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MOTOR VEHICLE SAFETY PROVISIONS IN HOUSE AND SENATE HIGHWAY BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MARCH 22, 2012

Serial No. 112–130

Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE
77–607 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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MOTOR VEHICLE SAFETY PROVISIONS IN HOUSE AND SENATE HIGHWAY BILLS

THURSDAY, MARCH 22, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Marcia Blackburn (vice chairman of the subcommittee) presiding.

Members present: Representatives Blackburn, Stearns, Harper, Lance, Guthrie, Upton (ex officio), Butterfield, Schakowsky, and Waxman (ex officio).

Staff present: Kirby Howard, Legislative Clerk; Brian McCullough, Senior Professional Staff Member, Commerce, Manufacturing, and Trade; Gib Mullan, Chief Counsel, Commerce, Manufacturing, and Trade; Andrew Powaleny, Deputy Press Secretary; Shannon Weinberg, Counsel, Commerce, Manufacturing, and Trade; Michelle Ash, Democratic Chief Counsel, Commerce, Manufacturing, and Trade; and Will Wallace, Democratic Policy Analyst.

Mrs. BLACKBURN. The subcommittee will come to order. Good morning, and welcome to everyone. Chairman Bono Mack has personal business in California today, and it is going to prevent her from joining us, and we look forward to her quick return next week. So I would like to begin today, as I said, by welcoming each of you and by yielding myself time for an opening statement.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

I do want to thank our expert witnesses for joining us as we examine vehicle safety provisions in the House and the Senate highway bills. We are honored to have our esteemed colleague, Congressman Lewis, with us for our first panel, Administrator Strickland, we welcome you for our second panel, and several stakeholders whose industries and interests are central to today's hearing.

The American people believe the auto industry can grow and prosper without diminishing our efforts to make our highways safer. These aren't mutually exclusive goals, and they don't need to be if we have the right approach. The history of the last 2 decades of highway safety demonstrates that industry-developed technology, combined with Federal oversight and enforcement by

NHTSA has continually reduced the number of fatalities to near-record lows as collected vehicle-travel rates continue to increase.

Transportation is fundamental to our everyday lives, and highway safety deserves our special attention. The safety of our roads is important, and it is in everyone's best interest. Interstate commerce, our economy, and families rely on the ability to travel safely in order to conduct business, earn a living, and carry out their daily activities. With safety always in the forefront of our minds, we ought to ensure our motor vehicle safety policies are framed in a way that ensures economic flexibility and efficiency for business, as well as regulatory caution and reduced uncertainty for the auto manufacturing industry.

Regarding flexibility and efficiency, we know that America is a haven for innovators and that safety is something many consumers look for when purchasing a vehicle or traveling with a commercial bus or motorcoach company. Accidents on our roadways are not only an immediate danger to the passengers involved but also a major setback for industry, potentially harming a small business's productivity and safety reputation.

It is in the industry's best interest to incorporate safety features into their vehicles and business models, and they have the expertise to understand that safety features work, how they work, how they interact, and how quickly they can be implemented. We need to consider the best ways to incentivize safety, to be flexible and respectful of the processes that exist, to better understand what works best for safety for our economy and the transportation systems.

Regarding caution and certainty, we must exercise prudence before assuming the Federal Government knows best. Simply placing more mandates and regulations on industry, especially without proven safety benefits, will not help us reach any of our shared goals for safe travel. Let's avoid regulatory whiplash by narrowly targeting our efforts on true harms, determining proven ways to make the biggest impact and reducing crashes on our roads needs to take precedence.

At the same time, we need to understand what tools and resources can be offered to improve transportation safety without growing the size of the Federal Government and place additional costs on consumers.

Businesses need certainty, and employees deserve to know their jobs aren't at risk because of ill-conceived Federal regulations.

I look forward to hearing from each of our witnesses today about their views on the state of safety within their respective industries, how safety might be improved, and whether there is a role for the Federal Government to help those efforts. With the recent passage of the Senate Transportation Bill, I am also interested to learn how provisions in the Commerce Title of MAP–21 will affect safety and any concerns our witnesses may have with the legislation as proposed.

[The prepared statement of Mrs. Blackburn follows:]

Statement of the Honorable Marsha Blackburn
Chairman, Committee on Energy & Commerce
March 22, 2012
"Motor Vehicle Safety Provisions in House and Senate Highway Bills"

Good morning to all our guests and witnesses. Unfortunately, Chairman Mary Bono Mack had personal business in California which prevented her from joining us today. We look forward to her quick return to us next week. I'll be stepping in as Chair for today's hearing.

I want to thank our expert witnesses for joining us as we examine vehicle safety provisions in the House and Senate highway bills. We're honored to have our colleague, Congressman John Lewis, Administrator Strickland from the National Highway Traffic Safety Administration (NHTSA), and several stakeholders whose industries and interests are central to today's hearing.

The American people believe the auto industry can grow and prosper, without diminishing our efforts to make our highways safer. These aren't mutually exclusive goals, and they don't need to be if we take the right approach. The history of the last two decades of highway safety demonstrates that industry-developed technology, combined with Federal oversight and enforcement by NHTSA, has continually reduced the number of fatalities to near record lows as collective vehicle travel rates continue to increase.

Transportation is fundamental to our everyday lives and highway safety deserves our special attention. The safety of our roads is important and it's in everyone's best interest. Interstate commerce, our economy, and families rely on the ability to travel safely in order to conduct business, earn a living, and carry out every day activities, such as getting children to school.

With safety always in the forefront of our minds, we ought to ensure our motor vehicle safety policies are framed in a way that ensures economic flexibility and efficiency for businesses, as well as regulatory caution and reduced uncertainty for the auto manufacturing industry.

- **Regarding flexibility and efficiency**, we know that America is a haven for innovators and that safety is something many consumers look for when purchasing a vehicle or traveling with a commercial bus or motorcoach company. Accidents on our roadways are not only an immediate danger to the passengers involved, but also a major setback for industry, potentially harming a small business's productivity, or a company's safety reputation, for years. It is in industry's best interest to incorporate safety features into their vehicles and business models, and in many cases they have the best expertise to understand how safety features will work and interact, how quickly they can be implemented, and whether they will be effective on the road. We need to think about the best ways to incentivize safety that makes sense and works for everyone. We need to be flexible and respectful of the processes that exist to better understand what works best for our safety, our economy, and our transportation systems.

- **Regarding caution and certainty**, we must exercise prudence before assuming the federal government knows best how to control everything. Simply placing more mandates and regulations on industry, especially without proven safety benefits, will not help us reach any of our shared goals for safe travel on our highways. It also means that other more deserving work will be delayed or prioritized incorrectly. Let's avoid regulatory whiplash by narrowly targeting our efforts on true harms. Determining proven ways to make the biggest impact in reducing crashes on our roads needs to take precedence. At the same time, we need to understand what tools and resources can be offered to improve transportation safety without growing the size of the federal government and that place additional costs on consumers. Businesses need certainty and employees deserve to know their jobs aren't at risk because of ill-conceived federal regulations.

I look forward to hearing from our witnesses today about their views on the state of safety within their respective industries, how safety might be improved, and whether there is a role for the federal government to help their efforts. With the recent passage of the Senate transportation bill, I am also interested to learn how provisions in the Commerce title of MAP-21 will affect safety, and any concerns our witnesses may have with the legislation as proposed. Thank you for your time and I will now recognize the Ranking Member, Mr. Butterfield, for his opening statement.

Mrs. BLACKBURN. Thank you for your time, and I would like to recognize the ranking member, Mr. Butterfield, for his opening statement.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Let me thank you, Madam Chairman. Let me thank the chairman of the committee—subcommittee, who is not here today, but thank her for her leadership on the subcommittee and thank her for her friendship.

Let me also thank Congressman John Lewis for coming today, and John Lewis is no stranger to any of us who serve in this Congress, and I want to thank him and welcome him to this subcommittee as well as the Administrator and other witnesses who are waiting to testify this morning.

We have an 11:00 vote, I am told, and so I better try to expedite my statement and make sure that all of our witnesses can be heard.

This committee has a long history of working together to advance vehicle safety, and I am hopeful that we can continue to be a part of that history today. Deaths from vehicle incidents have declined significantly and are at their lowest point in 60 years. Those who are here today as witnesses should be proud of their role in making that happen.

However, far too many Americans still lose loved ones when they are drivers or passengers of an automobile. It is our job today, in my opinion, to ensure that we continue to make progress in this area. Today we will discuss the Senate-passed Surface Transportation Bill, as well as the version of the Surface Transportation Bill reported to the House Floor. Included in these measures are a number of provisions related to passenger and motorcoach safety that fall under the jurisdiction of the Energy and Commerce Committee.

Arising gas prices and the economic recession will force some people away from traveling in cars and instead some opt to travel by motorcoach, and these large inter-city buses transport large numbers of passengers over long distances with a less expensive price tag, but those buses often lack key safety features like seatbelts, use of advanced glazing technology that makes windows stronger, and therefore, less likely to break and eject passengers in the event of a crash, and strong roofs to protect passengers from being crushed in a rollover. And these safety improvements can help keep passengers safer and ultimately save lives.

I am very pleased, again, that Congressman John Lewis from the great State of Georgia is here today to speak about his bill, H.R. 837, the Motorcoach Enhanced Safety Act of 2011, which was included as a part of the Senate Highway Bill. I strongly support Mr. Lewis's efforts and hope that Motorcoach Enhanced Safety Act will become law either as a stand-alone bill or part of a larger legislative package.

I recently authored an amendment to H.R. 7, which I am hopeful can be supported on a bipartisan basis, dealing with odometer fraud at online auctions, and I am pleased that the Senate bill in-

cluded stiffer penalties for people who violate Federal odometer reporting requirements. I hope that it will serve as a deterrent to those who defraud unsuspecting consumers to the tune of over a billion dollars annually according to a 2002 study.

There are roughly 260 million motor vehicles on the road in the U.S. today, and the safety and security of passengers traveling in those vehicles on American roads should be paramount to policymakers, regulators, and the auto industry alike. It is clear that auto manufacturers agree. They have demonstrated their commitment to safety by continuously innovating and creating new technological features such as anti-lock brakes and stability controls.

I know we can work together to get those excellent safety features on all vehicles any time and manner. Congresswoman Blackburn, I hope we can ultimately pass a long-term highway bill with strong safety provisions for passenger vehicles as well as motorcoaches so that the American roads are safer for all of us.

I appreciate the witnesses being here today, and I look forward to their testimony.

I yield back.

Mrs. BLACKBURN. The gentleman yields back.

At this time I recognize our full committee chairman, Mr. Upton, for 5 minutes to give his opening statement.

Mr. UPTON. Well, thank you, Madam Chair, and knowing that the votes have been moved up I am going to ask to insert my statement into the record to expedite the process.

So thank you very much for your leadership.

[The prepared statement of Mr. Upton follows:]

Statement of the Honorable Fred Upton
Chairman, Committee on Energy & Commerce
March 22, 2012
"Motor Vehicle Safety Provisions in House and Senate Highway Bills"

I want to thank Chairman Bono Mack for calling this hearing, and to Vice-Chairman Blackburn for chairing this hearing in Chairman Bono Mack's unavoidable absence. The Chairman remains in California to celebrate and memorialize the life of a friend and community leader who recently passed, and our thoughts and prayers are with her and of course the family.

First and foremost, I'd like to take a moment to commend both NHTSA and the automotive community for shepherding in what is unequivocally the safest period in automobile history. Thanks to the efforts of both manufacturers and the experts at NHTSA, in 2010 (the most recent numbers available), our communities saw the lowest overall number of fatalities since 1949. Our families and friends together traveled an estimated 3 trillion miles on the nation's roads in 2010. Not only were there fewer fatalities than any year in the past six decades, but the rate of fatalities per vehicle miles traveled is the lowest since the first year of the automobile.

I'd also like to take a moment to congratulate the automobile industry on a significant milestone: the U.S. auto industry sold over 1 million units last month, an increase of 15.8 percent from February 2011. Based on last month's numbers, the auto industry projects it will see annual sales exceed 15 million vehicles, the first time the industry projected such numbers since March 2008. More car sales mean more jobs at the auto plant, more jobs at the parts supplier, more jobs at the dealership, more jobs at the maintenance shop, and so on.

This is positive news but let us not lose sight of the fact that this is a fragile time for the industry and for the economy; we must be careful to balance new standards to account for the cost to manufacturers and consumers.

The fundamental question is whether the costs outweigh the benefits conveyed. With every new regulation we place on manufacturers, from safety to fuel efficiency, we increase the cost to consumers. We must be careful in balancing the both the benefits and costs of new standards versus what consumers can afford: safety shouldn't be a luxury.

I've heard from a number of folks that provisions in the Senate bill are overly prescriptive and often at odds with the safety priorities identified by NHTSA. It is with these concerns in mind that I am eager to hear from our witnesses today on the state of automobile safety and the proposals contained in both the Senate and House bills. I'd like to thank you all for your time today.

Mrs. BLACKBURN. Thank you, and at this time I recognize the ranking member of the full committee, Mr. Waxman, for his opening statement.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Madam Chair and Ranking Member Butterfield, for holding this hearing.

In the last Congress our committee examined massive Toyota recalls and the government's slow response to sudden unintended acceleration. We examined the reforms needed at NHTSA. The committee passed the Motor Vehicle Safety Act, which I introduced, to make sure NHTSA has the expertise to keep pace with emerging technologies and stronger enforcement authority to ensure timely and effective recalls.

Many of the provisions of this bill are included in the bipartisan Senate Transportation Bill, and I would like to thank Chairmen Rockefeller and Pryor, the Senate sponsors of the provisions for their leadership in moving this legislation forward.

The Senate bill includes provisions to improve electronics expertise at NHTSA. It also mandates new safety standards to reduce the risk of sudden acceleration as well as standards for electronics systems performance. The bill includes measures to improve accountability with a higher cap on civil penalties and a requirement that auto safety officials certify the accuracy of information given to the agency. The bill has improvements in the area of transparency, it would give consumers easier access to recall information, safety bulletins prepared by manufacturers, and the early warning data companies submit to help NHTSA identify defect trends.

All of these provisions are similar to ones we considered in this committee last Congress, and they are all important safety measures.

In addition, the Senate Reauthorization Bill requires important new standards for child safety seats and booster seats in particular. It has mandates for strong motorcoach safety standards that are desperately needed but have languished at NHTSA for years.

I would like to thank my colleague, Congressman John Lewis, for his steadfast efforts to press for action on this issue.

Let me close by thanking Administrator Strickland for his testimony today. Your leadership along with Secretary LaHood has reenergized the agency. While we take great pride in the sustained decline in vehicle fatalities, we must continue to look for opportunities to save more lives.

Mr. WAXMAN. I would like to now yield the balance of my time to my colleague, Ms. Schakowsky.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. I thank the gentleman for yielding.

I want to reiterate that the Senate has passed the Transportation Bill that has a number of key safety provisions that will keep consumers safe, including children. Mr. Waxman named some of them. I also wanted to highlight a study and potentially a rulemaking system that could warn drivers that a child remains in the backseat as well as the child safety seat requirements.

Unfortunately, the House Transportation Bill as drafted includes few safety measures and would actually repel Safety Belt Performance Grants, the Older Driver Safety Program, and Child Safety and Child Booster Seat Incentive Grants. I hope this hearing today will highlight the importance of the provisions of the Senate Bill and the other party will reconsider their approach here in the House.

Auto safety should be a bipartisan issue. Just, well, I shouldn't say just, 4 years ago I worked closely with Representative Peter King to enact the Cameron Gulbransen Kids Transportation Safety Act. That bill mandated a rear visibility rule, and we are anxiously awaiting finalization of that this year, and of course, it will save lives.

The Senate bill with its many safety initiatives passed by an overwhelming vote, as has been mentioned, 74 to 22, and there is no reason we can't move auto safety forward in a similar way here in the House. I hope we do it immediately, and I yield back to the—to Mr. Waxman.

