in which NHTSA can improve the analysis of information in its consumer complaints database.

Relatedly, I understand that NHTSA's Crash Investigation Division (CID), which oversees the Special Crash Investigations (SCI) commissioned by the agency, has a staff of nine people. SCI reports for crashes in 2005, 2006, and 2009 provided NHTSA with the first detailed information on crashes involving what would later be determined as the General Motors (GM) ignition switch/air bag non-deployment defect. At the time, the investigations focused on the non-deployment of air bags, and could not conclusively identify the position of the ignition switch as the likely cause of the crashes that were investigated.

i. Please provide a table showing the total number of Special Crash Investigations undertaken each year from 2000 to 2013.

j. Please detail the impact on NHTSA's safety mission of a funding boost allowing for a 25% increase in the number of Special Crash Investigations undertaken annually. Would such an increase provide a greater body of evidence for NHTSA to draw on when determining that a safety-related defect may exist or that a particular issue at least warrants further scrutiny? Please explain what NHTSA capabilities would be enhanced by such a change and address whether it could help speed NHTSA's identification of defects.

In your testimony at the Subcommittee hearing on April 1, 2014, you stated, "We are…considering ways to improve the use of crash investigations in identifying defects. We are reviewing ways to address what appear to be remote defect possibilities."

k. Please provide details on how NHTSA plans to improve the use of crash investigations in identifying defects.

l. Would an increase in the number of Special Crash Investigations that are undertaken enable the agency to have more data on those issues that, in your words, "appear to be remote defect possibilities"? Please explain your answer.

2. In written testimony submitted for the Subcommittee hearing on April 1, 2014, you wrote that "GM had critical information that would have helped identify this defect," that NHTSA did not possess. I would like to explore this point further.

   Press reports from the hearing have gone as far as saying that GM withheld information from NHTSA. I would like to focus on what exact information GM failed to provide to NHTSA *before* the existence of a safety-related defect was formally determined. In response to members questioning, you stated that there are several pieces of information you: would have liked" to have had at a minimum from GM, including "information that they changed the part in the ignition switch [in 2006]," "information that they were talking to their suppliers" because of "concerns about the algorithm associated with air bag nondeployments," and "any information they had directly linking the ignition switch defect to air bag nondeployments." You also indicated that NHTSA's ongoing investigation may determine additional information possessed by GM that would have been useful for NHTSA defect identification activities.

   Perhaps this information, if known by GM, should have been reported to NHTSA as a matter of principle. However, it is not clear that this principle is enshrined in federal law or regulations in a manner that ensures NHTSA receives that information it needs to identify possible safety-related defects.

   a. What pieces of information that NHTSA did not receive may have helped the agency ascertain the safety problem earlier, if it had received them? Please include the three kinds of information mentioned above that you said you "would have liked" to have had.

   b. For each piece of information listed as potentially helpful that NHTSA did not receive:

      i. Please state what law or regulation requires that manufacturer submit such information to NHTSA;

      ii. Please indicate if such information is or is not currently required to be submitted to NHTSA, based on the current language of federal law and regulations; and

      iii. For any information not required to be submitted by law or regulation, please submit language that would make such helpful information required to be submitted by law.

   c. GM, like all manufacturers, is required to submit to NHTSA several different kinds of information, including: defect and noncompliance reports pursuant to 49 C.F.R. Part 573.6; notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications, pursuant to 49 C.F.R. Part 579.5; and Early Warning data pursuant to 49 C.F.R. Part 579.21. I know this list is incomplete, so please list all types of information manufacturers are required to submit to NHTSA that the agency then reviews for *possible* safety-related defects.

In addition, what information is required to be sent to NHTSA once a defect is formally determined?

3. The bipartisan investigation by the Committee on Energy and Commerce has found that GM approved, at least twice, the inclusion of ignition switches in its vehicles that did not meet the company's own specifications for torque performance between the run and accessory positions. In fact, the ignition switches of certain vehicles in the 2003-2007 model years had torque, between run and accessory, that measured between 4 and 10 Newton centimeters (Ncm) rather than meeting the GM specification of 20 Ncm (plus or minus 5 Ncm). In making the decision to accept ignition switches that did not meet its torque performance specifications, GM put the safety of its customers at great risk. Yet, to the surprise of many of my colleagues, such a move did not violate federal motor vehicle safety standards (FMVSS), because there is no FMVSS provision on ignition switch torque performance.

    a. Please describe the process NHTSA employs in determining new safety hazards that warrant being regulated under FMVSS.

    b. Is NHTSA evaluating, or does NHTSA plan to evaluate, whether an FMVSS is needed for ignition switches?

    c. Aside from issuing or amending an FMVSS, what are other methods that NHTSA can use to monitor known safety hazards in individual vehicle parts and ensure that manufacturers do not place their customers at risk from these hazards?

