

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

April 12, 2018

Ms. Heidi King
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Dear Ms. King:

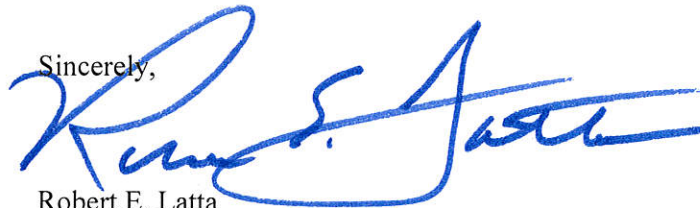
Thank you for appearing before the Subcommittee on Digital Commerce and Consumer Protection on, Wednesday, February 14, 2018, to testify at the hearing entitled "Oversight of the National Highway Traffic Safety Administration."

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.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, April 26, 2018. Your responses should be mailed to Ali Fulling, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to ali.fulling@mail.house.gov.

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

Sincerely,



Robert E. Latta
Chairman
Subcommittee on Digital Commerce
and Consumer Protection

cc: Jan Schakowsky, Ranking Member, Subcommittee on Digital Commerce and Consumer Protection

Attachment

Additional Questions for the Record

The Honorable Robert E. Latta

1. Can you please give us a brief update on the New Car Assessment Program (NCAP)? We know NHTSA asserts the program has influenced manufacturers to build vehicles that consistently achieve high ratings.
 - a. What are the forthcoming actions on NCAP? Is there a timeline for enhancing NCAP and including autonomous vehicles?

The Honorable Adam Kinzinger

1. I appreciate you addressing my question regarding my recalled parts provisions in the FAST Act, however your response at the hearing (as well as the subsequent written explanation your staff sent to my staff) regarding the status of my provision actually seems to address a different provision regarding batch look up of VINs. That provision did, indeed, require a study. To clarify, the batch provision that you reference is Section 24103. But that is not the Kinzinger provision that I am inquiring about which is Section 24116.

Section 24116 requires automakers to provide recalled parts data and does not expressly mention batch data. Section 24116 reads as follows:

SEC. 24116. INFORMATION REGARDING COMPONENTS INVOLVED IN RECALL. Section 30119 of title 49, United States Code, is amended by adding at the end the following:

“(g) INFORMATION REGARDING COMPONENTS INVOLVED IN RECALL.—A manufacturer that is required to furnish a report under section 573.6 of title 49, Code of Federal Regulations (or any successor regulation) for a defect or noncompliance in a motor vehicle or in an item of original or replacement equipment shall, if such defect or noncompliance involves a specific component or components, include in such report, with respect to such component or components, the following information:

“(1) The name of the component or components.

“(2) A description of the component or components.

“(3) The part number of the component or components, if any.”

For NHTSA to adequately address my provision from the FAST Act, it is my belief that it can only be accomplished through comprehensive access to both original equipment part numbers of recalled parts tied to specific VINs and other OE parts identification information. It is important that automotive manufacturers and professional automotive recyclers come together to enhance overall motor vehicle safety, help improve recall remedy rates, and effectively address the federal recall remedy requirements for used equipment enacted 15 years ago in the TREAD Act.

- a. Will you commit to having NHTSA host a high-level Recall Safety Summit of stakeholders to more effectively address this outstanding safety issue that has not been addressed in the past 26 months since its passage?
 - b. Please provide any other updates regarding Section 24116, which is critically needed for the efficient identification of safety recalled parts in the automotive supply chain, especially by automotive recyclers.
2. In November of last year, the GAO released a report titled: “Automated Vehicles: Comprehensive Plan Could Help DOT Address Challenges.” The report indicated that “DOT recently formed a group to lead policy development in the future, but has not announced a detailed timeline or scope of work. Without a comprehensive plan, it is unclear whether DOT’s efforts are adequately tackling AV challenges.” The report also indicated that “states are ... responsible for registering vehicles, licensing drivers, educating drivers, and regulating auto insurance.” My home state of Illinois is home to numerous large, medium, and small auto insurance firms. The SELF DRIVE Act recognizes the long standing regulation of auto insurance at the state level.
 - a. Please explain, in as much detail as possible, NHTSA and DOT’s outreach (referenced above) to the automobile insurance market participants, state insurance commissioners, state legislators, and consumer groups.
 - b. Has a timeline, scope of work, or comprehensive plan been established, to date?
3. The November GAO report mentioned in Question 2 also raised questions about data privacy, ownership of data, and access to the data from AVs. The report indicated that “DOT officials indicated that they expect existing data privacy policies and disclosure agreements to apply to AVs.” It is likely too early to determine what the insurance and liability landscape will be as AVs proliferate. NHTSA may have an opportunity to play an important role in convening interested parties—be they state insurance commissioners, auto insurance companies, the OEMs, or others—to facilitate dialogue about the flow of AV data in the future while simultaneously recognizing and respecting the role of states in regulating auto insurance.
 - a. Do you agree with this assessment?
 - b. Do you see NHTSA playing a role in the realm of data flows? If so, please describe your vision.