Mrs. BLACKBURN. I thank the gentleman for yielding back.

We are going to have three panels today. As always, each witness has prepared an opening statement. The full statement will be in the record. You will have 5 minutes for summarizing your remarks.

Our first panel, of course, is our colleague, Congressman John Lewis, and we are delighted to have you here. You are recognized for 5 minutes, and as always, punch the button to turn on the mic, watch the timer. When it turns yellow, you are going to have 1 minute for wrap-up, and we are delighted that you are here. You may begin.

STATEMENT OF HON. JOHN LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. LEWIS. Well, thank you very much, Chairwoman Blackburn, Ranking Member Butterfield, and members of the committee. Thank you for the opportunity to testify today.

On March 2, 2007, an accident occurred in my Congressional district and made headlines across the country. A charter bus carrying the Bluffton University baseball team careened off a closed exit and crashed onto highway I–75 in downtown Atlanta, Georgia.

It was devastating. Seven of the 35 passengers lost their lives on that terrible day. A university, a community, parents, teachers, teammates, and friends mourned. News outlets across the country asked, why did this happen? How can we prevent this from occurring again?

A few days later, my office received a phone call from Dr. Jeffrey Salomone, one of the leading surgeons who treated the players. He knew the Grady doctors at the Grady hospital, one of the best trauma centers in America. These Grady doctors could have saved more lives if only the team had not been thrown out of their seats and

ejected from the bus. Dr. Salomone explained his painful work trying to save lives and do the patchwork. He felt strongly that much of it could have been prevented if only they had been wearing seatbelts.

He stated that countless lives could have been saved had Congress acted years ago. He was furious at our inaction. He knew what his job was and demanded that we do ours.

As a Nation we have learned time and time again that motorcoach accidents are rare, but when they do occur, the consequences are severe. The National Transportation Safety Board recommended time and time again that Congress enact stronger comprehensive motorcoach bus safety standards. Since that terrible dark day in downtown Atlanta, there have been 120 accidents across the country. One hundred and twenty. Some are small and occur on their local news, while others like the tragedy in Sherman, Texas, the Bronx in New York, East Brunswick, New Jersey, High Point, North Carolina, and most recent in Clinton, Montana, send a deathly reminder that Congress needs to act, and we need to act now.

For me, buses are very important. They are personal. Madam Chair, I traveled for 6 years from rural Alabama, through Montgomery, through Birmingham, to Nashville, Tennessee, from 1957, to '63, on my way to school. I grew up taking motorcoach buses, again, in Alabama, in Georgia, in Tennessee, in Virginia, and in the Carolinas. Dr. Martin Luther King Jr. sent me a bus ticket to meet him for the first time in 1958, when I was 18, and I later joined thousands of Freedom Riders to desegregate interstate commerce. I know all too well that buses are the lifeline of our Nation. It is a major means of transportation for all Americans; sporting teams, students, and tourists in every corner of our country. Is it so wrong to push for them to be safe? It is the right thing to do. It is the necessary thing to do.

For 5 years we have had a bipartisan effort on this issue. Senators on both sides of the aisle have tried repeatedly to push this bill forward. Every time an accident occurs in their home States, their citizens, like mine, demand action, and we must act.

I commend the Senate for the inclusion of the Motorcoach Enhanced Safety Act in the Surface Transportation Reauthorization Bill. Recently my good friend and colleague, Congressman Ted Poe from Texas, joined me in offering an amendment to H.R. 7 to ensure that the House bill included equally high motorcoach standards.

This is one of those issues where we just need to put partisan politics aside and get it done. The American people are demanding that we act. The motorcoach industry has had decades to make their fleets safe and safer, and time is up. Congress needs to act and act now, not tomorrow or next year but now. I urge each of you to sit back and ask yourself why you can get on a bus and have access to wireless service and outlets but not a seatbelt? It doesn't make sense. Your window is not crash-proof, the roof is not crush-resistant. Trust me. You do not want to be on the receiving end of a phone call from a doctor, a parent, a survivor, a child, a patient, a loved one in a preventable motorcoach accident.

I hope and pray that any bill that this committee puts on the floor will send an unmistakable message that the United States House of Representatives, the body of the people, speaks in a clear voice for safety.

Again, I thank you for the opportunity to testify this morning. Thank you, again.

[The prepared statement of Mr. Lewis follows:]

Testimony of Congressman John Lewis (D-GA) on the Motor Vehicle Safety Provisions in House and Senate Highway Bills before the House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade

March 22, 2012

Good morning, Madam Chair, Ranking Member Butterfield, and Members of the Committee. I would like to thank you all for the opportunity to testify today.

On March 2, 2007, an accident occurred in my congressional district which shook the nation to its core. A chartered bus careened off a closed exit and crashed onto highway I-75 in Atlanta, Georgia. The driver mistakenly drove up an exit ramp. When he attempted to break, the driver lost control. The bus swerved off the exit, flipped over the rail at the top of the intersection, and crashed onto the below freeway.

My staff and I joined the entire nation in watching the news coverage of emergency responders desperately attempting to save the lives of the Bluffton University baseball team, the driver, and his wife. It was heartbreaking. The team was treated at Grady Memorial Hospital, the major trauma center for Metro Atlanta, Atlanta Medical Center, and Piedmont Hospital. Seven of the thirty-five passengers lost their lives on that terrible day. A university, a community, parents, teachers, teammates, and friends mourned. News outlets across the country asked, "Why did this happen? How can we prevent this from occurring again?"

A few days later, I received a phone call from Dr. Jeffrey Salomone, one of the leading surgeons who treated the players. He was outraged and frustrated – demanding that I do something. As the leading surgeon who operated on the Bluffton victims, he knew that he could have saved more lives if the passengers had not been thrown from their seats, and ejected from the bus. He explained their painful effort -- trying desperately to save lives and do patchwork that would have been so much simpler if only their patients had been protected by seatbelts. Dr. Salomone knew that countless lives across the country could have been saved if Congress had acted years ago, and established safety standards for motorcoach buses. He was furious at our inaction. The doctor knew what his job was, and he demanded that we do ours.

I responded immediately. First, I reached out to Chairman Olver and the Transportation, Housing, and Urban Development Appropriations Subcommittee to request report language from the National Highway Traffic Safety Administration (NHTSA) on national standards to reduce complete and partial ejections in buses. In the meantime, there was yet another accident, and another tragedy.

As a nation, we keep learning the hard way that motorcoach accidents are rare, but when they do occur, the consequences are devastating. When I heard that Senator Sherrod Brown (D-OH) and Senator Kay Bailey Hutchinson (R-TX) introduced a bipartisan response, the Motorcoach Enhanced Safety Act (MESA), I reached out to sponsor the House companion. It was the least I could do. In preparing to introduce the House-version of the Motorcoach Enhanced Safety Act, I learned that, like seatbelts in cars, the National Transportation Safety Board had recommended time and time again for stronger, comprehensive motorcoach bus safety standards.

I was shocked to learn how far behind we were on this basic issue. You can find seatbelts on motorcoach buses all around the globe, but not here in the U.S. -- the leading country of developed world. Why is that? Congress has had decades to think, study, and review. It is simply unconscionable to think that we can wait one more minute, one more day, or one more month to act.

Any delay will just bring more headlines, more victims, and more tears. Since that terrible day in Atlanta, there have been 120 accidents across the country. Some are noted in quick blurbs on local news. But others -- like the tragedies in Sherman, Texas, the Bronx, New York, East Brunswick, New Jersey, High Point, North Carolina, or most recently in Clinton, Montana – shake our very core.

For me, buses are very personal, very important. I grew up taking motorcoach buses – in Alabama, Georgia, Tennessee, Virginia, and the Carolinas. Dr. Martin Luther King sent me a bus ticket to meet him for the first time, and later I joined thousands of Freedom Riders to desegregate interstate commerce. I know all too well that buses are the lifeline of our nation, a major means of transportation for all Americans -- sporting teams, students, and tourists -- in every corner of our country. Is it wrong to push for them to be safe?

This Committee and the Senate Commerce, Science, and Transportation Committee have held multiple hearings on this important issue; I know that you take safety very seriously. My good friend and our former colleague, Secretary LaHood has made safety a national transportation priority – acting on cell phone use, texting, and motorcoach safety – to the best of his authority. Our bill gives the administration a comprehensive plan and the authority to make motorcoaches safe.

Senators on both sides of the aisle have tried repeatedly to push this bill forward. Every time an accident occurs in their home states, their constituents demand action. I commend the Senate on their inclusion of the Motorcoach Enhanced Safety Act in the surface transportation reauthorization bill. Recently, my good friend and colleague, Congressman Ted Poe from Texas, joined me in offering an amendment to H.R. 7 to ensure that the House bill included equally high motorcoach safety standards.

This is one of those issues, where we just need to put partisan politics aside and get it done. The motorcoach industry has had decades to make their fleets safer, and time is up. Congress needs to act now. You can get on a bus and have access to wireless service and outlets, but not a seatbelt? Your window is not crash-proof. The roof is not crush-resistance, and the list goes on and on.

I hope that you will support this bipartisan, bicameral effort. Trust me; you do not want to be on the receiving end of a phone call from a doctor, a parent, a survivor, or a child who has lost a patient or their loved one in a preventable motorcoach tragedy. I hope and pray that any bill that this Committee puts on the Floor will send an unmistakable message that the U.S. House of Representatives – the body of the people – speaks in a clear voice for safety.

Again, I thank you for the opportunity to testify today.

Mrs. BLACKBURN. Thank you, Mr. Lewis. We appreciate your testimony.

I have no questions that I am going to ask, but at this time I am going to yield to Mr. Butterfield, who does have one question he would like to ask for the record.

Mr. BUTTERFIELD. Thank you, and thank you, Mr. Lewis, for your very powerful statement. I think it speaks volumes and clearly explains the issue that we have to deal with.

But as you acknowledge, the Senate bill is somewhat different from the way you would like to see this handled. The Senate does not require a retrofitting of motorcoaches, and your bill does.

Would you be happy with the Senate version, or do you want to stay with the idea of requiring retrofitting?

Mr. LEWIS. Well, no, I would love to see what it is in our bill prevail, but I am prepared to accept a compromise. I want action.

Mr. BUTTERFIELD. All right. All right. That is my question. Straight to the point. Thank you.

I yield back.

Mrs. BLACKBURN. Thank the gentleman for yielding back.

Is there anyone further seeking recognition for questions? Mr. Upton? Mr. Harper? Mr. Lance? OK.

We thank you, sir, for your time.

Mr. LEWIS. Thank you, Madam Chair and members of the committee. Thank you very much.

Mrs. BLACKBURN. Thank you, sir.

Mr. STRICKLAND. For our second panel we have the Honorable David Strickland, Administrator of the National Highway Safety—Transportation Safety Administration, NHTSA as we love to call it. Good morning. We are pleased that you are here. You are recognized for 5 minutes, and as always, punch that button to get the mic on so that we can hear you, and watch the timer. When it moves to yellow, you will have 1 minute left for wrap-up, and at this point you may begin.

STATEMENT OF DAVID L. STRICKLAND, ADMINISTRATOR, NATIONAL HIGHWAY TRANSPORTATION SAFETY ADMINISTRATION

Mr. STRICKLAND. Thank you very much, Madam Chairman, Ranking Member Butterfield, and members of the committee. It is always good to be back before Energy and Commerce.

This is a fantastic opportunity for the men and women of the National Highway Traffic Safety Administration to have the opportunity to discuss the Motor Vehicle Safety Provisions in the Surface Transportation Reauthorization.

I can definitely speak with some experience here in terms of the amount of effort it takes to get one of these bills done. I had the pleasure and honor to serve as a staffer on the Senate Commerce Committee during the work on SAFETEA–LU, so I definitely appreciate the task before you and happy to be of assistance along with my staff at any time that you ask.

As you know, last year the Nation continued a long-term downward trend in traffic-related fatalities. In 2010, there were 32,885 motor vehicle-related fatalities, a 24 percent reduction compared to 2005, and the lowest level since 1949. For all of us at the agency

this trend is encouraging, but almost 33,000 people losing their lives in motor vehicle crashes is a toll that is way too heavy.

The National Highway Traffic Safety Administration is working across multiple fronts to save lives and reduce traffic-related injuries. We continue to promote responsible driver behavior to reduce alcohol-impaired driving and to encourage the use of seatbelts. We are also working vigorously to meet the new challenge of distracted driving.

At the same time we are exploring new emerging technologies that have the potential to prevent crashes from happening in the first place, which, frankly, is the moon shot for dealing with all of our fatalities on the roads.

As I discuss more fully in my written testimony, the Senate has include a number of provisions that would permit the agency to ensure motor vehicle and equipment safety on a broader basis than we can today, including the authority to address safety hazards caused by some imported motor vehicle equipment, greater consumer protection against safety defects or non-compliance from manufacturers who file for bankruptcy, and increases in the total amount of civil penalties that NHTSA can seek for safety-related violations.

To further strengthen our safety mission, we seek additional authority in several areas including the authority to require action by used car dealers or rental car companies with regard to recalled vehicles, clarification of authority over safety-related aspects of distracting portable electronic devices in vehicles, and the direct appellant review of recall orders to ensure that manufacturers may challenge orders while avoiding lengthy district court trials during which there is no recall in effect to protect consumers.

We at the agency believe that these straightforward clarifications of authority would enable us to address timely safety concerns on our roadways. For example, the authority to notify consumers of recall issues before they purchase a used vehicle or rent a car could easily protect consumers and provide real world safety benefits.

Here is a second example. The agency recently proposed visual manual driver distraction guidelines. These guidelines are designed for vehicle manufacturers to consider as they introduce electronic devices into these vehicles. However, the agency needs clarification of its authority concerning the safety aspects of external devices that can also distract drivers inside the vehicle. Here, again, clarification of the agency's authority to do so is an important element in furthering the safety of those devices.

Finally, the Senate bill includes numerous rulemaking provisions with some very short deadlines. I appreciate the inclusion of a provision that would allow an extension of a timeframe when necessary with an explanation to the committees of jurisdiction. This will permit the agency to continue to prioritize its regulatory work based on available resources and the judgment of the likely safety benefits and costs.

Thank you, again, Madam Chairman, for this opportunity to testify before the committee today. I am happy to answer any questions that all of you may have.

Mrs. BLACKBURN. Thank you, sir. We appreciate your time, and I will tell you what, record pace getting through that opening statement, and we will try to reciprocate with our questions.

I will yield myself 5 minutes to begin the questioning with you.

I want to start, something was mentioned in opening statements about the Safety Bill Grants. I want to just seek some clarification. Are you not looking to repeal those grants and then reprogram that money for other uses?

Mr. STRICKLAND. That is correct. I will be happy to answer the question more fully for the record, but right now it is a Section 406 grant. It is under SAFETEA–LU, which is a Primary Belt Grant, which gives a very significant payment for States that have not passed the Primary Belt Law for the first time, and it pulls that incentive.

Therefore, the reason we are asking to reprogram these funds is that, frankly, the States that we feel that could be pulled in by this incentive have taken action, and at this point right now we are having fairly significant resources that are not being expended, and we feel that we could repurpose these particular funds in a way that can further increase belt use but not tying up the resources for some States that may not decide to go in that direction of primary belts.

Mrs. BLACKBURN. OK, and that is action you already have in process?

Mr. STRICKLAND. Yes. Actually, we made technical assistance to the Senate in regards to this issue, and that is what they did.

Mrs. BLACKBURN. Excellent. OK. I want to ask you about Cass Sunstein's comments describing the guidance that is being given to the Federal agencies on the cumulative effects of the regulations on industries, and how is NHTSA planning on complying with that new guidance?

Mr. STRICKLAND. Thank you for the question, Madam Chairman. This is something that frankly internally that we have always done in coordination with all of our rules. We always have to take into consideration the cumulative affect of the work that we are doing. It is our goal to make sure that the rules that we promulgate maximize safety benefits while taking into account the possible costs. It does not serve to anyone's advantage to have redundant or unnecessary rules that do not apply or improve the prism of safety.

