



October 19, 2015

To: Members, Subcommittee on Commerce, Manufacturing, and Trade
From: Committee Majority Staff
Re: Hearing entitled “Examining Ways to Improve Vehicle and Roadway Safety”

I. INTRODUCTION

On October 21, 2015, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing on “Examining Ways to Improve Vehicle and Roadway Safety.” The Subcommittee will consider a legislative staff discussion draft that includes multiple proposals intended to improve motor vehicle safety processes and practices among auto manufacturers, and prepare the National Highway Traffic Safety Administration for the next generation of vehicles and innovation in the auto industry.

II. WITNESSES

First Panel

- Mark Rosekind, Ph.D., Administrator, National Highway Traffic Safety Administration;
- Maneesha Mithal, Associate Director, Division of Privacy and Identity Protection, Federal Trade Commission

Second Panel

- Mitch Bainwol, President and CEO, Alliance of Automobile Manufacturers;
- John Bozzella, President and CEO, Global Automakers;
- Ann Wilson, Senior Vice President, Motor & Equipment Manufacturers Association;
- Peter Welch, President, National Automobile Dealers Association;
- Michael Wilson, CEO, Automotive Recyclers Association;
- Greg Dotson, Vice President, Energy Policy, Center for American Progress; and
- Joan Claybrook, Former Administrator, National Highway Traffic Safety Administration.

III. BACKGROUND

A. Overview

In 2014, there were an estimated 253 million cars and trucks on the road in the United States averaging 11.4 years.¹ In comparison to past years, the nation's vehicle fleet is aging.² This is due to improved vehicle quality and other economic factors that are influencing Americans to keep their cars for longer periods of time.³ The average age of vehicles in operation is expected to increase to 11.7 years by 2019, and it is projected that the number of cars on the road that are 12 years old or more will increase by 15 percent over the next five years.⁴

Despite better quality vehicles and a 36 percent decrease in traffic fatalities over the last decade, vehicle safety recalls are on the rise.⁵ Last year, there were over 63 million vehicles recalled for safety defects and noncompliance with federal motor vehicle safety standards.⁶ This was up from approximately 22 million vehicles recalled in 2013 and surpassed the previous record in 2004 of 30 million vehicles recalled in one year.⁷ The rise in safety recalls has been attributed to a number of factors, including increased vehicle technology and complexity; shared supply chains among vehicle manufacturers; and increased scrutiny from safety regulators and government officials.⁸ On average, recall completion rates have remained around 70 percent.⁹

Cars are also more connected than ever. Internet connectivity and networked sensors are being added to cars as a means of improving safety, increasing mobility, and providing other customized conveniences to drivers. By 2020, it is projected that there will be a quarter billion connected vehicles on the road, "enabling new in-vehicle services and automated driving capabilities."¹⁰ The U.S. government also is taking steps to advance connected car technologies. The National Highway Traffic Safety Administration (NHTSA) is expected to issue a rulemaking at the end of this year requiring vehicle-to-vehicle communications devices in new

¹ IHS Automotive Press Release. June 8, 2014. (*IHS*). Available at: <http://press.ihs.com/press-release/automotive/average-age-vehicles-road-remains-steady-114-years-according-ihs-automotive>

² LeBeau, Phil. Americans Holding Onto Their Cars Longer Than Ever. CNBC. July 29, 2015. Available at: <http://www.cnn.com/2015/07/28/americans-holding-onto-their-cars-longer-than-ever.html>

³ *IHS*.

⁴ *IHS*.

⁵ USA Today Editorial. Today's Cars are Safer than Ever: Opposing View. June 15, 2015. Available at: <http://www.usatoday.com/story/opinion/2015/06/15/alliance-of-automobile-manufacturers-editorials-debates/71266264/>.

⁶ See Annual Recall Reports 1966-2014. Available at: <http://www.safercar.gov/Vehicle+Owners/vehicle-recalls-historic-recap>

⁷ *Id.*

⁸ New York Times. "More Complex Cars and Stricter Rules Lead to More Recalls." October 26, 2005. Available at: <http://www.nytimes.com/2005/10/26/automobiles/autospecial/more-complex-cars-and-stricter-rules-lead-to-more-recalls.html>