The Honorable David McKinley

1. According to NHTSA data, we have recently experienced one of the largest percentage increases in vehicle fatalities in nearly 50 years. It is critical that NHTSA continues to update its crash countermeasures to protect consumers and reverse this trend. Can you provide me with the latest information on NHTSA’s efforts to update its crash countermeasures and how the agency is taking into account new innovations, such as

lightweight materials that did not exist when NHTSA's current countermeasures were created, to improve structural safety guidelines?

The Honorable Larry Bucshon

1. Ms. King, NHTSA has indicated it will propose CAFE regulations for 2022-2025 model years by the end of March or early April. EPA has not indicated a timeline for their Revised Final Determination or any subsequent proposed rulemaking. How is NHTSA coordinating with EPA to ensure a coordinated approach and schedule that results in an efficient regulatory framework?
2. As you know, glider kits are brand new commercial trucks absent the engine, transmission, and rear axles. Glider kits originated as a means to replace a badly damaged truck chassis and cab, while reusing the damaged truck's powertrain. Now a new industry has been birthed, where manufacturers are installing older remanufactured engines into these glider kits in growing numbers, producing new glider vehicles which have avoided EPA and NHTSA emission and safety regulations. Glider vehicle manufacturers are clearly manufacturers of new motor vehicles according to NHTSA regulation §571.7(e). Are these manufacturers meeting basic legal requirements to register with NHTSA as manufacturers, to define VIN configurations, and to file safety defect reports? What is NHTSA doing to ensure that glider manufacturers are complying with all existing heavy duty Federal Motor Vehicle Safety Standards, and to take enforcement actions where appropriate?
3. Ms. King, I introduced HR 3421, which was eventually rolled into the SELF DRIVE Act, that directs the Secretary to establish a publicly available and searchable electronic database for motor vehicles that have been granted an exemption. The goal of this bill is to increase transparency between the federal government and the public. How important is communication between NHTSA, the States and the public at large?
4. Ms. King, in your testimony you mention that NHTSA is adapting your mission given the rapid pace of change in the current transportation landscape. Can you please talk about what NHTSA is doing to adapt and how NHTSA is leveraging new technology to improve safety?
5. Ms. King, who is NHTSA partnering with on its newly announced Drugged-Driving Initiative and how can we on this committee support the work you're doing at NHTSA on this very important issue?

The Honorable Jan Schakowsky

1. NHTSA's public planning for self-driving cars has been focused on "eliminating unnecessary regulatory barriers." But self-driving cars use many new technologies, such as a variety of sensors. Those sensors may require new safety standards. What specific new motor vehicle safety standards are needed to address new technologies? When will NHTSA initiate rulemaking proceedings for those safety standards?