So frankly, you know, I think Administrator Sunstein's guidance is effectively what the agencies are already working under. That was a clarification of the particular guidance and intent, but our, in terms of our rulemaking operation, we already sort of take those elements into——

Mrs. BLACKBURN. So you have an active cost benefit analysis——

Mr. STRICKLAND. Absolutely.

Mrs. BLACKBURN [continuing]. That is in place. Would that apply to the last fall's CAFE proposal and pending review visibility rule, the visual manual guidelines for automakers, potential rulemakings on advanced vehicle communications such as vehicle to vehicle and vehicle to infrastructure?

Mr. STRICKLAND. For CAFE, yes, it applies.

Mrs. BLACKBURN. OK.

Mr. STRICKLAND. For rear visibility, it applies. In regards to the visual manual guidelines, they are guidelines. They are not a rule, so, therefore, we did not have to take cause into effect.

Mrs. BLACKBURN. OK. All right, and what about the vehicle communications?

Mr. STRICKLAND. That will be—right now we are making the agency decision as to the vehicle to vehicle, you know, systems. We are making the agency decision by the end of this year, which may then enter into rulemaking phase. When it does, prospectively if the agency decides to move forward with the rule in regards to the vehicle, the vehicle communications, then, of course, the cost benefit analysis guidance would then fall into play in terms of our issuance of that rule.

Mrs. BLACKBURN. OK. We have got a fragile recovery in the auto industry, if you will, and so as you look at rules and guidelines and mandates and requirements on the car makers, what are you doing there for make certain that you don't overreach and harm a recovery, that everything you are doing is—you are going to look at that cost benefit analysis?

Mr. STRICKLAND. Madam Chairman, as you already referred, the cost benefit analysis definitely asks us to weigh the cost and the benefits of our rules. Thinking about numbers and factors, I mean, frankly, in some situations depending on the rules thousands of variables or factors in terms of costs and benefit and including how it may impact potential consumers and the industry itself.

So in terms of our evaluations, that has been our north star in terms of our rulemaking effort. So in regards to CAFE and regards to rear visibility, we have always taken very hard looks, the two most recent examples of how we look at costs and benefits and how they may impact the fleet.

And so absolutely we take that into account very strongly every time we go into a rulemaking process.

Mrs. BLACKBURN. You noted in your testimony that you all are already working on many of the items that are in the Senate bill.

Mr. STRICKLAND. That is correct.

Mrs. BLACKBURN. And of those mandates that are there, the standards that they are looking to mandate, how many are you already working on?

Mr. STRICKLAND. Well, there are several. We will get back to you on the record specifically for the——

Mrs. BLACKBURN. That would be helpful.

Mr. STRICKLAND. But we have, we also definitely referred to our Research and Rulemaking Priority Plan, which we have posted on NHTSA.gov, which goes through the timeframes and the process of where we are in all of our work, but there is a significant amount of work in motorcoach and other places where we have undertaken work, and we are actually close to completion on some of those elements.

Mrs. BLACKBURN. Thank you. My time has expired.

I recognize Mr. Butterfield.

Mr. BUTTERFIELD. Thank you. In 2009, NHTSA issued a Motorcoach Safety Action Plan. I am sure you are familiar with that, building off of NTSB recommendations, the plans set rulemaking priorities for crash avoidance, seatbelts, fire safety, emergency

egress, and ejection mitigation. A timeline for addressing these priorities was outlined in the agency's 2011, 2013, rulemaking and research priority plan. In the past NHTSA has often not met its rulemaking timelines. That is why Congress has felt the need to step in and impose deadlines

Regardless of whether the Senate bill becomes law, how do you intend to stick to your deadlines?

Mr. STRICKLAND. Ranking Member, absolutely I will have to say that all of these safety issues are so important, and the timeliness of them and the promulgation of these issues is the highest priority of the Secretary and myself. We always have to recognize that this work has to be based on sound science, sound engineering principles, and frankly, there is a notion of sometimes the chaos theory and the unknown in terms of the work, in terms of how we promulgate these rules.

However, we have very close to completion on a number of these rules such as the mandatory seatbelt rule for motorcoaches. We are on the edge of working on and possibly promulgating a proposal for electronic stability control in heavy-duty vehicles, for example, for roof crush structures and vehicle stringency, for motorcoaches. We are very close to working on that as well.

So I appreciate the fact that we are well overdue. It is the Secretary's commitment and my commitment that we hold to our deadlines and that we issue these rules in a timely manner.

Mr. BUTTERFIELD. I notice a proposed rulemaking on the seatbelt standard was released in August of 2010, and the comment period closed about 18 months ago. What is the status of this rulemaking?

Mr. STRICKLAND. Right now it is over at the Office of Management and Budget. We hope that this rule will be issued fairly soon in 2012.

Mr. BUTTERFIELD. Let me ask you about school buses. I just learned recently that school buses don't fit within the definition of motorcoach. Is that correct?

Mr. STRICKLAND. That is—I guess the question is motorcoach has an over the road, but for school buses there are definitional differences.

Mr. BUTTERFIELD. And is there any type of conversation ongoing about whether or not these safety features should be included on school buses? And the reason I ask that and it has been so long ago, and I don't expect anyone to remember, but in my Congressional district I guess 25 or 30 years ago, there was an awful, awful, awful school bus accident in which all of the children on the bus were actually killed, and the conversation back then and remains in that small community, you know, about seatbelts on school buses.

Mr. STRICKLAND. Yes. School buses, sir, we had actually taken action on in terms that we have permitted the States may go forward, and they may individually decide to mandate belts on buses within their particular States or jurisdiction. There is not a national rule mandating belts on school buses, or it is not part of the rulemaking undertaking for motorcoaches.

The reason is this. The safest form of transportation for children is a school bus period. There are probably a handful of deaths a year, maybe I think seven or eight fatalities a year because of

school bus crashes, and most of those are for children that are struck outside of the bus. In terms of the actual bus crashes I think the average would be one to two children per year versus the hundreds of thousands of miles that are traveled and the thousands and thousands of children that are carried by school buses.

Adding the belts on the buses may actually decrease the number of buses available for children to ride, which would actually increase the number of fatalities of children because they will be forced to taking passenger cars. There is the structure of compartmentalization in buses, protects children, and frankly, the cost and the benefits of having the belts on buses the agency feels that is not the appropriate measure at this time. We feel that adding belts on buses decreases the number of buses and thereby, would increase the risk of children driving in passenger cars.

Mr. BUTTERFIELD. All right. In the interest of time I think I am going to yield back. I had one more, but I am going to yield back.

Mrs. BLACKBURN. Thank you, Mr. Butterfield. Would you like to submit that one for the record just to get a response in writing? OK. We will do so accordingly.

At this time I recognize Mr. Harper for 5 minutes.

Mr. HARPER. Thank you, Madam Chair.

Mr. Strickland, thank you for being here and taking this time. I am sure you were looking at fun things to do, and this was at the top of your list, but we appreciate your time.

You know, one of the big safety concerns seems to be texting while driving. That is the complaint I hear more than anything else back home, and it is something that we certainly tell our friends and staff don't do that.

Mr. STRICKLAND. We appreciate that.

Mr. HARPER. It is certainly something. Coming in from the airport Monday we almost observed a major wreck on the interstate coming in from Reagan National where there was a work truck stopped, and it was clear they were not paying attention, and it was within a foot or 2 of plowing into the back of a stopped work truck. So, you know, it is a great concern every day for us on how we are going to address those issues.

One of the questions, I know there is some talk about maybe blocking cell phone usage of drivers. Is that something that you are looking at, any aspect of that, or just texting?

Mr. STRICKLAND. Well, thank you for the question, Mr. Harper. The Secretary's leadership over the past 3 years on distractions has really sort of given, frankly, the entire country leadership and guidance on this emerging threat. From his work on the two distraction summits and frankly, his direction to all the mobile administrations, including mine, things that we could do to address distraction risks in our particular motor vehicles.

Clearly, the usage of devices in motor vehicles poses a very significant threat. We lost over 3,000 people in 2010, to distraction-related crashes. In terms of your question regarding technologies that may be used to intervene, we are looking at several possible technology pipelines as possibilities for further research, but right now we are really focused on our distraction plan, which the first element is the visual, manual guidelines that are right now in the proposal and comment period, and that closes on April 24. And

then our next work will begin then on nomadic devices and then of those commands or cognitive impact of using these devices.

Mr. HARPER. Is there any plan or do you support—I know some localities have cell phone bans——

Mr. STRICKLAND. Uh-huh.

Mr. HARPER [continuing]. You know, and driving. Is that something that you are looking at technology wise to restrict driver usage of cell phones?

Mr. STRICKLAND. At this point right now our review of the technologies we don't see a viable pathway technologically for cell phone blocking because the thing called spillover, you can basically—you have, say, a jamming signal in a vehicle. It doesn't stay in one vehicle, it spreads to other vehicles. There is a similar issue that is corollary but not necessarily direct connected where I know in the penal system that they are looking at possibly having cell phone jammers to keep prisoners from using cell phones, and they have the very same issues. It spills out and over well outside the borders of the jail and impacts actual consumers.

So in terms of that particular issue we don't see a particular promise in that technology, but we not sort of on a pathway of analysis of trying to figure out a technological way to stop cell phone usage in the car. We are not doing that type of——

Mr. HARPER. Of course, distracted driving has been an issue since the first AM radio got put in the first car.

Mr. STRICKLAND. Yes, sir.

Mr. HARPER. And so I know that we certainly don't want to interfere with anyone's ability to enjoy themselves while they are driving, but the texting is certainly something that we are interested in working on to work with you on that particular issue.

Mr. STRICKLAND. Well, the one other thing I would like to definitely underscore, Mr. Harper, I think you made a very good point. You know, distraction is more than just a phone. Distraction is more than just an android device or whatever the case may be. There is an element of personal responsibility that has to be involved with every driver. So as much as we are working on making sure the vehicle doesn't create more risk, it is also important to underscore that to make sure that people recognize that your only job behind the wheel is to drive.

So thank you very much for noting that, sir.

Mr. HARPER. OK. Now, I will yield back the balance of time.

Mrs. BLACKBURN. I thank the gentleman for yielding back.

At this time Ms. Schakowsky, you are recognized for 5 minutes.

Ms. SCHAKOWSKY. Thank you. I will be very brief. I wanted to tell you, Mr. Strickland, that I got a very much appreciated call from the Secretary about the rulemaking and the rear visibility in vehicles, that the standard that I hope will come out, and while I am disappointed that it didn't come out in February as it was originally scheduled, he explained his absolute commitment to getting it done.

So just for the record I wanted to thank you, and I also wanted you to comment on your commitment to issuing a strong rule and whether it is at all possible to move up that timeline.

Mr. STRICKLAND. Ms. Schakowsky, I absolutely give the very same commitment the Secretary gave to you. As I have had the

honor to work with you on this particular issue as a staffer, and I remember beginning work on this issue in 2003, I am very proud of a lot of the work that I was able to share and assist members on over the years, but I will say the Cameron Gulbransen Act is probably one of the highlights in terms of what I think is such a special rule because it is about children's safety.

So for that we at the agency want to make sure that we get this rule right, and we want to make very special care to do that, but absolutely we are laser focused on working through those issues and getting this, getting the rule promulgated as the Secretary issued the deadline.

Ms. SCHAKOWSKY. Thank you very much. About two children get killed every month, so the sooner the better. Right.

The other thing that you alluded to in your testimony, you briefly mentioned, under current law there is a loophole that allows rental car companies to lease out vehicles that are under safety recall without making the repairs. I frankly was pretty startled to find that out, and in 2004, two sisters, Rachael and Jacqueline Haugh, were killed in a Chrysler PT Cruiser that was under recall for steering problems yet rented out by Enterprise. The steering column malfunctioned, the car caught fire, and they veered into the path of an ongoing tractor trailer.

I can't understand why there is any excuse for rental companies to loan out cars to individuals without making the necessary repairs which manufacturers usually provide for free.

So you talked on this issue, and I wanted to know what authority NHTSA has or needs to prevent these avoidable accidents.

Mr. STRICKLAND. Ms. Schakowsky, the Department provided technical assistance to the Senate in regards to this issue. You are absolutely right. Right now rental car companies and used car companies have no obligation under law to fix a repair that has been issued under the Safety Act, which means you have unwitting and unsuspecting consumers that may be getting in vehicles that are not repaired and putting themselves at risk. These companies are in the stream of commerce, and I don't think that any consumer whatsoever should have an expectation or worry that the next car they rent may not be properly repaired and put their lives at risk.

So we very much support the proposition of giving this authority under the Motor Vehicle Safety Act to then cross apply our enforcement authority over rental car companies and used car dealers so that we can make sure that these cars get repaired.

Ms. SCHAKOWSKY. Thank you very much, and once again, thank you for all the work that you have done on the rear visibility rule, and I hope that we will see it as soon as possible. Thank you.

Mr. STRICKLAND. Thank you, Ms. Schakowsky.

Mrs. BLACKBURN. Thank the gentlelady for yielding back, and at this time I recognize Mr. Guthrie for 5 minutes.

Mr. GUTHRIE. Hey, thank you for coming here today. Appreciate having you.

Mr. STRICKLAND. Thank you, sir.

Mr. GUTHRIE. Looking at the Senate Highway Bill, it has a lot of new requirements that you are going to have to put forth, some like the device recorder, the black box, and the push button ignition standards, and it asked you to move forward on rulemaking

in some areas that your group is still studying, it puts a lot of mandates for you to do over the next course of the bill, and I guess my question is do you feel like that is going to overwhelm what you do? I know you are probably not overstaffed, and are you going to have to pull people from one project.

Mr. STRICKLAND. Au contraire.

Mr. GUTHRIE. You are, you say are?

Mr. STRICKLAND. Oh, no. Overstaffing, quite the contrary.

Mr. GUTHRIE. Oh. I know you are not.

Mr. STRICKLAND. Yes. We have a very active and vigorous force of 600.

Mr. GUTHRIE. Exactly. That is what I figured. So all these new mandates come down. Does this concern you in your ability to finish projects you are on? Are you going to have to move people from one project to another?

Mr. STRICKLAND. Mr. Guthrie, we have a research and rulemaking priority plan which is based on data and risk. We work very hard to make sure that we allocate our resources in a way that we save the most lives in terms of the work that we do. While we recognize that in terms of our own analysis, there is clearly other issues that the Congress may ask us to take up, and we are more than willing and happy to do, but it has to be done in the context of recognizing that these have to be done within the context of the other rules that we are working on, which really do have a broad impact to save lives.

Mr. GUTHRIE. So——

Mr. STRICKLAND. Every additional rule does add more burden. Then we definitely ask for, I guess, the ability to be able to adjust deadlines, you know, with the Secretary notifying the committees of jurisdiction of the reasons why we had to make those particular moves. But we will say that the deadlines in the Senate bill are incredibly aggressive. Frankly, I don't think that as they are currently written we would not be able to make those deadlines just by the very nature of regular rulemaking we would make those deadlines.

Mr. GUTHRIE. Uh-huh. That is good to know, because I know your rulemaking process you assign by risk, as you just said, and so if the number one thing you are working on is the number one thing that is going to save lives, then as you move down, then if all the sudden you get these mandates from the outside, and of course, it is within the purview of Congress, it is something we need to understand that as we put new mandates on you, that either—if they were in your queue already at the high part of your queue, they would be high risk because that is what you are looking at.

So we are going to ask you to pull people off of other projects it sounds like if we pass the deadlines that the Senate put into place.

Mr. STRICKLAND. We would ask to be able to work with the committees of jurisdiction on being able to establish timeframes to accomplish all the safety goals that they are asking. The things that are highlighted in the Senate bill are important. They are risks, but we always, I want to make sure that we can sort of align our resources and our workload so we can best address the risks that affect most people.