⁹ Timian, Jennifer. Chief, Recall Management Division, Office of Defects Investigation, NHTSA. Safety Recalls Completion Presentation. 2012 Government/Industry Meeting. January 25, 2012. Available at: <http://www.sae.org/events/gim/presentations/2012/timian.pdf>; See also GAO Report on Auto Safety: NHTSA Has Options to Improve the Safety Defect Recall Process. June 2011. Available at: <http://www.gao.gov/assets/320/319698.pdf>

¹⁰ Gartner Press Release. January 26, 2015. See <http://www.gartner.com/newsroom/id/2970017>

cars.¹¹ Last month, NHTSA also was engaged in efforts to secure commitments from ten vehicle manufacturers to make automatic emergency braking a standard feature in new vehicles.¹²

The proliferation of vehicle safety technologies has wide implications for vehicle safety, mobility, driver convenience, as well as vast societal and economic benefits.¹³ It also introduces new safety considerations into the automotive sector, including privacy and cybersecurity, which may extend beyond what is contemplated by the current regulatory framework. These considerations among others may impact how automakers, suppliers, dealers, NHTSA, and others address vehicle and roadway safety issues in the future.

B. Discussion Draft on Vehicle and Roadway Safety: Section-by-Section

TITLE I – ADMINISTRATIVE

Section. 101. Required Reporting of NHTSA Agenda:

This section requires the NHTSA Administrator to publish and submit to Congress an annual plan detailing the agency's projected activities for the upcoming year. The report to Congress is directed to contain projected activities related to the Administrator's policy priorities, projected rulemakings, plans to develop guidelines, plans to restructure the Administration or to establish or alter working groups, any planned projects or initiatives, and any projected dates or timetables associated with those plans.

Section 102. Corporate Responsibility for NHTSA Reports:

This section directs the Secretary of Transportation (Secretary) to issue rules requiring a senior official responsible for safety in any company submitting information to the Secretary to certify the accuracy of the information submitted.

Section 103. NHTSA Reporting on Implementation of Inspector General Recommendations:

This section directs NHTSA and the Inspector General of the Department of Transportation (IG) to submit periodic reports to Congress on NHTSA's progress in implementing recommendations from IG report issued June 18, 2015 regarding NHTSA's data collection and analysis processes and practices. NHTSA must submit progress reports to Congress every 90 days and its reports must include a plan and timetable for implementing any remaining recommendations.

¹¹ See <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-will-accelerate-v2v-efforts>

¹² See <http://www.nhtsa.gov/About+NHTSA/Press+Releases/nhtsa-iihs-commitment-on-aeb-09112015>

¹³ U.S. Department of Transportation: Office of the Assistant Secretary for Research and Technology: Intelligent Transportation Systems Joint Program Office. Connected Vehicle Research in the United States. Available at: http://www.its.dot.gov/connected_vehicle/connected_vehicle_research.htm

Section 104. Report on Operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies:

This section directs the Secretary to submit a report to Congress on the operations of the Council of Vehicle Electronics, Vehicle Software, and Emerging Technologies that was established in 2012 under the Moving Ahead for Progress in the 21st Century Act (MAP-21). This section directs the Secretary to include information about the accomplishments of the Council, the role of the Council in integrating and aggregating electronic and emerging technologies expertise across NHTSA, the role of Council in coordinating with other Federal agencies, and the Council's priorities over the next 5 years in the report.

Section 105. Improvement of Data Collection on Child Occupants in Vehicle Crashes:

This section directs the Secretary to revise NHTSA's crash investigation data collection system to include data on child restraint systems that were in use in a vehicle involved in a crash. This section also directs the Secretary to work with law enforcement officials, safety advocates, the medical community, and research organizations to improve how data on child restraint systems is recorded in police or other incident reports. This section directs the Secretary to submit a report to Congress within 3 years of enactment of the Act on the collection of child occupant crash data in NHTSA's crash investigation data collection system.

Section 106. Electronic Odometer Disclosures:

This section authorizes States to permit electronic odometer disclosures as long as the disclosures are in compliance with the Electronic Signatures in Global and National Commerce Act, meet State requirements within the Act, or meet appropriate authentication and security measures. This section provides that once NHTSA issues formal rules on electronic odometer disclosures, this section ceases to have effect.