4. At different occasions during the Subcommittee hearing on April 1, 2014, you stated that NHTSA will "hold General Motors accountable" if the agency's investigation determines that GM failed to meet its legal responsibilities to report and address the ignition switch defect, including by failing to act quickly or in good faith toward the agency. However, the maximum civil penalty that NHTSA can issue for a related series of standards or compliance violations is $35 million. (It can also issue up to $35 million for a related series of violations of inspection, investigation, and records standards.) I do not believe that the prospect of these fines is an adequate deterrent to unsafe practices by major automakers, whose annual revenue can top $150 billion.

    a. The Motor Vehicle Safety Act of 2014, which I introduced, would increase the maximum civil penalty NHTSA can levy for a related series of violations to $200 million. Please detail the impact on NHTSA's deterrent capabilities if the agency's maximum total civil penalty for a related series of violations was increased to $200 million. Would such a development help NHTSA ensure that manufacturers are accountable for the safety of their customers?

On March 4, 2014, NHTSA sent GM a Special Order (essentially, an administrative subpoena) with 107 questions that the company must answer pertaining to the ignition switch/air bag non-deployment safety defect and its handling of related recalls. GM's answers were due to NHTSA on April 3, 2014. An April 8, 2014, letter from NHTSA to GM indicated that the company was not in compliance with the agency's investigation, having failed to "respond to over a third of the requests" and to "answer under oath as required."

Because GM did not fully respond to the Special Order, the agency demanded civil penalties of the statutory maximum of $7,000 a day, pursuant to 49 C.F.R. Part 578. As of April 15, 2014, GM has still failed to fully comply with the requests of the NHTSA Special Order.

b. Is GM's failure to respond to significant portions of the NHTSA Special Order unusual? Has a manufacturer previously simply disregarded NHTSA's inquiries for weeks on end in favor of paying civil penalties?

c. Please detail the likely impact on manufacturer compliance with NHTSA requests for information if the agency's maximum daily civil penalty was substantially raised. Would such a change help NHTSA ensure that manufacturers are accountable and responsive to the agency's inquiries?

5. In a March 2010 hearing before the Subcommittee on Commerce, Trade, and Consumer Protection, then-NHTSA Administrator David Strickland acknowledged an inconsistency: when a consumer reports a safety problem directly to NHTSA, the report goes into a publicly searchable database; however, when a consumer instead reports the safety problem to a car company, that report becomes confidential business information. I would like you to discuss the regulations that implement the Early Warning Reporting (EWR) system and why they are so restrictive of public accessibility. If consumers had more access to EWR information earlier, they could influence defect investigations and even bring about earlier auto recalls, which could prevent injuries and save lives.

At that same hearing, Administrator Strickland explained the Administration's commitment to transparency, and said, "the more transparency we have, the better."

a. It is my understanding that NHTSA grants confidential treatment to all submissions in certain classes of EWR information, including: data relating to warranty claims and warranty adjustments; data relating to field reports and copies of field reports; data relating to consumer complaints; production numbers, other than of light vehicles; and Common Green Identifiers. Is this correct?

b. Please state the rationale for the agency's confidential treatment of all EWR data relating to consumer complaints. How can information submitted by consumers be considered confidential business information?

c. It is my understanding that manufacturers may submit individual requests for confidential treatment of additional EWR information, relating to reports of incidents involving death and injury, numbers of property damage claims, and/or production for light vehicles. Such requests must conform to all requirements of NHTSA's confidential business information regulation (at 49 C.F.R. Part 579), including adequate support that the release of EWR data will cause competitive harm and that such harm will be substantial. Is this correct?

d. What is the broadest amount of EWR data to which such an individual request for confidential treatment may apply? Are manufacturers required to make such a

request for each individual EWR report for which they are seeking confidential treatment?

e. What percentage of all individual manufacturer requests for confidential treatment of EWR data is granted? What percentage of such requests that are determined to comport with the requirements of 49 C.F.R. Part 512 – including the requirement to support an assertion of substantial competitive harm – is granted?