Mr. GUTHRIE. And one other question. I know there is a 2-year ban for somebody that works for your commission, I guess, agency——

Mr. STRICKLAND. Uh-huh.

Mr. GUTHRIE [continuing]. To go work in the private industry when they are—and I know there are a lot of people that are automotive engineers that have specific skills or so forth, and you may want to hide them from private industry because I have been to proving grounds, test grounds, and things. These are highly-skilled people, highly-educated people who do this for private industry trying to make sure they have safety and security because we know our automotive suppliers want to put out safe vehicles.

But if you needed somebody with those kind of technological ability and they knew that they came and worked for you for some number of years or a brief period of time and couldn't go back, is that a problem in recruiting I guess is my question, the 2-year ban? Do you think that is going to be an issue for you?

Mr. STRICKLAND. Mr. Guthrie, the Obama administration holds our ethics obligations to the highest level. We believe that our guiding light should be making sure that we serve the American people in an honest and forthright way.

However, we also believe that the ethics rules should be thought about and considered and applied in a federally-consistent manner. I think one of the impacts that you highlighted is that when you single out a particular agency, whether it is ours, the National Highway Traffic Safety Administration, or others, you have unintended consequences.

Mr. GUTHRIE. Uh-huh.

Mr. STRICKLAND. We are more than happy to have a dialogue with the committee to discuss ways that we can work——

Mr. GUTHRIE. Because this—I am about out of time. This doesn't ban them from lobbying. This bans them from going back and working in private industry.

Mr. STRICKLAND. That is correct.

Mr. GUTHRIE. In the field. So if you have highly-technical vehicle engineers, and our automotive people have them, they have them working for them because they are in the business of putting out a safe product, and therefore, these people would really be banned for you to hire because it would hurt their careers. And they're not talking about going back and trying to influence policy. They are going back and making—going back and forth to make sure we have safe vehicles on the road. I am familiar with the industry. That is why I think that that is going to limit you in hiring those kinds of people.

Mr. STRICKLAND. Well, Mr. Guthrie, we are always mindful of trying to make sure we are blessed with some of the best automotive talent in the world that works for our agency. We are always mindful of the ability to be able to recruit and compete, you know, good talent going forward, and anything that we could do to make sure that we have clearly the highest ethical standards that are federally consistent and the ability to be able to actively compete, not only with private industry to bringing in the best but frankly other agencies across government to bring in the best tal-

ent. It is always something that we would be happy to discuss with the committee and hopefully find a way forward.

Mr. GUTHRIE. Thank you. Thank you very much.

Mrs. BLACKBURN. Thank the gentleman for yielding back, and I do not think we are going to do a second round. I just have two additional questions that I wanted to highlight with you and get your input.

In the Senate bill why didn't that include a reauthorization for your vehicle safety programs? I think it did you highway programs but not your vehicle.

Mr. BUTTERFIELD. Point of order, Madam Chairman. Are we going to do a second round or not do a second round?

Mrs. BLACKBURN. If you would like to do a second round——

Mr. BUTTERFIELD. Well, it appears that you are engaged in a second round which is contrary to what I thought the agreement was.

Mrs. BLACKBURN. We can do a second round if everyone would like to.

Mr. BUTTERFIELD. I am just trying to get——

Mrs. BLACKBURN. I have two further questions.

Mr. BUTTERFIELD [continuing]. The third panel on queue here.

Mrs. BLACKBURN. Yes, sir. We are, too.

Mr. BUTTERFIELD. Yes, well, I thought we had an agreement. Apparently we don't. Consider this the second round.

Mrs. BLACKBURN. We will do so.

So what we would like to hear is why didn't the Senate bill include a reauthorization for those vehicle safety programs.

Mr. STRICKLAND. Ms. Blackburn, I can't speak to the decision that the Senate made in terms of why they constructed the bill that they did. We provided technical assistance, and they made a decision not to include that particular provision.

Mrs. BLACKBURN. OK. Thank you. Did you have any input on that decision?

Mr. STRICKLAND. We were asked. The Senate Commerce Committee and the other committees of jurisdiction of the Senate asked the agency for technical assistance. We provide direct technical assistance.

Mrs. BLACKBURN. OK.

Mr. STRICKLAND. We don't—we are not involved in any policy decisions.

Mrs. BLACKBURN. That is great, and then does electronic stability control present different challenges for different types of vehicles, or is it simply a matter of installing the same technology that has already been developed for smaller vehicles?

Mr. STRICKLAND. It is very different. There are so many different variables in establishing electronic stability control in heavy-duty vehicles. I presume that is what you are asking.

Mrs. BLACKBURN. Yes.

Mr. STRICKLAND. And there is stability, there is roll stability, there is a number of other elements, there are different tests and protocols. It is a wildly different animal which will take time for us to make sure that we get it right.

Mrs. BLACKBURN. OK. So you are just seeking further time?

Mr. STRICKLAND. We are working, we are currently working on the proposal, but in terms of your question, which is are light vehi-

cles, electronic stability control cross applicable to heavy duty, the answer is no, they are not. We have to undertake new work to do so.

Mrs. BLACKBURN. OK. With that, that is the extent of the questions that we were seeking.

Mr. Butterfield, I recognize you for a second round.

Mr. BUTTERFIELD. All right. Thank you.

Administrator, in previous testimony to this committee you have expressed concern that the maximum civil penalty the agency can seek from a manufacturer is set in the statute at only $15 million per case, which adjusted for inflation comes to a little over $7 million in today's dollars. In 2010, it is assessed that maximum allowable penalties at the time against Toyota, $16.4 in one case, $16 million in another, for a total of $32 million.

NHTSA noted in a letter to the company that without this cap Toyota could have been assessed penalties for $13.8 billion. If Senate 1813 were to become law, there would be the potential for increased civil penalties up to $250 million per case.

Question. How would increasing the civil penalties' cap strengthen the agency's ability to enforce safety rules? How would it affect your interactions with the auto companies?

Mr. STRICKLAND. Mr. Butterfield, we have the obligation, the duty to protect American safety regarding traffic crashes, and thereby, we regulate some of the largest industries on planet Earth. And frankly, a maximum penalty of over $17 million is frankly a pittance to most of these I guess full-line vehicle manufacturers.

For us to be able to have a higher deterrent value, being able to not have to go into an enforcement posture in the first place, and therefore, use resources and time for investigating, we feel that a more significant penalty would frankly create a greater incentive for manufacturers to comply with the rules without us having to expend more resources to investigate and enforce.

We feel that it is high time that these particular penalties are reflective of the size of the industry, and therefore, we gave technical assistance to the Senate, and we are happy that the Senate did include an increase in the civil penalty provision.

Mr. BUTTERFIELD. Thank you. I yield back.

Mr. STRICKLAND. Madam Chairman, I would like to correct one thing for the record. My apologies. Your question you asked me about motorcoach belt safety, I apologize that factually the final rulemaking is within the Department of Transportation. It has not gone over to OMB yet, but we have finished our particular work. It is right now in review within the Department.

Mrs. BLACKBURN. I thank you for the correction. We will note it in the record.

Mr. STRICKLAND. Thank you.

Mrs. BLACKBURN. At this time I recognize—Ms. Schakowsky passes.

Mr. Strickland, we thank you. You are always generous with your time, and we thank you for coming before us today, and with there being no further questions from the panel, we would dismiss you, and have a very brief recess while we set our third panel for the day, and, again, we thank you for your generosity of time.

Mr. STRICKLAND. Thank you, Madam Chairman. We look forward to working with the committee.

Mrs. BLACKBURN. And our witnesses for the third panel, we are moving right along this morning, so Mr. Butterfield was just saying, well, if we had 3 minutes for each opening statement we could do this in 18 minutes, but we will not rush you. We will not rush you. I assure you.

Our witnesses in the order that they will give us their testimony this morning, Mitch Bainwol, who is the President and CEO of the Alliance of Automobile Manufacturers. Next is Michael Stanton. He is the President and CEO of Global Automakers. Our third witness, Victor Parra, President and CEO of United Motorcoach Association. Our fourth witness, Peter Pantuso, President and CEO of the American Bus Association. Our fifth witness is the Honorable Joan Claybrook, former NHTSA Administrator and Consumer Co-Chair of the Advocates for Highway and Auto Safety. Our final witness is Ami Gadhia, Senior Policy Counsel at Consumers Union, Political, and Action from Consumer Reports.

We are delighted that each of you are here. We thank you for your time and for the preparation in your testimony. You are each going to be recognized for 5 minutes. I would remind you all, move the microphone toward you, touch the button to turn it on. When you see the light turn yellow on the timer, you have 1 minute to wrap up.

Mr. Bainwol, you may begin.

STATEMENTS OF MITCH BAINWOL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ALLIANCE OF AUTOMOBILE MANUFACTURERS; MICHAEL J. STANTON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF GLOBAL AUTOMAKERS; PETER J. PANTUSO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN BUS ASSOCIATION; VICTOR S. PARRA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNITED MOTORCOACH ASSOCIATION; JOAN CLAYBROOK, FORMER ADMINISTRATOR, NATIONAL HIGHWAY TRANSPORTATION SAFETY ADMINISTRATION, CONSUMER CO–CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY; AND AMI V. GADHIA, SENIOR POLICY COUNSEL, CONSUMERS UNION

STATEMENT OF MITCH BAINWOL

Mr. BAINWOL. Chairman Blackburn, Mr. Butterfield, on behalf of 12 leading car companies, thank you for this opportunity to testify today. I am Mitch Bainwol, President of the Alliance of Automobile Manufacturers. I represent three U.S. base companies, as well as nine iconic European and Japanese brands. Our companies sell three of four cars purchased in the U.S.

I am pleased to say that our industry is leading America out of recession after a nearly catastrophic 2008 and '09, car sales were up about 10 percent each of the last 2 years, with forecasts strong for 2012 as well. Domestic and foreign-based companies are adding shifts, plants, and jobs in the United States. Exports are rising again. BMWs from South Carolina, BWs from Tennessee, Toyotas from Kentucky, Mercedes from Alabama, and Detroit three products moving literally all over the globe. All tolled eight million

Americans owe their employment to this sector, at least 10,000 employees in each of 47 States.

So it is an honor to represent manufacturers who view safety in a very serious way and employ thousands of engineers who work every day to make the vehicles safer, and the results are striking. I think we are going to have a slide brought up. Perhaps not. There we go.

[Slide.]

OK. As you can see from this slide, if a picture is worth a thousand words, a trend line tells a pretty compelling story. What you have from—on the yellow line is the vehicles miles traveled, moving from roughly 500 billion miles to 3 trillion miles from 1950 to 2010. Then you have a line going in the inverse direction, and that is the fatality rate. So it is really a stunning success story. I don't mean to say that the job is done, but I think this slide as a predicate for today's hearing really does tell a very compelling story.

And I would say that the prognosis for future gains is outstanding. We are at the dawn of a new golden age in safety developments. Driver assist technologies that dramatically enhance crash avoidance are already in dealerships today. Technologies like blind spot alerts, lane departure warnings, autonomous breaking, adaptive cruise control, and more.

Two weeks ago I was in Sweden where I test drove a Volvo with city safety, and that is Volvo's technology that assists drivers with automatic braking in certain cases. The Insurance Institute for Highway Safety here took a snapshot of accidents with the Volvo XE60 equipped with this technology and found a 27 percent reduction in front-end collisions relative to similar vehicles. A 27 percent reduction.

The implications for the safety of drivers and passengers, for insurance rates, for traffic flow, and for fuel economy is nothing short of profound, and that is just one technology. So the goal as a matter of policy must be to maximize the rate of innovation. A review of the Senate reauthorization hinges on that concept. Do the provisions enhance the ability of automakers to invent and implement new technologies or not? Do the provisions help or hinder consumers to access these new technologies?

With innovation in mind we have three particular concerns with the Senate bill. First, Section 304 seeks to reverse existing NHTSA policy and recent court decisions regarding the early warning reporting data. While transparency generally is a good idea, we agree with NHTSA and the courts that existing regulations strike the right balance between publically-available data and confidential business information.

The early warning system was specifically designed so that NHTSA could benefit from the widest-possible universe of information but would also be responsible for screening the data to avoid precipitating, premature, and potentially misplaced panic among drivers, and that would stimulate costly and baseless litigation and inhibit innovation.

Second, relating to Section 406, the Alliance supports equipping new vehicles with event data recorders, EDRs, with sufficient lead time to implement this technology for those few manufacturers who have not yet done so. Yet 406 both requires NHTSA to conduct a

study on the privacy implications from expanding the scope of the EDRs and mandates a second rulemaking in a short timeframe, regardless of the outcome of that study. Rulemaking without first concluding the study puts the cart before the horse. Congress and the public should have a clear understanding of the privacy implications as well as the cost consumers will absorb before the agency writes a new rule.

And third, the Senate bill targets the auto industry in a baseless, counterproductive, and punitive fashion. It tends to signal the auto employees throughout this country that policymakers are hostile to the sector by imposing civil penalties 15 times the magnitude of penalties facing other manufacturers, also large businesses, of consumer products. The rationale for this super penalty is flawed. Its imposition would damage our ability to compete and provide jobs, and it would divert resources that would be better spent in innovation.

Today the average car on the road is about 11 years old. That average car doesn't have electronic stability control. It doesn't have sophisticated airbags, it doesn't have features like voice control to keep eyes on the road and hands on the wheel. It doesn't have the new driver assist technologies that I spoke about. The average car probably gets mileage 20 percent worse than today's cars that are comparable, and it doesn't have current advanced environmental controls.

The illustration makes a very simple point. The best thing we can do for consumers is not just facilitate innovation but facilitate replacing old cars with new cars for safety, for the environment, for the health of the economy we should make cars as safe, I am sorry, as affordable as possible. That, of course, means that we have to be careful not to price cars out of reach with noble intent but counterproductive regulatory access.

Many thanks for this chance to participate.

[The prepared statement of Mr. Bainwol follows:]

STATEMENT

OF

THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

BEFORE THE:

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE OF THE COMMITTEE ON ENERGY AND COMMERCE OF THE U.S. HOUSE OF REPRESENTATIVES

MARCH 22, 2012

PRESENTED BY:

Mitch Bainwol
President and CEO

Thank you, Chairman Bono Mack, Ranking Member Butterfield and Subcommittee members. I appreciate the opportunity to appear today on behalf of the Alliance of Automobile Manufacturers (Alliance), a trade association of twelve car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo. Together, Alliance members account for roughly three quarters of all vehicles sold in the U.S. each year.

The sale of cars is a massive economic driver. Revenues from car sales alone totaled over $564 billion in 2010, an increase of 17% from the previous year. Throw in the manufacture and sales of parts, along with repairs and service, and you get another $173 billion in economic activity. So, automobiles drive more than $735 billion into the economy. Eight million – eight million – people are employed directly and indirectly as a result of the manufacture, sale and repair of automobiles. Those eight million people earn $500 billion in compensation and pay $70 billion in taxes. These are American families living literally all over this country. In many communities, they form the backbone of local and even state economies. And as jobs are added, these numbers will climb. Auto policy is central to the economic vitality of virtually every state.

As this Committee considers the road ahead for the National Highway Traffic Safety Administration (NHTSA) it is important to bear in mind the broader context of motor vehicle safety in the U.S. today. Fatalities and serious injuries resulting from motor vehicle crashes in the U.S. are at their lowest level in 60 years and down 25 percent since 2005. This fact is remarkable given that the number of licensed drivers has more than doubled and annual vehicle miles traveled have more than quadrupled since 1960.

Our success reflects the industry's relentless drive to develop innovative and effective vehicle safety technologies combined with the cooperative efforts of government and other stakeholders to design effective laws, education and enforcement programs. Nearly all of the modern safety features on motor vehicles in the U.S. – antilock brakes, stability control, side airbags for head and chest protection, side curtains, pre-crash occupant positioning, collision avoidance including forward collision warning, lane departure warning, and more – were developed and implemented voluntarily by manufacturers, in advance of any regulatory

mandates. And the industry continues moving forward, engaging in high-tech research, and developing and implementing new safety technologies including autonomous braking systems, vehicle safety communications systems for crash avoidance and much more. Our commitment is to continuously improve motor vehicle safety.