2. At the hearing, you stated that the President's Budget reflects the resources you believe NHTSA needs. How are you planning to reorganize or redistribute staff and resources to address the changing needs of the agency? How will you ensure that staff have the skills and knowledge needed to address new technologies, including automated technologies?
3. At the hearing, some of my colleagues and I asked you when some specific overdue rulemakings would be finalized. You were unable to provide specific dates at the hearing. And I have a few more overdue rulemakings to ask you about. While I agree that safety should not be rushed, some of these rules are years overdue. For each of the following rulemakings, please provide the specific date on which the rulemaking was initiated, the date on which the NPRM was issued, and when a final rule will be issued. If final rules have been issued on any of the below directed rulemakings, please cite the publication of that rule in the Federal Register.
 - a. Section 31501 of MAP-21 required a rule to better protect children in car seats in side impact crashes. This rule is already two years overdue.
 - b. Section 31502 of MAP-21 required a rule improving child restraint anchorage systems by 2015. NHTSA issued a notice of proposed rulemaking in 2015, but there has been no further action.
 - c. Section 31503 of MAP-21 required that NHTSA initiate a rulemaking proceeding to require rear seat belt reminder systems. NHTSA has not taken any public action on that statutory mandate.
 - d. Section 24104 of the FAST Act required a rule that would ensure consumers are notified of recalls electronically in addition to by mail. The final rule was due in 2016, but NHTSA has only issued an NPRM so far—also in 2016.
 - e. Section 24112 of the FAST Act required a rule regarding corporate responsibility for NHTSA reports. That rule was due by December 2016.
 - f. Section 24115 of the FAST Act required a rule to ensure that tire pressure monitoring systems cannot be overridden, reset, or recalibrated in such a way that the system will no longer detect when the inflation pressure has fallen below a significantly underinflated level. NHTSA has yet to take any action on that requirement.
 - g. Section 24322 of the FAST Act required a rule directing manufacturers to include stickers with crash avoidance information in their vehicles. That rule was due in 2016.
 - h. Section 24403 of the FAST Act required a rule directing manufacturers to retain vehicle safety records. That rule was due over a year ago.

- i. NHTSA issued a notice of proposed rulemaking for vehicle-to-vehicle communications in January of last year, with comments due in April of last year.
 - j. Six years ago, Congress charged the National 9-1-1 Office with issuing \$115 million in grants to help deploy Next Generation 9-1-1. Unfortunately, the 9-1-1 Office has yet to even finalize its grant making rules. In addition to providing the rulemaking details, when can we expect that it will award the grants?
- 4. Under the FAST Act, manufacturers were required to include in their Part 573 defect information reports part names, descriptions, and part numbers for all components involved in the defect or noncompliance being reported. It appears that some manufacturers are not complying with that mandate.
 - a. A number of these reports failed to include part numbers in their 573 reports, but were accepted by NHTSA. What are you doing to remedy those incomplete reports?
 - b. When will NHTSA go through its process, including any notice and comment, to adjust the required form to better accommodate input of specific fields of entry of part numbers and other parts identification information? On what date will NHTSA issue this final rule or form so that more specific part information is included in 573 reports?
- 5. So far, only Waymo and GM have submitted voluntary safety assessment letters encouraged by NHTSA's Federal Automated Vehicle Policy. I have heard complaints that these submissions are inadequate and that companies are not sharing enough information about the safety of their vehicles with NHTSA or with the public. NHTSA has made it abundantly clear that these assessment letters are voluntary. These assessments may have little value if they are simply general descriptions of a company's systems and activities. For those companies that do submit safety assessments, is NHTSA requesting additional detailed information to help the agency monitor self-driving cars? If so what information are you requesting?
- 6. In 2015, NHTSA announced plans to update NCAP with valuable new information on vehicles' crash avoidance technologies and their safety in crashes involving pedestrians. But these plans have been stalled for more than two years. On what date will NHTSA issue final revisions to NCAP so that consumers have up-to-date safety information when shopping for cars?
- 7. On January 8, 2018, DOT announced two pilot programs to integrate new sources of big data into the agency's analysis of car crashes, with the goal of providing better insights to improve highway safety. One program would incorporate highway speed data from GPS-enabled devices, and the other would integrate traffic crash data from the crowd-

sourced mobile app Waze. I certainly support efforts to decrease traffic fatalities, but I do have questions about what personal data might be contained in these datasets.