f. Please detail the process of determining whether a manufacturer has provided adequate support that the release of EWR data will cause competitive harm and that such harm will be substantial. In this explanation, please include the criteria used to make such a determination.

g. Please detail the role that the spirit of transparency plays in NHTSA's decisions on whether or not to grant confidential treatment to manufacturers when they make individual requests for such treatment. Are manufacturers' requests weighed against the public interest in the transparency of safety data? If so, how?

h. Please state whether granting confidential treatment to EWR information precludes NHTSA from posting such information on its website with sensitive business or personal information redacted. If so, please detail what kind of treatment of this information would permit NHTSA to make the information publicly accessible, except with sensitive business or personal information redacted. If not, please detail whether the agency does or does not post such information on its website, with sensitive business or personal information redacted, in cases where there it would be in the interest of safety or transparency to do so.

i. It is my understanding that NHSTA has the authority to rewrite federal regulations pertaining to EWR information (at 49 C.F.R. Part 579) and confidential business information (at 49 C.F.R. Part 512). Is this correct?

j. Please detail whether, and how, NHSTA is reviewing these regulations in the spirit of enhancing transparency and the public accessibility of EWR data.

6. NHTSA's second Special Crash Investigation report from 2007 discusses the ignition switch problem raised by the December 2005 TSB, stating, "it is not known what role, if any, this may have played in the non-deployment of the air bags." The report later says looking into the issue would be "beyond the scope of this investigation." Did others in NHTSA then follow-up on this issue? If not, why not?

7. When the ignition switch position moves from run to accessory, what's the actual problem? Is it that power is disconnected from the airbags or is the engine shutting down inherently a safety problem?

8. For conducting future investigations, has NHTSA formally changed its procedures to make sure that ignition switch position is an issue that should be monitored more closely? Does NTHSA have formal procedures that would apply here?

9. NHTSA is using new IBM software to search for patterns, but does NTHSA currently have in operation any software which predicts safety defect trends? If not, why not?

10. What criteria does NHTSA use to determine when it opens a safety defect investigation? Is the criteria used consistently across all possible investigations?

11. When considering whether to open an investigation, what sources of data does NHTSA rely on? Does it seek outside sources like safety advocates in addition to consumer complaints and EWR reports? If not, why not?

12. What methodology does NHTSA use to analyze vehicle safety complaints?

13. What information does NHTSA receive about vehicle safety that is not made available to the public?

The Honorable G.K. Butterfield

1. Mr. Friedman, NHTSA is on record in support of S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act. As you know, at its core the legislation is straightforward—it requires cars that are under a safety recall to be repaired before they are rented to customers. The legislation has been approved by the Senate Commerce Committee on a bi-partisan basis.

    a. Given that current law prohibits a dealer from selling a new car subject to recall before it is repaired, can you think of any reason why a dealer should be able to rent such a vehicle?

    b. The car rental industry strongly supports S. 921 as approved by the Senate Commerce Committee. Some have suggested that S.921 should distinguish between "serious" and "minor" recalls. What is your view on this idea? Do you think recalls should be "tiered" into categories based on the level of safety hazard?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Tim Murphy

1. If General Motors makes a change to a part, do they also have to have a different part number? What are NHTSA's requirements with regard to that?

The Honorable Steve Scalise

1. During the hearing we discussed a chart that showed the number of sales and the correlating complaint rates with those vehicles. You explained that the Cobalt did not stand out when compared to peer vehicles. Of the peer vehicles included on that chart, please provide the Committee with a list of the cars where NHTSA decided to take action.

2. In your testimony you say that NHTSA is pursuing an investigation of whether GM met its timeliness responsibilities to report and address this defect under Federal law. Please explain the specifics of how you came to that conclusion.

3. Please provide a clear and detailed explanation of what information NHTSA believes GM failed to provide to the agency, the reason why GM would be required to provide that information to NHTSA at the time a specific event or action took place and how that information would have benefited NHTSA's evaluation of this specific issue.

The Honorable Diana DeGette

1. If General Motors is changing a part, are they legally required to inform NHTSA of that change?

The Honorable John D. Dingell

1. During the hearing you stated that there were additional reasons that a review was prompted other than the 29 consumer complaints, 4 fatal crashes, and 14 field reports. Please explain the additional reasons.