Tackling the Primary Causes of Traffic Deaths and Injuries. As a nation, we can better utilize the full benefits of vehicle safety technologies when we get vehicle occupants properly restrained and drunk drivers off the road. While safety belt usage is increasing, over half of vehicle occupants killed in crashes are not restrained by safety belts or child safety seats. Alcohol impairment stubbornly remains a factor in roughly one third of traffic deaths each year. These are the areas where continued focus is an absolute must. Although programs designed to address "driver behavior" issues generally fall within the Transportation & Infrastructure Committee's jurisdiction, it is appropriate to mention a few of them here as you work with your colleagues on these important safety policies.

Under H.R. 7, states would receive additional apportionment funds for having primary seat belt, alcohol ignition interlock, and graduated driver license laws in place. Importantly, H.R. 7 would also require states to meet safety performance metrics with regard to reducing deaths and injuries resulting from unbelted occupants, and impaired drivers or inexperienced drivers. The bill is structured to give states flexibility to tackle their most pressing vehicle safety issues, while requiring accountability for results. The Alliance thinks this is a smart approach which strikes an appropriate balance of the state and federal roles.

The Alliance also supports H.R. 2324, the ROADS SAFE Act, introduced by Representatives Capito and Shuler, which would formally authorize the cooperative research program the industry voluntarily entered into and is jointly funding with NHTSA. The Driver Alcohol Detection System for Safety, commonly referred to as "DADSS," is a five-plus-year research effort created to develop in-vehicle technology that will quickly and accurately measure a driver's blood alcohol concentration (BAC) in a non-invasive manner. If the system detects that a driver is above the legal limit, the vehicle's starting capabilities are disabled. Based on Insurance Institute for Highway Safety projections, targeted implementation of this kind of technology has the potential to prevent thousands of deaths each year. Similar language is included in the Senate bill; H.R. 2324 should be included in the House's reauthorization bill.

Finally, the Alliance supports giving NHTSA and the states both the tools and the funding to combat distracted driving. We want to work with the Committee, as we have with NHTSA and the states, to ensure that new laws do not prohibit new technologies that make driving safer by allowing drivers to keep their eyes on the road and hands on the wheel. The Alliance and our partners at the American Academy of Orthopedic Surgeons have launched an award-winning multimedia campaign that highlights the important relationship between driver focus and road safety. The high-visibility campaign includes advertising, an interactive and independently branded website, and localized elements.

Focusing Limited Resources to Achieve Real-World Benefits. Auto engineers develop and test new safety technologies based on their expected performance in real-world situations. Proposed legislation needs to meet the same criteria. We are experiencing a sustained decline in fatalities because of the efforts begun over a decade ago to zero in on the biggest problems in traffic safety. At a time when we are acutely aware of our resource limitations and the economic constraints our customers are facing, both industry and government must continue to prioritize our efforts in order to maximize real-world safety benefits for Americans.

In March 2011, NHTSA published an updated Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan for 2011-2013. The Plan reflects extensive analysis of traffic safety data and the agency's judgment on the most effective means to continue to accomplish its Congressionally mandated mission to "save lives, prevent injuries and reduce economic costs due to road traffic crashes." Congress should resist mandating specific or far reaching rulemakings and time schedules for agency action. This is particularly critical for those rulemakings with relatively short deadlines that affect multiple aspects of motor vehicle design.

Our concern over legislatively-mandated rules is unrelated to our commitment to improving vehicle safety. Rather our concern is with the process. Indeed, industry is competing vigorously and moving rapidly to provide ever-increasing levels of safety in its vehicles. That said, safety rulemakings are often complex, involving a myriad of technical details, analysis of data, and consideration of necessary lead time. Mandates for rules to be issued by specified dates can short-circuit the necessary analyses and potentially lead to unintended safety

consequences. The complexity of safety rulemakings requires that careful attention be accorded to the inherent tradeoffs associated with regulations. For example, we have seen tradeoffs among adult high-speed protection in frontal crashes and associated harm to children and others in low-speed crashes. Mandating rules in certain areas, regardless of the public rulemaking record on the subject, prejudges the outcome of the rulemaking process and limits NHTSA's ability to make data-driven safety-related assessments and determinations of rulemaking priorities.

Accordingly, while we are supportive of many of the provisions in the Senate bill, the Alliance believes the following provisions should be revised or removed on the basis that they inappropriately divert resources from more pressing priorities:

Section 31304. This section reopens settled law by establishing a "presumption" that confidential business information disclosed to the agency is not exempt from disclosure under the Freedom of Information Act (FOIA). This section may cause competitive harm and is inconsistent with FOIA. The current early warning reporting regulations do exactly what Congress intended: the regulations put vital information in the hands of agency defect investigators. Secretary LaHood and Administrator Strickland stated as much in responses for the record to the Senate Commerce Committee last year.[1] This section unnecessarily throws into question an issue that has already been the subject of two rulemakings and three separate legal challenges. It should not become law.

Sections 31301, 31302, 31303, and 31307. The Alliance supports providing consumers with access to information. For example, the Alliance supports Section 31306, which allows NHTSA to include crash avoidance technologies in its New Car Assessment Rating program, which provides valuable information to consumers about vehicle safety features. However, a number of provisions in the Senate bill do not provide consumers new information; instead, they largely duplicate existing resources. A few examples illustrate the point. First, by using the make, model, model year and VIN, automakers and private entities such as CARFAX already provide consumers the means to determine whether a vehicle is subject to recall and whether the recall remedy has been performed (31301). Second, automakers already provide Technical

[1] "At this time, the agency believes the information reported by manufacturers to NHTSA is useful for identifying potential safety defects in the affected vehicles in the U.S. (Response of Secretary LaHood and Administrator Strickland to question number 4 from Sen. Hutchison for hearing record – Toyota Recalls and Government's Response –March 2, 2010 pps. 177-178.)

Service Bulletins and other dealer-related communications to NHTSA, which NHTSA in turn makes available on its safercar.gov website (31303). Third, automakers are already required by law to publish in Owner's Manuals information regarding how to report a suspected defect (31307). Finally, NHTSA already maintains a hotline for reporting defects. There is no apparent safety benefit to implementing a separate hotline for manufacturers, dealers or mechanics. That said, if Congress believes NHTSA should give special weight to these particular individuals' reports, they could simply ask callers to specify their profession when calling the existing hotline (31302).

Section 31403. The Alliance recommends deleting Section 31403, which gives NHTSA three years to decide whether to propose a rule specifying minimum clearances for passenger vehicle foot pedals with respect to other pedals, the vehicle floor, and any other potential obstruction to pedal movement. NHTSA identified pedal placement as an area in need of further research following the release of the NASA report on unintended acceleration. The agency should be allowed to finish and evaluate its research before a determination is made as to whether rulemaking is warranted, and it should be allowed to do so on its own timeline, rather than subjectively prioritizing an area that potentially offers very little safety benefits over more pressing safety needs.

Section 31404. In February 2011, NHTSA released the complete results of the study it conducted with NASA and concluded that electronic systems played no role in cases of unintended acceleration.[2] Although the Alliance is not opposed to NHTSA expanding its expertise and continuing research into electronic systems, this Section requires NHTSA to engage in an undefined rulemaking within two years and to decide whether to propose a rule within four years. Recent work by NHTSA, NASA and the National Academy of Science suggests that such a rulemaking is unlikely to have any significant near-term impact on motor vehicle safety. The agency's limited rulemaking resources could be devoted to addressing more pressing issues in that timeframe. NHTSA's newly created Vehicle Crash Avoidance and Electronics Controls Research group will be able to help guide the agency's work in the area of vehicle electronics.

[2] "NASA found no evidence that a malfunction in electronics caused large unintended accelerations." Michael Kirsch, Principal Engineer at the NASA Engineering and Safety Center (NESC) – NHTSA Press Release of February 8, 2011.

Section 31406. The Alliance supports equipping new vehicles with event data recorders (EDRs) as currently specified under Part 563. We note that EDRs do not provide occupant crash protection or crash avoidance benefits in the vehicles in which they are installed, therefore any requirement for vehicle installation should be implemented by amendment to the Part 563 regulation and not by a Federal Motor Vehicle Safety Standard (FMVSS). Manufacturers who opted not to install EDRs under the existing voluntary regulation will need sufficient lead time to develop and implement this technology in their fleets. NHTSA should have the authority to establish the lead time, including any phase-in schedule, after consultation with the manufacturers.

Section 31406 also would require NHTSA to enter into a new rulemaking to expand the information collected and duration of data recordings, which are two of the issues that NHTSA itself has identified as potentially impacting privacy concerns. NHTSA's various public notices, as well as various State legislation that has been introduced regarding EDRs acknowledge that the recording of information by EDRs raises a number of potential privacy issues. However, NHTSA has said its "role in protecting privacy is a limited one ... [NHTSA does] not have statutory authority to address many privacy issues, which are generally matters of State and Federal law that [NHTSA does] not administer." Nevertheless, NHTSA has stated it believes that its existing EDR requirements do not create any privacy problems because its rule *(1) does not require the recording of any data containing any personal or location identifiers and (2) the duration of the recording required is both "extremely short" (5 seconds) and only required in the event of a crash.*

Section 31406 was modified to require NHTSA to conduct a study on the privacy implications of such an expansion and report to Congress; however, it also mandates a second rulemaking moving forward in a very short timeframe, regardless of the outcome of the study. The Alliance believes the second rulemaking should not be undertaken until Congress and the public have a better understanding of the potential privacy issues that may be implicated by recording additional data for longer time periods and whether the agency has adequate statutory authority to ensure privacy is protected. If the reauthorization spans two years, as the Senate bill does, then there will be another opportunity for Congress to weigh in on whether and how the agency should move forward with a second EDR rulemaking.

Section 31502. The Alliance recommends deleting section 31502, a provision that would require NHTSA to undertake a rulemaking to improve visibility and access to LATCH child seat anchorages. We are not aware of any widespread problems with existing LATCH anchorages, so this rule would divert safety resources from more important areas and could also have unintended consequences for comfort for adult rear seat passengers. NHTSA is currently evaluating the merits of rulemaking on this matter as outlined in NHTSA's Priority Plan.

Section 31503. The Alliance also recommends that section 31503 be deleted. This provision would require NHTSA to mandate the installation of rear seat belt reminder systems. While the industry voluntarily developed and installed these systems for front seat passengers, it would be far more complex and expensive to develop a similar system for rear seat passengers. The installation of rear seat belt reminder systems should remain voluntary and market driven. Rather than a regulatory approach, the Alliance believes the annual "Buying a Safer Car" Brochure should be updated to include rear seat belt reminder systems.

Section 31504. Accidental fatalities due to hyper and hypothermia can be mitigated significantly with a coordinated, focused public education program, which is only now getting underway. Section 504's directive to conduct research recognizes that the reasons why children are abandoned in cars in some instances are not well understood. Without such an understanding, it is not possible to evaluate the anticipated effectiveness of potential countermeasures. Additionally, the provision as currently drafted would not allow the bifurcation of hyper- and hypothermia rulemakings based on research findings of safety need, practicability, or effectiveness of countermeasures.

Finally, the Alliance believes that other provisions deserve additional consideration as the bill moves through the legislative process:

Section 31203. Motor vehicle manufacturers are already subject to higher civil penalties than other similarly situated manufacturers of consumer products. Compared to the current penalty structure and the penalty structure for all other manufacturers of consumer goods under the Consumer Product Safety Act, the proposed increases are well out of proportion and unfairly punitive. The proposed increases should be scaled back to a more appropriate level.

Section 31305. This provision reaffirms existing law codified at 18 USC 1001 and adds an additional civil penalty to existing criminal penalties. Layering additional civil fines on top of potential criminal penalties for making false statements to the government is unlikely to enhance motor vehicle safety. This provision should be removed.

Again, the Alliance appreciates the opportunity to appear before the Subcommittee today, and we look forward to working with you as you consider how best to improve motor vehicle safety for the driving public.

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Mrs. BLACKBURN. I thank the gentleman for yielding back.

Mr. Stanton, you are recognized.

STATEMENT OF MICHAEL J. STANTON

Mr. STANTON. Yes, and in the spirit of Mr. Butterfield's suggestion, I will be brief. I do want to note that the provisions that are in the House and the Senate bill that extend incentive grant funding for programs to improve safety belt use and implement alcohol and impaired driving measures, countermeasures are extremely important. We believe these programs should be funded.

Generally, where the Senate has prescribed something but NHTSA is already proceeding with rulemaking, we would support the continuation of the NHTSA rulemaking, and this includes things such as brake pedal override, push button ignition systems, mandatory installation of EDRs, and pedal placement, which they are looking at. We think that is appropriately a research project and not subject for rulemaking at this time.

There are a couple of provisions in the Senate bill, though, that are problematic. The bill proposes increases in non-compliance penalties reaching levels that are disproportionately higher than those under other current regulatory laws. Vehicle manufacturers take their safety compliance obligations extremely seriously, and the substantial increase in the penalty amount seems to be unnecessarily and unfairly punitive.

The bill would also create a presumption in favor of public disclosure of manufacturer-submitted information relating to potential defects. This information is manufacturing quality data which has substantial competitive value. This matter has been previously and carefully considered by the agency and the courts, and we see no need to revise the balance that has been struck.

The Senate bill would also add an additional civil penalty to existing criminal penalties for submitting false information and reports to NHTSA. Layering additional civil fines on top of potential criminal penalties for making false statements to the government is unnecessary and unlikely to enhance motor vehicle safety.

And also the section on event data recorders is overly prescriptive. NHTSA currently has several rulemaking proceedings underway or planned to address these matters. It would be more appropriate to allow NHTSA to complete its investigations and issue rules based upon a full and comprehensive analysis of these complex matters.

And finally, we believe it would be premature for Congress to mandate changes to the NHTSA recall process. NHTSA is conducting a comprehensive review of the recall process based on the Government Accountability's June 15, 2011, report. Congress should refrain from imposing any new mandates on the recall process without benefit of this review.

Thank you, ma'am.

[The prepared statement of Mr. Stanton follows:]

GlobalAutomakers

Statement of Michael J. Stanton

President and Chief Executive Officer

Association of Global Automakers, Inc. (Global Automakers)

Before the

Committee on Energy and Commerce

Subcommittee on Commerce, Manufacturing and Trade

United States House of Representatives

March 22, 2012

Summary Statement

My name is Michael Stanton, and I am President and CEO of the Association of Global Automakers. Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations.

Tremendous strides have been made in motor vehicle and highway safety in recent years. In the early 1980's, approximately 50,000 Americans died each year in highway crashes. Annual fatalities are now in the low 30,000 range, notwithstanding substantial population growth and increases in vehicle miles traveled during the past 30 years.

A variety of factors have contributed to this decline, but improvements in motor vehicle design and technology have been major contributors. Vehicle manufacturers remain committed to further improvements in vehicle safety.

In recent years, major safety initiatives have been pursued through cooperative measures involving industry and government. The voluntary approach has been effective in achieving substantial safety benefits more quickly and less expensively than would result from a formal rulemaking approach.

The Senate has recently completed action on a transportation bill (S. 1813) that includes a vehicle safety title. There are provisions included in this bill we support, including grants to states to address enforcement of traffic laws, including reducing impaired and distracted driving and encouraging states to strengthen their Graduated Driver Licensing laws (Sections 31107, 31108 and 31112). We also support provisions directing NHTSA to: 1) continue its support of research on driver alcohol detection systems (Section 31111); and 2) conduct a study regarding the quality of data and the data elements collected through the National Automotive Sampling System (Section 31310).

The House transportation bill (HR 7) under consideration contains some similar provisions, including measures to extend incentive grant funding to improve seat belt use and implement alcohol and impaired driving countermeasures (Section 12201).