TITLE II – MOTOR VEHICLE SAFETY RECALLS

Section 201. Improvements in Availability of Motor Vehicle Safety Recall Information:

This section directs the Secretary to make vehicle safety recall information available on its public Federal website readily accessible and easy to use by: improving the organization, availability, readability, and functionality of the website; accommodating high-traffic volume; and establishing best practices for routine website maintenance. This section also directs the Government Accountability Office (GAO) to conduct a study on how consumers, auto dealers, and manufacturers use vehicle safety recall information made available to the public. The GAO also is directed to issue a report to Congress on its findings, including recommendations for any actions the Secretary can take to improve public awareness and use of the website. This section amends the Promotion of Public Awareness provision in MAP-21 by directing the Secretary to improve public awareness of recall information by periodically updating the method of conveying that information to consumers, dealers, and manufacturers. This section also directs

the Secretary to make available on the Internet detailed guidance to consumers on submitting vehicle safety complaints.

Section 202. NHTSA Recall Notification and Coordination:

This section directs the Secretary to issue rules requiring vehicle manufacturers to notify consumers of motor vehicle safety recalls by email (if available) in addition to first class mail, and encourage notification by other electronic means (e.g. social media). This section requires the Secretary to draft any notice of a vehicle defect or noncompliance in coordination with the affected manufacturer(s) prior to publishing the notice. It also prohibits the Secretary from publicizing the notice unless the Secretary has all affected vehicle identification numbers (VINs) available on the Internet for consumers to search and determine if their vehicle is affected. This section sets forth the process by which the VINs must be made available to the Secretary.

This section requires that a public notice of any defect or noncompliance must include, to the extent reasonable, whether remedies or repair parts are available and each manufacturer involved in the recall. It also requires the public notice to include an estimated time of availability of the remedy or repair part, if it is not immediately available.

This section requires manufacturers to give purchasers or lessees of the vehicle the option of providing an email address or other information, at the time of purchase or lease, to enable notification by electronic means in the event of a safety recall. This section prohibits the use of email addresses or any other contact information collected from being used for reasons other than providing a safety recall or noncompliance notice.

This section directs the Secretary to conduct an analysis on recall completion rates and assess actions by NHTSA to improve recall completion rates. This section directs the Secretary to submit a report to Congress on the results of its analysis and what should be included in its analysis. This section also directs the IG to conduct an audit of NHTSA's management of vehicle safety recalls.

Section 203. Recall Notification at State Vehicle Registration:

This section amends requirements on State participation in the National Driver Register by directing States to notify each owner or lessee of a motor vehicle at the point of vehicle registration of any open recall on that vehicle as a condition of participation in the registry. This section directs States to provide this information at no charge to the owner or lessee of the vehicle.

Section 204. Recall Obligations Under Bankruptcy:

This Section extends motor vehicle recall obligations to bankruptcy under chapter 7 of title 11.

Section 205. Application of Remedies for Defects and Noncompliance:

This section requires vehicle manufacturers to provide remedies for motor vehicle safety defects without charge for 15 years after a vehicle is bought by the first purchaser.

TITLE III – PRIVACY, HACKING PROHIBITION, AND CYBER SECURITY

Section 301. Vehicle Data Privacy:

This section directs vehicle manufacturers to develop and implement a privacy policy outlining the manufacturer's practices regarding the collection, use, and sharing of covered information as defined in the section. It directs a manufacturer to identify in its privacy policy whether it will provide a vehicle owner, lessee, or renter with any or all of the seven privacy elements described in this section.

This section directs manufacturers to file their privacy policy with the Secretary and directs the Secretary to make each manufacturer's privacy policy available on a publicly accessible website operated by the Secretary. If a manufacturer updates the terms of its privacy policy, this section directs the manufacturer to file an updated policy with the Secretary within 30 days.

This section provides that if a manufacturer does not file a privacy policy or violates any of the terms in its policy, the manufacturer is liable to the U.S. Government for a civil penalty of \$5,000 per day, with a maximum penalty for a series of violations of \$1,000,000. This section also provides that a manufacturer that submits a privacy policy identifying that it meets all seven of the privacy elements described in this section is not subject to civil penalties. It establishes a safe harbor from Section 5 of the Federal Trade Commission Act with respect to any unfair or deceptive act or practice relating to privacy for any manufacturer whose privacy policy and practices meet all seven of the privacy elements described in this section.

This section directs NHTSA to submit to the Secretary a study on the appropriate amount of time needed for vehicle event data recorders to capture and record sufficient vehicle-related data to investigate the cause of a crash. The study also must include the identification of data that may be appropriate to transfer to first responders for the treatment of crash victims. This section directs the Secretary to submit a report to Congress containing the results of the study conducted by NHTSA.