- a. What steps are you taking to ensure that the use of these datasets won't infringe on the privacy rights of individual drivers?
 - b. Have you consulted privacy advocates and the Federal Trade Commission for guidance on this matter? If so, when and how are you taking their input into consideration?
8. In September, the National Transportation Safety Board released its findings related to a fatal 2016 crash of a Tesla Model S in Florida. In addition to driver errors, the NTSB determined that the vehicle allowed the driver to disengage from driving for long periods of time. In its report on the 2016 Florida crash, the NTSB made several recommendations to DOT and NHTSA.
 - a. The NTSB recommended that NHTSA "[d]evelop a method to verify that manufacturers of vehicles equipped with Level 2 vehicle automation systems incorporate system safeguards that limit the use of automated vehicle control systems to those conditions for which they were designed." How and when will NHTSA address this recommendation?
 - b. The NTSB also recommended that DOT "[d]efine the data parameters needed to understand the automated vehicle control systems involved in a crash" including "the vehicle's control status and the frequency and duration of control actions to adequately characterize driver and vehicle performance before and during a crash." The NTSB urged NHTSA to use these parameters "as a benchmark for new vehicles equipped with automated vehicle control systems" so that they capture important data and ensure it is readily available to NTSB investigators and NHTSA, at a minimum. What is NHTSA's plan and timeline for implementation of this recommendation?
 - c. The NTSB also recommended NHTSA to "define a standard format for reporting automated vehicle control systems data, and require manufacturers of vehicles equipped with automated vehicle control systems to report incidents, crashes, and vehicle miles operated with such systems enabled." What is NHTSA's plan and timeline for implementation of this recommendation?
9. In December, your Office of Defects Investigation opened a new case to look into the extraordinarily high failure rate for a Goodyear tire that has been used on motorhomes since 1996. The "G159" tire can overheat at highway speeds, causing tread separation and blowout. The tire has reportedly failed on as many as 1 in 10 motorhomes, resulting in 98 injuries and deaths over the past two decades. And yet NHTSA seems to have been unaware of the problem until very recently.

- a. Goodyear reported only one death and 13 injuries to NHTSA. Is NHTSA investigating whether Goodyear improperly concealed any critical safety data from the agency? If Goodyear did fail to report required tire failure incidents, what sanctions can and will NHTSA impose on the company?
 - b. The ODI Resume indicates that information about the Goodyear G159 tire failure had been “sealed under protective order and confidential agreements, precluding claimants from submitting it to NHTSA.” NHTSA received that information only when a private attorney obtained a court order authorizing release. Even if the claimants in lawsuits against Goodyear were prohibited from reporting the tire failure information to NHTSA, wasn’t Goodyear required to do report such information to NHTSA?
 - c. The ODI Resume also states that “many of the incidents were not required to be reported under 49 CFR Part 579.” Identify each specific provision of that regulation that NHTSA believes exempted Goodyear from reporting any G159 failure incident and explain why each provision applies. Do you support amending the regulation to close these loopholes in the reporting requirements and, if not, why not?
 - d. Court records reveal that Goodyear has been concealing the tire defect from the public for many years. In July 2017, Goodyear submitted a request to NHTSA for confidential treatment of the information turned over pursuant to court order. The public has a strong safety interest in finally being given access to that information. How have you responded to Goodyear’s request for confidential treatment? How have you responded to the January 4, 2018, FOIA request that the Center for Auto Safety filed in this matter?
10. Last year, the House passed H.R. 3388, the SELF-DRIVE Act, which among other things expands the number and types of exemptions available to automakers. Under section 6 of the bill, a feature of a highly automated vehicle (HAV) for which the automaker is seeking an exemption would have to provide a safety level at least equal to the safety level of the standard for which exemption is sought or would have to provide an overall safety level at least equal to the overall safety of nonexempt vehicles.
- a. Please detail how NHTSA intends to evaluate the level of safety of a feature of an HAV or of the HAV overall and how NHTSA intends to compare that to the safety level of a current standard or of a nonexempt vehicle.
 - b. Does NHTSA currently have procedures or protocols for evaluating exemption requests under 49 USC 30113 as it is today? Please provide copies of such procedures or protocols.