However, there are some provisions in the Senate-passed bill of considerable concern to our members. For example, several of the activities prescribed in the bill are underway at NHTSA and would, in our view, be better left to agency expertise.

Other provisions in the Senate bill are also problematic. Our principal concerns include, but are not limited to, the following matters: 1) excessive civil penalties (Section 31203); 2) public availability of sensitive and proprietary early warning data (Section 31304); 3) corporate responsibility for NHTSA reports (Section 31305); and 4) vehicle event data recorders (Section 31406). We also believe it would be premature for Congress to mandate changes to the NHTSA recall process (Section 31311).

My name is Michael Stanton, and I am President and CEO of the Association of Global Automakers. Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our members sell 40 percent of all the vehicles purchased in America today. We also produce 40 percent of all vehicles made in the United States. Global Automakers' companies have invested $43 billion in U.S.-based production facilities, have a combined domestic production capacity of 4.2 million vehicles, directly employ more than 80,000 Americans, and create nearly 500,000 jobs for Americans through dealers and suppliers. Global Automakers supports public policies that improve motor vehicle safety, encourage technological innovation and protect our environment. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and the development of vehicles that enhance the quality of life for our customers.

Tremendous strides have been made in motor vehicle and highway safety in recent years. In the early 1980's, approximately 50,000 Americans died each year in highway crashes. That number has steadily declined and annual fatalities are now in the low 30,000 range. This reduction has occurred notwithstanding substantial population growth and increases in vehicle miles traveled during the past 30 years. In the 1980's highway fatalities occurred at a rate of 3.35 per hundred million vehicle miles traveled. That rate has been cut by two-thirds.

A variety of factors have contributed to this decline, but improvements in motor vehicle design and technology have been major contributors. Developments in advanced

technologies in recent years have had a significant effect on the fatality rate, and there is ample evidence that major improvements can be achieved in the near future.

In recent years, advances in electronic sensors have enabled "intelligent" occupant protection systems. The advances in these technologies have enabled the development of highly effective systems at reasonable cost. These new systems have been fully accepted by consumers. More recently, the focus of the industry and the National Highway Traffic Safety Administration (NHTSA) has been on advanced crash avoidance technologies. These systems can sense the potential for a crash and alert the driver to the risk. Some of these technologies can actually intervene and activate the vehicle's braking system to help avoid a crash or reduce its severity.

Despite these improvements in safety, motor vehicle crashes remain a significant cause of death and serious injury in the U.S., particularly for younger drivers. For vehicle manufacturers, there remains a strong commitment to further improvements in vehicle safety. In particular, the aggressive pursuit of advanced crash avoidance technologies continues.

Next generation technologies will allow vehicles to communicate with each other and with roadway infrastructure to avoid crashes. A major field trial of this "connected vehicle" technology is now underway in Michigan. Substantial reductions in crashes are anticipated from these vehicle-to-vehicle and vehicle-to-infrastructure communication systems. As a result of these and other ongoing efforts there is real cause for optimism that the trend of improved highway safety will continue.

In recent years, major safety initiatives have been pursued through cooperative measures involving industry and government. In 2000, auto manufacturers, the insurance industry, and suppliers worked together to develop test procedures for enhanced side airbag performance that were adopted by the auto industry in a voluntary agreement with NHTSA. In 2003, a similar approach was used to reach a voluntary agreement to improve the compatibility of car and light truck body structures, reducing fatalities in frontal crashes. Recently, NHTSA has issued voluntary guidelines regarding driver distraction related to in-vehicle electronic devices. The distraction guidelines were based in part on work by our friends at the Alliance of Automobile Manufacturers. The voluntary approach has been effective in achieving substantial safety benefits more quickly and less expensively than would result from a formal rulemaking approach.

NHTSA is implementing an aggressive agenda of vehicle safety rulemaking and research activity. Work is under way at the agency to address push-button ignition systems, electronic accelerator control systems, alert sounds for hybrid vehicles, event data recorders, and several other matters. Research continues on rollover crashes, various frontal crash modes, and the safety impact of vehicle weight reduction resulting from new fuel economy standards. We plan to work cooperatively with the agency on all of these matters.

The Senate has recently completed action on a transportation bill (S. 1813) that includes a vehicle safety title. In that connection, I would like to highlight our views on some of the key provisions in this section of the bill.

To start, there are measures we believe can have a demonstrable, positive impact on safety that we support, including grants to states to address enforcement of traffic laws, reduce impaired and distracted driving and strengthen Graduated Driver Licensing (GDL) laws (Sections 31107, 31108 and 31112). We also support provisions in the Senate bill that direct NHTSA to continue its support of research on driver alcohol detection systems (Section 31111). These systems prevent impaired drivers from starting their vehicles, thereby addressing one of the most significant causes of traffic fatalities. These measures are also consistent with activities already underway at NHTSA and planned for continuation by the agency, as stated in the agency's Congressional Budget Justification document. In addition, we support Section 31310 of the Senate bill, which directs NHTSA to conduct a study regarding the quality of data and the data elements collected through the National Automotive Sampling System (NASS). The data compiled by NHTSA, through on-site vehicle crash investigations, is critical for the evaluation of countermeasures as well as for the industry's ongoing research and development efforts.

The House transportation bill (HR 7) under consideration contains some similar provisions, including measures to extend incentive grant funding for programs to improve seat belt use and implement alcohol and impaired driving countermeasures (Section 12201). We believe these programs have a direct and positive impact on highway safety and urge their inclusion in any final transportation bill.

However, there are some provisions in the Senate-passed bill of considerable concern to our members. For example, several of the activities prescribed in the bill are underway

at NHTSA and would, in our view, be better left to agency expertise. These include rulemakings on brake pedal override (Section 31402), push-button ignition systems (Section 31405) and mandatory installation of event data recorders (Section 31406). Pedal placement, the subject of another directed rulemaking in the Senate bill (Section 31403), is appropriately the subject of research at NHTSA.

Other provisions in the Senate bill are also problematic. Our principal concerns include, but are not limited to, the following matters:

- **Excessive Civil Penalties (Section 31203).** The bill proposes increases in noncompliance penalties, reaching levels that are disproportionately higher than those under other current regulatory laws. Vehicle manufacturers take their safety compliance obligations extremely seriously, and the substantial increases in the penalty amounts seem to be unnecessary and unfairly punitive in nature.
- **Public Availability of Sensitive and Proprietary Early Warning Data (Section 31304).** The bill would create a presumption in favor of public disclosure of manufacturer-submitted information relating to potential defects. This information is fundamentally manufacturing quality data which has substantial competitive value. This matter has been previously and carefully considered by the agency and the courts, and we see no need to revise the balance that has been struck.
- **Corporate Responsibility for NHTSA Reports (Section 31305).** The Senate bill would add an additional civil penalty to existing criminal penalties for submitting false information in reports to NHTSA. Layering additional civil fines

on top of potential criminal penalties for making false statements to the government is unnecessary – and unlikely to enhance motor vehicle safety. We feel that this provision should be removed.

- **Vehicle Event Data Recorders (Section 31406).** This section, among other things, adopts prescriptive requirements regarding the installation of enhanced vehicle event data recorders (EDRs). NHTSA currently has several rulemaking proceedings underway or planned to address these matters. It would be more appropriate to allow NHTSA to complete its investigations and issue rules based upon a full and comprehensive analysis of these complex matters, rather than attempting to prejudge these technical issues.

Finally, we believe it would be premature for Congress to mandate changes to the NHTSA recall process (Section 31311). NHTSA is conducting a comprehensive review of the recall process based on the Government Accountability Office's June 15, 2011 report, "NHTSA Has Options to Improve the Safety Defect Recall Process" (GAO-11-603). Congress should refrain from imposing any new mandates on the recall process without benefit of this review. We urge Congress to allow NHTSA to complete its review before mandating new requirements.

Thank you for the opportunity to highlight some of Global Automakers' views on this complex and important topic.

# # #

Mrs. BLACKBURN. I thank the gentleman.

Mr. Pantuso, you are recognized.

STATEMENT OF PETER J. PANTUSO

Mr. PANTUSO. Madam Chairman, thank you for holding this hearing.

ABA has been working to making bus travel safer for many years. We worked with the late Congressman Paul Gilmore and in recent years with Congressman Bill Shuster on legislation that has really formed the basis for H.R. 7 Safety Provisions.

ABA represents 4,000 members, 800 of those are bus companies representing 60 percent of all the private motorcoaches on the road today. Our members provide a variety of transportation services including schedule service, charter and tour, and commuter service, and the industry provides more than 270 million passenger trips annually.

It is clear that the bus industry is the safest form of surface transportation, however, accidents do happen, and we know that one fatality is one too many. ABA has reaffirmed our support for full implementation of DOT's Motorcoach Safety Action Plan. We provide member safety ratings on our Web site to assist consumers in finding safe bus companies, and we regularly review their records and ask unsafe companies to leave the association.

ABA and its members believe there should be seatbelts on new motorcoaches. Our public comments submitted to NHTSA on this regulation are very clear.

We agree with proponents of S. 1813 that advanced window glazing, roof crush strengths, emergency egress, fire detection and suppression, and stability control must be studied. If appropriate rulemaking is required, they must be initiated if they find problems in their research.

But, however, the time limits in the Senate bill are just too tight. NHTSA's recent multi-year experience of developing a seatbelt standard serves as a prime example of why adequate time is needed to structure a science-based approach which includes proper research and testing to save lives.

And I want to stress this point. Our goal is to save lives and ensure the viability of our industry, not to promulgate one size fits all rules. Automobiles and airplanes both have seatbelts, but both are very different types of belts, seats, and restraint systems. ABA is concerned that S. 1813's rush to get new rules out will take precedence over issuing the right rules.

ABA also believes that NHTSA's multiple motorcoach rulemakings should be done in concert with one another. What we don't want to see is a rulemakings conclusion that negates the prior rulemaking safety benefits. For example, is testing determines that to enhance vehicle performance at a rollover windows should be strengthened or bonded to the coach as they are in Europe, that decision could impact adequate egress since in the U.S. windows are part of the exit systems. But if the decision is made on windows and it has already been finalized, the agency would need to restart that rulemaking process.

The Senate bill also allows NHTSA to order retrofits of motorcoaches that could force a complete reengineering of the vehi-

cle and force many small businesses out of business. Operators can comply with requirements of attaching readily-available equipment, but operators are very small business people, and much like you or I, they can no more be expected to remanufacture a coach than we could reengineer the vehicle that we purchase.

We feel that early adoption of the new technology is also clear, and that tax credits, grants, and loans to small operators are key. Without this support the operators will have to bear the brunt of as much as $70,000 in additional capital costs and unfunded mandates.

ABA is concerned that the Senate bill does not have any provision for operators' liability protection in those cases where the bus operator is compliant with current Federal mandates.

Please know that our differences with some of the provisions of S. 1813 does not diminish our desire for a strong and robust bus safety provisions.

In conclusion, Madam Chairman, I suggest that there must be also an increase in safety enforcement of existing regulations and consistent enforcement has enabled the illegal carriers to operate freely in too many markets. FMCSA must be given the authority to adequately close companies and to impound their busses if need be. Data shows that more than half of the motorcoach fatalities that have taken place over the past decade were caused either by known unsafe carriers or illegal carriers, and these fatalities should have never occurred.

We applaud FMCSA for its current enforcement actions including the safety sweeps by combining Federal, State, and local taskforce, and we know that working together with this committee, other committees that we can make the safest form of surface transportation even safer.

Thank you.

[The prepared statement of Mr. Pantuso follows:]

Summary of Testimony

Before the

House of Representatives' Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade

Delivered by:

Peter J. Pantuso
President and CEO
American Bus Association
March 22, 2012
10 o'clock a.m.

The ABA is the trade association for the private over-the-road motorcoach industry. ABA's 800 member bus companies provide all manner of transportation services to 720 million passengers a year.

ABA supports the bus safety provisions in H.R. 7 over the provisions of S. 1813 for several reasons. First, H.R. 7 provides additional time for the agency, National Highway Traffic Safety Administration (NHTSA) to research, test and if necessary, to initiate rulemakings on motorcoach emergency egress, window glazing, fire suppression stability control, and roof strength issues. Second, H.R. 7 requires the agency to research and test the rulemakings concurrently, to prevent one rulemaking's conclusion from negating a prior rulemaking's conclusions. Third, ABA believes that any new federal mandates concerning the manufacturing of motorcoaches must apply prospectively to new vehicles. Bus operators can comply with requirements involving readily attachable equipment but no bus operator can re-manufacture a motorcoach. Fourth, H.R. 7 has a provision for bus operator liability protection that will prevent bus operators complying with federal mandates from lawsuits premised on the operators' failure to provide equipment not required by federal law. Congress granted such protection to automobile manufacturers when passenger car air bags were first developed.

Testimony of Peter J. Pantuso, President and CEO
American Bus Association

Before the

United States House of Representatives Committee on Energy and Commerce

Subcommittee on Commerce, Manufacturing and Trade

Rayburn House Office Building Room 2123

March 22, 2012

10:00 am

Chairman Bono Mack, Ranking Member Butterfield and Members of the Subcommittee, my name is Peter J. Pantuso and I am the President and CEO of the American Bus Association (ABA). The ABA is the trade association for the private motorcoach industry. The ABA is home to over 800 bus companies, who represent 60% of all private motorcoaches on the road. Our members provide all manner of transportation services to the public. In addition to scheduled service operations provided by companies such as, Coach USA and Academy Bus Lines in New Jersey; Concord Coach Lines in New Hampshire; Greyhound Lines in Texas; Orange Belt Stages in California, ABA members like Badger Coaches in Wisconsin; and Abbot Trailways in Virginia and hundreds of others provide charter and tour services, airport shuttle services and commuter services throughout the United States and Canada. In total, the private motorcoach industry provides at least 720 million passenger trips annually. This number represents more passengers than the domestic airlines and many more than travel by Amtrak. Indeed, as an

industry, our members move more people in two weeks than Amtrak does in a year. ABA members also include an additional 3000 companies that provide motorcoach passengers with services. These members include tour operators, tourist attractions, convention and visitors bureaus, hotels, restaurants, bus manufacturers, equipment suppliers and others that serve bus manufacturers and bus companies.

Madam Chairman, on behalf of ABA's membership I would like to thank you for holding this hearing. ABA has been at the forefront of the fight to make bus travel safer for many years. For example, ABA, along with United Motorcoach Association (UMA) and Greyhound Lines, Inc., an ABA member and one of the largest domestic scheduled service motorcoach service providers, worked with the late Congressman Paul Gillmore (R. Ohio) five years ago on a bill that has formed the basis for the bus safety provisions in H.R.7. In addition, the ABA has as a constituent organization the Bus Industry Safety Council (BISC) which is composed of safety and security directors from one hundred of the private bus industry's carriers. The leaders and staffs of NHTSA, FMCSA and the NTSB routinely attend BISC and ABA meetings and interact with bus operator members on matters of safety and exchange ideas as to how to enhance motorcoach safety.

I have to note that the bus industry is one of the safest modes of transportation. According to the National Safety Council report "Injury Facts 2011" the intercity bus transportation accident death rates for the years 2006-2008 (the latest years for which statistics were available) was 0.03 per 100 million passenger miles, which is twenty times safer than travel by passenger car. Of course, even one fatality is one too many and we all must do everything we can to improve bus travel. We have supported NHTSA's proposed seat belt rule (the agency estimates that the rule will save between one and eight lives (http://federalregister.gov/r/2127-

AK56)) and encouraged the rule be issued sooner rather than later so that companies can make purchasing decisions. Other evidence of our commitment to safety may be found in the bus safety dockets of FMCSA (responsible for motorcoach safety enforcement) and NHTSA, the minutes of the proceedings of the NTSB, in the rooms of Congress in which I have testified on several occasions and in meetings with the Secretary of Transportation in which successive ABA Board Chairmen, including our current Chairman, Tom JeBran of Trans-Bridge Lines in Pennsylvania, have reaffirmed ABA's support for the full implementation of USDOT's 2009 Motorcoach Safety Action Plan. ABA's message has been consistently pro safety. ABA is ever mindful that it is not only our customers who ride our buses, but our neighbors, families, employees and friends. To that end, ABA was the first national motorcoach trade association to provide direct, clear and transparent access to motorcoach company safety records through listings in our online membership directory to assist consumers in choosing only the safest motorcoach operators for their next trip.