Section 302. Motor Vehicle Data Hacking:

This section establishes that it is unlawful for any person to access, without authorization, electronic control units or critical safety systems in a vehicle, or other systems containing driving data either wirelessly or through a wired connection. It establishes a civil penalty of \$100,000 for a person who violates this section.

Section 303. Cybersecurity:

This section requires NHTSA to establish by rulemaking an Automotive Cybersecurity Advisory Council to develop cybersecurity best practices for vehicle manufacturers. It sets forth the membership and meeting requirements of the Council and directs the Council to develop cybersecurity best practices within a year following its formation. This section requires that the best practices be approved by a simple majority of Council members and describes a list of items that the best practices may address. This section directs the Council to review the best practices on an annual basis and update them if necessary. It requires any updates to be published in the Federal Register and on a publicly accessible website maintained by the Administrator.

This section provides that vehicle manufacturers may submit a vehicle security and integrity plan to the Administrator describing the policies and procedures the manufacturer uses to implement and maintain some or all of the best practices approved by the Council. It also describes the review and approval process of vehicle security and integrity plans submitted to the NHTSA Administrator. This section exempts vehicle security and integrity plans submitted by manufacturers from Freedom of Information Act requests.

This section provides that a manufacturer that violates its vehicle security and integrity plan is subject to civil penalties. A manufacturer is not subject to those civil penalties (but doesn't get the liability protections) if it submits a vehicle security and integrity plan that is approved by the Administrator and implements and maintains the best practices identified in their plan. This section provides that the best practices issued by the Council may not provide a basis for or evidence of liability against a manufacturer whose cybersecurity practices are alleged to be inconsistent with the best practices if the manufacturer has not filed a vehicle security and integrity plan and if the plan does not include the cybersecurity practice at issue.

This section also establishes a safe harbor from Section 5 of the Federal Trade Commission Act with respect to the best practices identified and implemented and maintained in the vehicle security and integrity plan submitted by a manufacturer.

TITLE IV – SAFETY STANDARDS, GUIDELINES, EVALUATIONS, AND NEW REQUIREMENTS

Section 401. NHTSA Report on Seat Belts for School Buses:

This section directs NHTSA to conduct a study evaluating seatbelt and other advanced automotive technologies and connected vehicle technologies for school buses to determine which of those technologies for motor vehicles have the largest potential impact on school bus safety; the potential cost of implementation on school buses; and the impact on school bus capacity. This section directs NHTSA to issue a report to Congress on the findings of this study, including any recommendations to improve public awareness of safety measures relating to school buses.

Section 402. Rulemaking on Rear Seat Crashworthiness:

This section directs the Secretary to complete research into the development of safety standards or performance requirements for the crashworthiness and survivability for passengers

in rear seats of motor vehicles. This section directs the Secretary to initiate a rulemaking following the completion of its research on a federal motor vehicle safety standard for the crashworthiness and survivability of passengers in rear seats. If the Secretary determines that a safety standard for rear seats is not necessary, this section requires the Secretary to issue a report to Congress describing its reasons for not prescribing a standard.

Section 403. Retention of Safety Records by Manufacturers:

This section directs the Secretary to issue a rule requiring manufacturers of motor vehicles or motor vehicle equipment to retain all records, including documents, reports, correspondence, or other materials that may be related to motor vehicle safety for at least 10 years from the date they were generated or acquired by the manufacturer.

Section 404. Nonapplication of Prohibitions Relating to Noncomplying Motor Vehicles to Vehicles Used for Testing or Evaluation:

This section authorizes manufacturers or distributors of motor vehicles in the U.S. to operate vehicles that have not been certified as complying with federal motor vehicle safety standards solely for the purposes of testing and evaluation. This section restricts vehicles from being sold or offered for sale at the conclusion of the testing or evaluation.

Section 405. Treatment of Low-Volume Manufacturers:

This section directs the Secretary to exempt from certain federal motor vehicle safety standards a maximum of 500 replica motor vehicles per year manufactured or imported by a low-volume manufacturer. To qualify for the exemption, this section directs low-volume manufacturers to register with the Secretary under terms determined by the Secretary. This section prohibits a person from registering as a low-volume manufacturer if they are already registered as an importer.

This section directs the Secretary to require low-volume manufacturers to affix a permanent label to each exempted vehicle identifying which standards and regulations the vehicle is exempt from and the model year that the vehicle replicates. This section authorizes the Secretary to require the low-volume manufacturer to deliver written notice of the exemption to the dealer and first purchaser of the vehicle, if the first purchaser is not an individual that purchases the vehicle for resale. This section requires low-volume manufacturers to submit an annual report to the Secretary listing the number and description of vehicles exempted from certain federal motor vehicle safety standards, and a list of the exemptions described on the label.

