

May 24, 2010

The Honorable Henry Waxman
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Joe Barton
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Rep. Waxman and Rep. Barton,

As safety advocates and representatives of consumer organizations we are pleased that the House Energy and Commerce Committee will take up the Motor Vehicle Safety Act of 2010 to improve vehicle safety and to reauthorize the National Highway Traffic Safety Administration (NHTSA). The thousands of reported sudden unintended acceleration incidents, which have been linked to 52 deaths, call for a comprehensive response to prevent future deaths and injuries caused by vehicle safety defects. The failure of government regulation that has caused great public harm in the financial sector, coal mining, and off-shore oil drilling is also evident in auto safety as brought to light by the Toyota sudden unintended acceleration cases. This legislation corrects key deficiencies in NHTSA's authority and capacity to effectively protect the public.

The Committee has taken a deliberative approach, holding multiple subcommittee hearings on the defect and safety issues involved and drafting a bill that addresses both the immediate safety problem as well as the long-term safety need for public access to defect and safety information, corporate responsibility, and agency authority and resources that have been brought to light. We support many of the provisions in the bill including:

- Providing consumers a due process right to appeal the denial of a defect petition;
- A presumption in favor of maximum public availability of early warning data;
- Regulatory initiatives to resolve sudden unintended acceleration;
- A study of crash data collection; and
- Increasing NHTSA's starvation level funding authority.

The benefits of the Motor Vehicle Safety Act will fall short of their goals unless a number of vitally important improvements are made to ensure that:

- ▶ New safety standards are sufficient to prevent future episodes of sudden acceleration;
- ▶ Death reports submitted to NHTSA are documented;
- ▶ The public has ready access to defect information affecting their safety;
- ▶ Civil and criminal penalties are adequate to prevent careless and willful violations of law;
- ▶ The highest level of ethical conduct are upheld regarding public safety.

We have a number of suggestions to improve the provisions in the bill to achieve these goals.

Public Access to Defect Safety Information

- Early Warning Reporting (EWR) data can be made more useful to the agency and the public:
 - *EWR reporting categories*: the current EWR data system uses overly broad categories for defining potential vehicle defects (i.e. engines compared to sudden acceleration) reported to NHTSA. It is essential to have more refined categories so that specific defects can be readily identified. Manufacturers now select from 24 categories; they should be given 100 specific categories to use when reporting defect problems that match what

consumers now must use in filling out vehicle owner questionnaires (VOQ) when they report a potential defect to NHTSA.

- *Death report documents*: documents such as news articles, letters, claims from consumers, on which manufacturers base their EWR death reports, must be provided to NHTSA to ensure the agency has the original information known to the manufacturer and these documents, usually already public information, should be available to the public under the Freedom of Information Act;
- *Number of lawsuits*: the number of lawsuits filed alleging a defect are already reported to NHTSA as part of the general consumer complaint reports, but should be reported separately because the number of lawsuits filed is a more significant indication of a potential defect.
- *Ex Parte Communications*: Meetings between government and industry officials should be disclosed to the public. NHTSA requires that minutes of *ex parte* meetings on pending rulemaking topics must be filed in the public docket, but does not require the same treatment for *ex parte* meetings during pending enforcement actions or investigations. NHTSA should be required to file in the public record, within ten business days of any *ex parte* meeting or communication, detailed minutes, including copies of documents exchanged with outside parties, of any meetings and communications conducted during defect investigations. Similar *ex parte* procedures are standard in government regulatory agencies including the Federal Trade Commission, the Nuclear Regulatory Commission, the Federal Election Commission and the Securities and Exchange Commission.
- *Defect Investigation Documents*: Non-confidential defect information provided to NHTSA in an investigation to the agency is made available to the public. However, NHTSA sends such information it receives in electronic format to a private contractor who charges the public \$80 per disc to get this information, which essentially makes it too expensive for most consumers. All agency documents submitted in rulemaking proceedings automatically go on the web. NHTSA should place all public defect investigation information on its website.
- *Consumer Access to Safety Recall Repair Information*:
 - *Vehicle recall status*: Consumers should be able to find out, free of charge, whether a vehicle that is subject to a recall has been repaired. This information should be publicly available and searchable by vehicle identification number (VIN) on manufacturer websites or through other reasonable means without charge to consumers, as required for other vehicle recall information in Section 202(b) of the Committee Print;
 - *Technical Service Bulletins*: We support Section 202(c) of the Committee Print to make defect and noncompliance related communications from manufacturers publicly accessible on an Internet website, but urge the Committee to ensure that those public documents are available at no cost to the public.

Safety Improves When Congress Requires NHTSA to Issue Safety Performance Rules

- *Event Data Recorder Requirements Should be Included*: The rule mandating event data recorders (EDRs) (Sec. 108) leaves nearly all of the important governing aspects of vehicle data collection, such as the length of time of the data recording (before and after a crash event), crash data survival, tamper-proof design to agency discretion. Based on the agency's

track record, it issued a very weak, largely inadequate, voluntary regulation in 2006, this will not be a successful approach to improving EDR data collection. NHTSA should be directed to issue a performance standard that:

- Rollover caches: collect and record data throughout the duration of a rollover crash;
 - Minimum recording time: require data to be recorded for a specific minimum period of time both before and after the commencement of a crash;
 - Universal data port: ensure that EDRs are designed with a universal data access port to eliminate the need for multiple download tools with different designs; and
 - Study: conduct a study of the benefits of electronic EDR data transmission to NHTSA.
- Electronic systems standard: The Committee Print, Section 105, does not require the issuance of a final rule to establish minimum performance requirements for electronic systems in passenger motor vehicles if the agency decides that such a standard is not reasonable, practicable and appropriate. Given the heavy dependence of modern vehicles on electronics and electronic controls, plus the fact that the bill establishes a center for vehicle electronics within the NHTSA, the bill should require the agency to issue a vehicle electronics performance standard.

While the Committee Print does not include provisions on enforcement matters, we want to apprise the Committee of our views on the need for criminal and civil penalties.

Ensuring Effective Enforcement

- Criminal Penalties needed to stop intentional corporate misbehavior. Criminal sanctions for willful illegal conduct of the law should be provided to NHTSA, exercised in conjunction with the Justice Department, when violations result in death or injury. Such authority is part of the arsenal of many federal transportation, consumer protection and environmental as well as economic regulatory statutes. NHTSA should not be an exception given the life and death issues it oversees.
- Civil Penalties: There is no cap on the amount of harm inflicted so civil penalties should not be capped except based on relevant factual information and the level of misbehavior as determined by the Secretary of Transportation.

Providing for Ethical Conduct by Government Officials

- Include Senate bill provisions to promote ethical conduct: The bill should include the Anti- Revolving Door Ethics Requirements, and the Whistleblower Protections, included in the Senate version of the Motor Vehicle Safety Act of 2010, S. 3302.
- Eliminate Conflict of Interest in Use of NHTSA Test Facility: NHTSA's use of a testing and research facility owned by a regulated party, Honda Motor Company, poses a clear conflict of interest for the agency. NHTSA use constitutes 23 percent of the facility's capacity, while nine regulated automotive companies and a total of a 160 users take up the bulk of the test facility operating time. NHTSA should be required to relocate to an independent test facility site within two years.

Additionally, we strongly oppose the adoption of any amendments that will reduce the funding authorization levels, weaken or delay regulatory requirements or deny public access to critical information about vehicle safety problems.

We look forward to working with you and your staff in adopting legislation that will advance the safety of families and restore public confidence in the government's regulatory oversight in preventing deadly defects.

Sincerely,

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