ABA, like the proponents of S. 1813, agree that issues concerning advanced window glazing, roof crush strength, emergency egress, fire detection and fire suppression must be studied and, if appropriate, rulemakings initiated to address the problems found in the agency's research. In addition, ABA supports the provision for electronic on-board recorders found in S. 1813. ABA and its members believe that there should be seat belts on new motorcoaches. Our comments submitted to the National Highway Traffic Safety Administration (NHTSA) on the agency's proposed seatbelt regulation could not be any clearer (See NPRM NHTSA Docket Number 2010-0112; comments filed October 18, 2010). Finally, ABA and BISC were instrumental in NHTSA's bus crash testing process which has led to the agency's proposal on motorcoach seat belts. Finally, ABA notes that many of our bus operator members already have

seat belts, electronic stability control devices and fire suppression systems on board their coaches.

ABA has three reasons for its preference for the provisions in H.R.7 over those in S. 1813. H.R.7 gets bus safety right, gets it right the first time, and ensures that the federal bus safety mandates are implemented by the motorcoach industry as quickly as possible.

First, there is the issue of the time required for NHTSA to research and decide whether to issue rulemakings on the safety matters noted above. There is also the related issue of what NHTSA should research in making any determination. To begin, the time limits in S. 1813 are extremely tight and ABA simply believes that any rulemaking benefits from more time to research and analyze the issue before coming to a reasoned conclusion.

NHTSA's recent experience in promulgating a seat belt standard serves as an excellent example of why it is critical to allow an appropriate amount of time for proper research and testing. Before NHTSA could come to a decision on seat belts bus crash testing was first needed to determine what kind of belt (two point or three point), which seat design and what strength of the seat anchorage was required to actually save lives. In addition, ABA contends that NHTSA's research should also include reference to countries in the European Union whose motorcoaches have long had advanced safety equipment (including seat belts) and Canada which reportedly is considering legislation similar to H.R. 7. NHTSA should have the opportunity to review those standards in making its regulatory decisions.

None of these regulatory decisions can be or should be made overnight. A loaded 45 foot motorcoach weighing almost 50,000 pounds creates a far different crash environment than that of an automobile and ABA is concerned that a rush to get any rule out will take precedence over getting the right rule out, one based on the best available research. Proponents of S. 1813

complain that ABA's opposition to the time limits for NHTSA rulemakings in the Senate bill are more about lengthening the time for implementation of the safety mandates than for safety. This is not true.

Indeed, the time limits for implementation of new mandates for bus safety provisions in H.R. 7 are stronger than the comparable time limits in the Senate bill. Unlike the Senate bill, H.R. 7 not only has a start date for implementation of the safety mandates, it also has a full fleet compliance date. The Senate bill requires that starting two years after promulgation of the final seat belt rule, all new buses manufactured after that date must comply with the new rule. Similarly, sections 6309(b)(1)(F)(9ii) and 6309(b)(3)(A) of H.R. 7 require that starting three years after issuance of the final seat belt rule, all new buses manufactured after that date must comply with the new rule. But the H.R. 7 also requires in Section 6309(b)(3)(B) that all bus operators have 50% of their fleets compliant with the new standards within 6 years of the standards effective dates and 100% of their fleets compliant with the new standards within 12 years of the effective dates. In other words, after 12 years of the effective dates, the House bill requires that all new motorcoaches operating anywhere in the United States must be in full compliance with the seat belt, roof crush, window glazing, fire protection and emergency egress standards promulgated under that bill. S. 1813 has no comparable requirement, not even for seat belts. Thus, under the Senate bill, bus operators continue to legally provide motorcoach service without seat belts after the 12 year period while they will not be legally able to do so under the provisions of H.R. 7. As an aside, a similar 12 year period was mandated when final regulations were made effective in implementing the Americans with Disabilities Act (ADA).

An important issue left out of S. 1813's bus safety provisions is a requirement that new manufacturing requirements apply prospectively to new vehicles. This is the so-called "retrofit"

issue. The Senate bill allows NHTSA to order retrofits of motorcoaches with any equipment. Such an order for equipment like seat belts would place bus operators in an unwinnable position. Bus operators can comply with requirements involving readily attachable equipment, but no bus operator can re-manufacture a motorcoach. Nor can the law enforcement community enforce such requirements out on the roads. Requirements such as new seat belt regulation that mandate conformance with crash test performance measures are inappropriate for retroactive requirements.

One issue that seems to animate the proponents of S. 1813 is their suspicion that the language in H.R. 7 relative to "occupant protection systems" could be construed to mean something other than "seat belts" thus providing a way for NHTSA to refuse to issue a seat belt rule. I want to point out that the NHTSA proceeding promulgating proposed seat belts is entitled "Occupant Crash Protection" (Docket No. NHTSA-2010-0112, 75 Fed. Reg. 50958). That proceeding cites the NTSB recommendation (H-99-47) for NHTSA to "develop performance standards for motorcoach occupant protection systems that account for frontal impact collisions, side impact collisions, rear impact collisions, and rollovers." H.R. 7 uses the same language in its direction to NHTSA (Section 6209(b)(1)(A). NHTSA indicates in the NPRM that its response to that NTSB recommendation is that "Today's NPRM would require lap/shoulder belts at each passenger seating position" (75 Fed. Reg. at 50965).

Third, there is an issue about the need for concurrency in the rulemakings. ABA believes that the NHTSA rulemakings on fire suppression and detection; emergency egress, window glazing, stability control and roof strength are related and should be treated as such as the conclusions in one rulemaking may affect all other rulemakings. ABA believes that the rulemakings should be treated as such in order to prevent one rulemaking's conclusion from

negating a prior rulemaking's conclusion or interfering with or degrading the effectiveness of other safety systems and their subsequent implementation. Our industry engineers believe that the motorcoach must be viewed as a part of a complete safety system in which one enhancement does not interfere or degrade the effectiveness of another. Testing, engineering and safety analyses must be completed on all structural changes to the vehicle to ensure that we do not cause greater problems in different accident scenarios by the changes we make to one part of the vehicle. To cite one hypothetical example, if NHTSA's testing and research determines that to enhance vehicle performance in a rollover bus windows should be strengthened and bonded to the motorcoach, that decision could impact an agency decision on how to provide adequate egress from the motorcoach. But if the decision on bus roofs has already been finalized either the agency would have to start the rulemaking process over or the industry would have to reengineer its manufacture of motorcoaches. In order to prevent this result ABA proposes and H.R. 7 includes a requirement that NHTSA accomplish its rulemakings concurrently. In our view, this provision preserves NHTSA's discretion to adopt new standards in a manner consistent with testing and analysis.

Fourth, it is ABA's hope that the bus safety provisions in H.R. 7 will encourage any NHTSA mandates to be implemented quickly into the industry. One way to do this is to provide tax credits (as well as grants and loans for small bus operators) to purchase the equipment necessary to comply with any NHTSA mandates.

To this point ABA notes that the private bus industry is in large measure a small family owned industry. The average ABA bus operator member has fewer than eight coaches (each new coach costs upwards of $500,000). I would point out that while the industry is made up of small businesses, they directly employ over six hundred thousand people and support 1 million

people and a total of $112 billion in economic activity. Motorcoach tourism is a driver of local economies providing jobs that cannot be outsourced and vital transportation links to millions of Americans.

It is clear however, that NHTSA mandates will increase the direct capital and operating costs to operators. We estimate that new vehicle mandates could increase capital costs by as much as $70,000 per bus. (A copy of our cost estimate is attached to my testimony). NHTSA estimated that the cost of retrofitting seatbelts on existing motorcoaches could cost up to $40,000 (See 75 Fed. Reg. 50958, 50979). Without the kind of financial assistance to meet the demands of this unfunded mandate ABA anticipates the bus safety proposals in S. 1813 would simply be a small business disaster and would likely force many companies out of business. In addition, while the S. 1813 supporters dispute ABA's cost estimates, (calling them "inflated") they have been unable to advance any competing cost estimate of their own. In addition, it is clear that tax credits are a means for getting new technology into an industry. It is clear to ABA that tax credits are a legitimate way to get advanced safety equipment into the motorcoach industry as quickly as possible.

Finally, ABA is concerned that the Senate bill does not have any provision for bus operator liability protection. The need for such protection is easily defended. In those cases in which the bus operator is complying with the federal mandates he or she should not be subjected to frivolous law suits for not having safety equipment for which there is no legal requirement. Thus an operator should not be sued for not having advanced window glazing when the government has no requirement or standard for such equipment. It is the same protection afforded the automobile manufacturers when air bags first came into the consumer market. The bus industry seeks nothing more than the treatment accorded other transportation modes. Such

protection is also appropriate here because it impacts small businesses and this is especially so if Congress agrees with S. 1813 that NHTSA may retroactively apply its mandates to motorcoaches that may be twenty years old or more.

ABA and our members are committed to making the safest mode of surface transportation even safer and we applaud the leadership of the House for integrating the right approach into HR. 7. ABA's differences with some of the provisions of S. 1813 should not disguise our desire for strong and robust bus safety provisions. Indeed, ABA looks forward to the conference between the House and Senate to work out the differences between the bills leading to one conference report we all can support. Before I submit to questions from the subcommittee I would like to highlight one very serious safety problem that faces our industry today that bears crucially on bus safety.

For over a decade ABA has consistently called for an increase in effective bus safety regulations, and stronger enforcement of those regulations. In 2005, 2006, 2008 and 2011 ABA testified before several House and Senate Committees regarding bus safety and the needed reforms in vehicle standards, enforcement and compliance regulations. I will state again today that inconsistent enforcement of existing regulations, the lack of training of bus safety inspectors and until very lately little attention given to bus inspections and to those who apply to be bus operators are factors which have enabled illegal carriers to operate freely in many markets. Only one out of every twenty-four commercial motor vehicle inspections involved a motorcoach. While the FMCSA has worked diligently to close this gap, doubling the number of inspections in the last two years, we still face an ongoing inspection gap and the fact that only a handful of states have creditable bus inspection programs. In addition, ABA has called for FMCSA to be given the authority to immediately shut down and if necessary impound the buses of illegal or

unsafe carriers. Furthermore, ABA does support the provision in S. 1813 (originally introduced by Senator Schumer) that calls on FMCSA to devise an easy to understand bus safety rating system within the confines of the agency's existing data for consumers to use when hiring a motorcoach.

ABA does applaud the FMCSA for some of its enforcement actions, including recent "safety sweeps" by a combined federal, state and local task force which led to the ticketing and, in some cases the removal of noncompliant buses and drivers from the road. ABA also welcomed the one-time enforcement actions in New York, New Jersey and Pennsylvania to ticket remove from the road buses in violation of basic safety regulations. But such enforcement actions are too rare. The enforcement gap is a deadly problem as ABA's data indicates that 54% of all motorcoach fatalities in the last decade (1999-2009) were accidents caused by either unsafe or illegal carriers. In other words, over half of fatalities in the last ten years have been the result of bus operators or drivers that should have never been allowed to run equipment under current federal regulations. To be clear these fatalities should have never occurred and could have been avoided if current law had been enforced.

In closing I would like to invite you to a special event that the ABA, the District of Columbia Department of Transportation and Destination D.C. are hosting on March 24, 2012. These organizations are collaborating to provide Members of Congress, staff and the general public with an opportunity to learn more about the motorcoaches that bring millions of people to D.C. for events such as the upcoming National Cherry Blossom Festival. Our "Board a Bus" event will take place during the National Cherry Blossom Festival's Family Day at the National Building Museum on Saturday, March 24, 2012 from noon to 2 p.m.

Thank you Chairman Bono Mack, I am happy to answer any questions you or any of the members of the subcommittee may have for me.

Respectfully submitted

Peter J. Pantuso, CTIS
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PER-BUS ESTIMATED COSTS FOR A NEW BUS OF 18 VEHICLE MANDATES IN S. 453

TOTAL ESTIMATED PER-BUS MANDATE COST

$60,000 – $70,000

TOTAL ESTIMATED MANDATE COST FOR A 30 BUS FLEET

$1,800,000 -- $2,100,000

ITEMIZED COSTS OF S. 453 VEHICLE MANDATES:

1. Three point seatbelts at every seat, Section 3(a)(1)

$15,000.00 (including enhanced compartmentalization; retrofit would be more than double because new seats, strengthened floors required)

2. Advanced window glazing in each window, Section 3(a)(3)

$7,000.00 (Tempered multi-layer)

3. Installation of improved firefighting equipment, Sections 3(a)(5), 4(a)(5), 4(b)

$6,000.00 (Kiddie fire detection and suppression system)

4. Improved compartmentalization (including enhanced seat designs), Sections 5(a)(1), 5(b)

Included in cost estimate for 3 point belt. Seat back raised 4 inches and foam added

5. Enhanced interior impact protections, Sections 5(a)(2), 5(b)

$3,000 (sidewall paneling only; seat costs covered in #1 above)

6. Enhanced stability technology, including electronic stability control, roll stability control, and torque vectoring, Section 3(a)(4)

$3,000 (retrofit cost would be triple)

7. Improved roof strength and crush resistance that substantially improves resistance to deformation and intrusion, Section 3(a)(2)

$8,000-$10,000 (structural reinforcements to roof bows and vertical supports)

8. Enhanced fire hardening or fire resistance of motorcoach exteriors to prevent fire and smoke inhalation injuries to passengers, Sections 4(a)(1), 4(b)

$ 13,000

This includes flame hardening of exterior body panels, both composition and geometry; hazardous location electrical fixture and connection hardening; hardening and relocating exhaust outlets from engine and supplemental heater to mitigate flame propagation

9. Enhanced motorcoach interiors to improve resistance of interiors and components to burning, inhalation of toxic smoke and permit sufficient time for the safe evacuation of passengers, Sections 4(a)(2), 4(b)

$11,000

The main cost here is to go over and above FMVSS 302 standards to a "Flame Block" material as the covering which is 3X the cost of the seat material. Incremental costs to do all seats would be $4,000.00. To "Flame Retard" the balance of the interior would be another $7,000.00, for a total of $11,000.00.

10. Improved fuel systems to suppress fuel-fed fires, Sections 4(a)3, 4(b)
$1,500 to shield the fuel system

11. Improved emergency evacuation designs -- emergency exit window, door and roof hatch, Sections 4(a)(4)(A), 4(b)

Mrs. BLACKBURN. I thank the gentleman.
Mr. PARRA.

STATEMENT OF VICTOR S. PARRA

Mr. PARRA. Thank you, Chairman Blackburn, Ranking Member Butterfield, and members of the committee. I appreciate you calling this hearing today and the opportunity to appear before this committee and represent the bus and motorcoach industry. This committee has a long and distinguished record of promoting vehicle safety and lies at the center of this Nation's discourse on best practices to achieve safe and efficient travel.

On behalf of the United Motorcoach Association it is my goal to provide the committee our perspective on the Bus and Motorcoach Safety Provisions included in the American Energy and Infrastructure Jobs Act, H.R. 7, as reported by the House Transportation and Infrastructure Committee, and those of S. 1813, the Moving Ahead for Progress in the 21st Century, as passed by the Senate last week.

Founded in 1971, United Motorcoach Association is the Nation's largest association of bus and motorcoach companies and industry suppliers with over 1,200 members located across North America. Membership represents the full spectrum of bus and motorcoach operations from small family charter and tour to nationwide schedules and commuter service operations.