11. Consumers are concerned about privacy and cybersecurity vulnerabilities that will inevitably come with the increased data collection and connectivity of automated driving systems. And many are concerned about NHTSA's preparedness for these issues. While we have heard about some companies' initiatives, please detail what actions NHTSA is taking to be prepared to address these issues. Is NHTSA hiring or planning to hire privacy or cybersecurity experts? If so, when and how many?
12. The Department of Transportation under the Obama Administration established a federal advisory committee called the Advisory Committee on Automation in Transportation (ACAT). The advisory committee was intended to assess the Department's current research, policy, and regulatory support to advance the safe and effective use of autonomous vehicles. It appears that first and only meeting of the ACAT occurred on January 16, 2017. Has there been any other action taken by the ACAT since that meeting on January 16, 2017? Please explain NHTSA's involvement with the ACAT? Please detail the current status of the advisory committee and any other advisory committees involved in the issue of automated technologies. When have they met, when will they be meeting in the next year, and what are their agendas?
13. Last December, NHTSA indicated that it would address industry's petition for changes in how credits toward Corporate Average Fuel Economy standards are earned, banked, and transferred as part of the proposed rulemaking to finalize the 2022-2025 CAFE standards.
 - a. Please describe what, if any, changes to CAFE credits are included within the current draft of the notice of proposed rulemaking scheduled for release on March 30, 2018.
 - b. We have heard that NHTSA may not meet its timeline of March 30, 2018, for the release of the proposed rulemaking and that it has yet to be sent to the Office of Management and Budget for review. What date will the proposed rule go to OMB and what date will the proposed rule be released to the public?
 - c. We have heard that NHTSA is changing, revising or amending the model it is using to draft the proposed rule. Please share that new or revised model. Will you commit to ensuring the new or revised model is made public prior to the release of the proposed rule to the public? When can we expect the new or revised model to be made public?
14. The penalty for noncompliance with CAFE standards has not changed since 1975, when it was set at \$5.50 per one-tenth mile per gallon for each vehicle sold. NHTSA had announced an increase to \$14 effective in 2019, but last July the agency put that increase on hold. A simple adjustment for inflation since 1975 would put that penalty at \$25. On what date will NHTSA issue a final rule on the adjusted penalty, and what will be the

effective date? Will NHTSA commit to a penalty of at least \$14 and, if not, what is the basis for a lower penalty?

15. DOT had been issuing monthly report on significant rules. *See* <https://cms.dot.gov/regulations/significant-rulemaking-report-archive>. In 2017, those reports were not issued monthly. Can you commit that any major rulemakings out of NHTSA will be reported on a monthly basis?

The Honorable Debbie Dingell

1. The delays in responding and in providing certainty in the regulatory landscape have significant real-world costs to industry, and ultimately to consumers.

It is my understanding that NHTSA receives more than 75,000 consumer complaints each year, and that NHTSA publishes the complaints that arrive in the form of Vehicle Owner Questionnaires (VOQs) on its website with partial Vehicle Identification Numbers (VIN) to protect the privacy of the consumer who complained. However, I understand that NHTSA policy for many years has been to share the full VIN with the manufacturer of that customer's vehicle only after NHTSA opens a defect investigation into the issue that is the subject of the complaint. The manufacturers have said that the VOQ data is significantly less valuable to them without the full VIN, and that they could conduct more robust analyses of the VOQ data earlier if they could have access to the full VIN of the VOQs that involve their own vehicles as soon as those VOQs are made available. This would aid manufacturers in identifying potential safety defects earlier, which in turn would aid NHTSA's mission.

Your budget request states that a goal for FY 2018 is to "enable the Office of Defects Investigation to improve its effectiveness and meet growing challenges to identify safety defects quickly, ensure remedies are implemented promptly, and effectively inform the public of critical information." (NHTSA FY 2018 Budget Request at page 29). In light of this goal, why isn't NHTSA moving forward to make the full VINs available from VOQs to the relevant manufacturers to enable them to help you identify safety defects quickly? What other considerations has NHTSA taken into account on this issue?

The Honorable Doris Matsui

1. Ms. King, you stated that you were unsure whether an auto manufacturer could meet its CAFE fleet-wide target if it sold solely SUVs, despite the fact that you confirmed these targets take into account vehicle footprint. In fact, NHTSA's CAFE rule says that "[m]anufacturers are not compelled to build vehicles of any particular size or type (nor do the rules create an incentive to do so)."

My staff had a follow-up conversation with your agency during which NHTSA staff indicated that the situation I described is in fact possible because automakers that build vehicles with larger footprints – like SUVs – have proportionately higher CAFE fleet-

wide targets. Do you agree with this characterization from your staff? Given that the mix of trucks, SUVs, and smaller cars actually sold is already factored into the fleet-wide target, adjustment to the standards for sales trends is not necessary, correct?

2. I'm a strong supporter of innovative transportation solutions. But I'm concerned that some people conflate autonomous vehicle and connected vehicle technologies. Does NHTSA believe that the deployment of AVs is dependent on the development of vehicle-to-vehicle technology? Do you believe we should be leveraging self-driving technology as soon as it can be deployed safely at a commercial scale in order to improve overall vehicle safety?