This section establishes terms under which the low-volume manufacturer must register with the Secretary and remain eligible to manufacture or import replica vehicles. This section requires the Secretary to maintain an up-to-date list of registrants on an annual basis and publish that list in the Federal Register or on a website operated by the Secretary.

This section provides that the original manufacturer, its successor or assignee, or current owner, who grants a license or otherwise transfers rights to a low-volume manufacturer shall incur no liability for the license or assignment to the low-volume manufacturer. It also establishes vehicle emission compliance standards and engine installation requirements for low-volume manufacturers.

Section 406. No Liability on the Basis of NHTSA Motor Vehicle Safety Guidelines:

This section establishes that no guidelines issued by the Secretary with respect to motor vehicle safety can provide a basis for or evidence of liability in any action against a defendant whose practices are alleged to be inconsistent with the guidelines. It also prohibits the Secretary from using guidelines to build a case against or negotiate a consent order with any person engaged in practices alleged to be inconsistent with the guidelines. Alternatively, this section provides that any person who is subject to the guidelines may use the guidelines to demonstrate compliance with motor vehicle safety standards or regulations.

TITLE V – ADVANCED AUTOMOTIVE TECHNOLOGIES

Section 501. Metrics for Advanced Automotive Technologies:

This section directs the Secretary to establish an Advanced Automotive Technology Advisory Committee (“Committee”) to develop safety performance metrics for advanced automotive technologies and connected vehicle technologies. This section establishes membership requirements for the Committee and directs the Committee to develop safety performance metrics for these technologies if the technology is installed as original equipment in at least 15 percent of any manufacturers’ motor vehicle fleet for sale in the United States. It also directs the Committee to establish test procedures to be used to determine if the technology meets the established safety performance metric. This section directs the Secretary to publish any safety performance metrics in the Federal Register and provide public notice of the metrics in any other manner determined by the Secretary. Test procedures also must be made public on a website maintained by the Secretary.

Once a performance metric and test procedure is developed, this section directs the Secretary to assign a safety rating under the New Car Assessment Program (NCAP) to the advanced automotive technology and the connected vehicle technology. This section also establishes label requirements directing the Secretary on how to apply or remove safety ratings for a particular advanced automotive technology or connected vehicle technology to a new car label under the Automobile Information Disclosure Act.

Section 502. Credits for Advanced Automotive Technology:

This section establishes greenhouse gas emissions credits of 3 or more grams per mile for an advanced automotive technology in any light-duty vehicle, light-duty truck, or medium-duty passenger vehicle beginning with model year 2018 that is equipped with at least three advanced automotive technologies installed as original equipment. It also establishes greenhouse gas

emissions credits of 6 or more grams per mile for certain vehicles with a connected vehicle technology installed as original equipment. It also directs the EPA Administrator to conduct a periodic review of the number of grams per mile of greenhouse gas emissions being given as credits and determine whether the number should be changed starting in 2026 and biennially thereafter. The EPA Administrator is directed to submit a report Congress on the results of each review and determination. It also directs States with waivers from the Clean Air Act to revise their standards within 30 days to be in compliance with greenhouse gas emissions credits once a safety performance metric for an advanced automotive technology or a connected vehicle technology has been published in the Federal Register.

Section 503. Fuel Economy Credits for Advanced Automotive Technologies:

This section contains definitions for terms used within the Act, including advanced automotive technology and connected vehicle technology. It also directs NHTSA to adjust fuel economy credits to be equivalent to the greenhouse gas emissions credits set forth in Section 502. It directs NHTSA to revise fuel economy credits to be equivalent to greenhouse gas emissions credits if the EPA changes the credit amount following a periodic review.

IV. ISSUES

The following issues may be examined at the hearing:

- How improved access and availability of safety recall information may increase recall completion rates.
- How can recalls be improved at all levels, including through actions by NHTSA, the states and by OEMS.
- The data collection practices of automakers and how those practices are disclosed to consumers.
- How NHTSA and automakers are approaching and remediating cybersecurity vulnerabilities in connected cars.
- How crash avoidance technologies improve vehicle safety and fuel efficiency.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Paul Nagle, Olivia Trusty, and Graham Dufault at (202) 225-2927.