The United States Small Business Administration estimates that over 90 percent of the privately-owned bus and motorcoach companies meet the definition of a small business. Motorcoaches have one of the strongest safety records amongst all modes of transportation with an average of only 20 fatalities a year. While even on fatality is one fatality too many, the motorcoach industry operates in an environment that yields over 32,000 fatalities annually, representing less than one-tenth of 1 percent of those fatalities.

UMA believes the best way to ensure improved safety is to enforce existing Federal motor carrier safety regulations and support safety initiatives that are backed by science, research, and testing.

While the—with the life expectancy well over 20 years, a modern motorcoach represents a financial investment of $500,000 to $600,000. Consequently, our industry demands vehicles that offer the best known design and construction that protects their passengers operationally from unforeseen accidents. UMA steadfastly welcomes changes in motorcoach occupant protection; however, those changes must be founded by science and testing by appropriate Federal agencies. Any mode of transportation that provides 720 million passenger trips annually demands the best science and regulations our Federal agencies can produce.

We believe H.R. 7 provides the most rational and reasonable approach to enhanced bus and motorcoach safety. Most of its provisions were largely based on the bill authored by Congressman Bill Shuster, H.R. 1390, which we strongly support, because it recognizes the complexities of motorcoach engineering and operations, mandating that science must drive policy and not the reverse.

H.R. 7 incorporates the long-standing recommendations of the National Transportation Safety Board and is consistent with the Secretary of Transportation's Motorcoach Safety Action Plan. In-

deed, NHTSA is well on its way with crash tests that have resulted in proposed rulemaking, requiring three-point seatbelts for every passenger. UMA supports this proposed rulemaking.

Furthermore, our industry manufacturers have been proactive in installing seatbelts. In fact, in a study that we did with our motorcoach manufacturers, we learned that about, in fact, 100 percent of the motorcoaches put in service in the last year included seatbelts.

In contrast, UMA strongly opposes the Bus and Motorcoach Safety Provisions included in this 1813. We believe the safety provisions are an example of extreme government overreach and will not lead to increased motorcoach safety. Many of its mandates are overlapping, unnecessary, and are currently under, already under research and testing by Federal agencies.

Moreover, many of the mandates are simply unworkable within the timeframes allotted. The motorcoach tour and travel industry is an important economic engine in our country. It contributes nearly $112 billion in total economic activity in the United States. At a time when the motorcoach industry is struggling to recover in this economy, this is not a time to impose unnecessary and excessive mandates on industry with an outstanding safety record.

In conclusion, you may believe that the contrast between the Bus and Motorcoach Safety Provisions in the House bill and Senate bill could not be more striking, and we appreciate this committee's focus on that. UMA stands ready to contribute to ongoing efforts to enhance safety of bus and motorcoach operations.

Thank you, Chairman Blackburn.

[The prepared statement of Mr. Parra follows:]

STATEMENT OF VICTOR S. PARRA

PRESIDENT & CEO, UNITED MOTORCOACH ASSOCIATION

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

HOUSE ENERGY AND COMMERCE COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 22, 2012

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Chairman Bono-Mack, Ranking Member Butterfield, Members of the Committee. I appreciate you calling this hearing today and the opportunity to appear before the Committee and represent the bus and motorcoach industry in my testimony. This Committee has a long and distinguished record of promoting vehicle safety and lies at the center of our nation's discourse on the best practices to achieve risk acceptable and efficient travel.

On behalf of the United Motorcoach Association (UMA), it is my goal to provide the Committee our perspectives on the bus and motorcoach safety provisions included in the American Energy and Infrastructure Jobs Act of 2012 (HR 7) as reported from the House Transportation and Infrastructure Committee and those of S. 1813, the Moving Ahead for Progress in the 21st Century (MAP-21) as passed by the Senate last week.

Founded in 1971, the United Motorcoach Association (UMA) is the nation's largest association of bus and motorcoach companies and industry suppliers with over 1,200 members located across North America. Membership represents the full spectrum of bus and motorcoach operations; from small family charter and tour - to nationwide scheduled and commuter service operations. The United

States Small Business Administration estimates over 90% of all privately owned bus and motorcoach companies meet the definition of small business.

Motorcoaches have one of the strongest safety records amongst all modes of transportation with an average of only 20 fatalities a year. While even one fatality is one too many, the motorcoach industry operates in an environment that yields over 30,000 fatalities annually; representing less than one-tenth of one percent of those fatalities. UMA believe the best way to ensure improved safety is to enforce existing Federal Motor Carrier Safety Regulations for our vehicles and drivers and support initiatives that improve safety that are backed by science and testing. The traditional definition of safety is the absence of risk; and, while no form of modern transportation is absolutely free of risks, the risks associated with motorcoach travel are largely mitigated through appropriate operations, vehicle design and construction.

It should be noted that every motorcoach operating today on our Nation's highways is required to be built to the Federal Motor Vehicle Safety Standards, promulgated by the National Highway Traffic Safety Administration (NHTSA). Motorcoaches represent a significant investment by the companies that purchase them. With a life expectancy well over twenty years, a modern motorcoach represents a financial investment of over $500,000 with many now approaching $600,000. For the Nation's motorcoach operators, this substantial investment is always linked to its appropriate operations, vehicle design and construction.

The Nation's motorcoach companies demand vehicles that offer the best known design and construction that protects their passengers operationally and from unforeseen accidents. UMA has steadfastly welcomed changes in motorcoach occupant protection; however, those changes must be founded by sound science and testing by appropriate Federal agencies. Any mode of transportation that provides 720 million passengers trips annually, connecting people everyday to essential jobs, careers, education healthcare and tourism, commands the best science and regulations our Federal agencies can produce.

UMA believes the American Energy and Infrastructure Jobs Act of 2012,(HR 7), as reported by the House Transportation and Infrastructure Committee, provides for the most rational and reasonable approach to enhanced bus and motorcoach safety. HR 7's bus and motorcoach safety provisions have been the subject of hearings and discussions amongst the industry and interested parties for over four years. Most of its bus and motorcoach safety provisions were largely based on a bill authored by Congressman Bill Shuster, HR 1390, the Bus Uniform Standards and Enhanced Safety Act of 2011, which we strongly support. This bipartisan legislation recognizes the complexities of motorcoach engineering and operations; mandating that science must drive policy rather than unsubstantiated conclusions.

HR 7 contains language giving the Secretary discretion on retrofit requirements and mandates that if required the Secretary must find the equipment can be

certified by the original equipment manufacturer as meeting requisite performance requirements, and is readily attachable subsequent to initial manufacturer by the operator and enforced through readily visible inspection requiring no disassembly. This is important so that any retrofit requirement would not result in a complete restructure of the bus. While implementation is taking place, it is also vital that operators have in place liability protection for existing vehicles in their fleet as their fleets are replaced with new vehicles; another important feature of HR 7.

HR 7 incorporates the longstanding recommendations of the National Transportation Safety Board and is also consistent with the Secretary of Transportation's Motorcoach Safety Action Plan. Indeed, NHTSA is already well under way with crash, as well as other, tests. Some of these tests, initiated under the previous Administration, have resulted in proposed rulemaking that would revise the long-standing position that required passive occupant protection in the form of compartmentalization, in favor of requiring three-point seatbelts for every passenger. UMA supports the proposed rulemaking and NHTSA has indicated we will likely see final rulemaking regarding three-point seatbelts later this year, which they estimate could save as many as eight lives annually.

UMA also understands there may be additional proposed rulemaking later this year from NHTSA on other areas of motorcoach passenger occupant protection. HR 7 will not hinder NHTSA's current progress as it respects the need for science based outcomes rather that prescriptive mandates and will assure the

public of rational and obtainable timelines that incorporate scientific findings that have "real world" applications.

In anticipation of final rulemaking, scientific data such as crash pulses released by NHTSA, and advancements in technology, manufacturers are currently offering risk mitigating devices including seatbelts, electronic stability control, tire pressure monitoring and fire suppression systems. A recent survey coordinated by UMA of motorcoach manufacturers indicates the number of recently manufactured motorcoaches with seatbelts is approaching 100%; and other safety related devices are rapidly growing in numbers as well.

In contrast, UMA strongly opposes the bus and motorcoach safety provisions included in S. 1813, the Moving Ahead for Progress for the 21st Century (MAP-21) as passed by the Senate law week. While we commend the Senate for moving forward on a surface transportation reauthorization bill, the motorcoach safety provisions as reported by the Senate Commerce Committee and included in the final legislation, is an example of extreme government overreach and will not lead to increased motorcoach safety. Many of its mandates are overlapping, unnecessary and are currently undergoing research and testing by responsible Federal agencies. Many of the mandates are simply unworkable as the time frames in which the amendment would require each mandate to be accomplished are not consistent with proceeding in a prudent and logical fashion.

The Senate bill would require 18 separate mandates estimated to increase the cost of a new motorcoach by $60,000 – $70,000 per new vehicle. The potential structural and reengineering retrofit mandates for seatbelts alone is estimated by the National Highway Traffic Safety Administration (NHTSA) to cost as much as $40,000 per bus (see 75 Fed. Reg. 50958, 50979.) According to NHTSA the potential retrofit requirement of seatbelts as envisioned by the amendment could cost the industry as much as $1,173,000,000 (see 75 Fed. Reg. 50958, 50979).

The bus and motorcoach industry is an important economic engine for the country. Our members provide transportation for 720 million passengers trips a year. As previously stated, 90% of our industry consists of small businesses. The motorcoach tour and travel industry contributes nearly $112.7 billion in total economic activity in the United States. At a time when the motorcoach industry is struggling to recover in this economy, this is not the time to impose unnecessary and excessive mandates on an industry with an outstanding safety record.

In conclusion, UMA believes the contrasts between the bus and motorcoach safety provisions in the House bill and the Senate bill could not be more striking and we appreciate this Committee's focus on them. UMA appreciates the opportunity to submit testimony regarding these matters and stands ready to contribute to on-going efforts to enhance the safety of bus and motorcoach operations.

Mrs. BLACKBURN. I thank you, and Ms. Claybrook, you are recognized.

STATEMENT OF JOAN CLAYBROOK

Ms. CLAYBROOK. Thank you very much, Madam Chairman and members of the subcommittee. My name is Joan Claybrook. I am here representing the Advocates of Highway and Auto Safety, a coalition of consumer health safety and insurance companies.

For the past 20 years passage of a Surface Transportation Bill under the leadership of both Republicans and Democrats has resulted in the adoption of some of the most significant advances in highway and auto safety that have literally saved thousands of lives prevented millions of injuries, saved billions of dollars in healthcare and societal costs, and this year's bill should be no different.

For these reasons we want to move forward with this unfinished agenda that we have spelled out in our full statement. The Senate passed Transportation Bill S–1813 or MAP–21 as it is called, adopted with strong bipartisan support, includes many important vehicle safety protections for families whether they are traveling by car or by intercity motorcoach.

The MAP Bill which we support requires NHTSA to issue new safety standards to ensure complex electronic systems that control the vehicle meet minimum quality and safety concerns as they must today in aircraft. Other provisions would require vehicle brake systems that can always overrun accelerator control and foot pedals for the brake and accelerator that are not located too closely together.

Additionally, the bill would ensure consumers have better access to agency information about safety-related data, recalls, and defects. Other provisions addressed, whistleblower protection, conflicts of interest by former NHTSA employees, and corporate accountability for document submissions to ensure that the government safety investigations proceed without impediment.

It also directs agency actions to better protect children inside impact crashes, improve child-restraint anchoring systems, increase seatbelt usage with rear seatbelt reminders, and address the risk of horrific death among young children inadvertently left behind in hot vehicles.

Nearly 725 million motorcoach trips are taken annually, almost matching the number of airline trips taken annually, and as one of my colleagues here said, motorcoaches stay on the highway for about 20 years. So when you make an improvement of safety in a motorcoach, it is going to do a safety protection for people day after day, year after year after year. And the total cost the Senate bill is 10 cents a trip. I am sure that every American would be willing to pay 10 cents a trip to be assured of the safety protections in that Senate bill.

Unfortunately, motorcoaches are not held to the same high safety standard as passenger vehicles or commercial aviation today. Because motorcoaches carry up to 55 passengers, when a crash does occur, it is both catastrophic and it is deadly. Attached to my statement is a chart describing over 178 motorcoach crashes since 1990, that have killed 317 people and injured 3,000. For more than 40

years the National Transportation Safety Board, that we rely on for these issues, has investigated fatal motorcoach crashes and issued numerous recommendations, many on the agency's most wanted list, most wanted to be installed in new vehicles.

Yet these recommendations to improve occupant protection in a crash have been ignored or delayed at the Department of Transportation. We know what to do to protect them, the people who ride in these buses, an enactment of the MAP–21 directs DOT to take actions with many reasonable deadlines on many of the most critical NTSB recommendations.

The motorcoach safety language adopted by the Senate includes what we call the Greyhound Compromise, which was negotiated and agreed to last summer. Not only did Greyhound endorse the occupant protection provisions of the bill, but Mr. David Leach, Greyhound CEO, stood with family members, Senators of both parties, and safety groups and stated that these improvements should be adopted industry wide and that Greyhound supported, "the strongest safety legislation," not, "the weakest."

The most effective legislation to correct deadly and dangerous deficiencies is contained in MAP–21. My prepared statement goes into great detail about this and compares the provisions with H.R. 7.

Unfortunately, Motorcoach Safety Provisions in H.R. 7 are not as comprehensive or specific and include unnecessary delays and protracted deadlines. On the other hand, the Greyhound Compromise requires timely action on key NTSB recommendations that will ensure passengers are protected with seatbelts, anti-ejection window glazing, roof crush protection, tire pressure monitoring systems, and roll-over protection—prevention technology. And I would say that roll over is the source of most severe cause of injury in over 50 percent of these crashes.

These safety technologies are affordable costs, and as I mentioned a dime per passenger trip and are already available as optional equipment on—by motorcoach manufacturers who do not oppose the Senate bill. There is no excuse for delaying any longer. We strongly urge the subcommittee to support the provisions of MAP–21.

Thank you so much for the opportunity to testify.

[The prepared statement of Ms. Claybrook follows:]

Summary of Testimony by Joan Claybrook
Consumer Co-Chair, Advocates for Highway and Auto Safety on
"Motor Vehicle Safety Provisions in the House and Senate Highway Bills"

Unfinished Safety Agenda

- In 2010, nearly 33,000 people were killed and more than 2.2 million were injured on our nation's highways at an annual cost to society exceeding $230 Billion. Motor vehicle crashes remain the leading cause of death for all Americans between ages 5 and 34.
- The human and economic toll on families and society is staggering and unnecessary.
- Unless Congress enacts a strong safety agenda as part of the surface transportation authorization bill, it is expected that more than 150,000 people will be killed in crashes and over 10 million will suffer injuries that can be serious, debilitating and costly during the next five years.
- There is strong public support for improving motor vehicle and motorcoach safety.

Urgent Action Needed

- The Senate passed its surface transportation authorization bill, the Moving Ahead for Progress in the 21st Century Act (MAP-21), S.1813, in a bipartisan vote of 74 to 22.
- MAP-21 includes a strong motor vehicle safety title and motorcoach safety provisions that will save lives, reduce injuries, and cut costs directly attributed to highway crashes. We urge the House to adopt the safety provisions in the MAP-21 legislation.
- Motorcoaches are an affordable mode of transportation for millions of families, students, seniors and church groups, who make nearly 750 million trips each year. Yet, motorcoaches are not being held to the same high safety standard as passenger vehicles or commercial aviation. Since 1990, there have been at least 178 motorcoach crashes and fires, resulting in about 317 deaths and more than 3,000 injuries. Crashes are increasing—last year there were 24.

Motor Vehicle Safety

- MAP-21 includes provisions to improve motor vehicle safety, provide consumers with better access to vehicle safety data and information, render agency activities more transparent and provide more accountability for safety defect and enforcement programs under federal law.
- MAP-21 also contains key passenger and child passenger safety priorities, including a brake override standard, a pedal placement standard, a keyless ignition standard, an enhanced seat belt reminder system, a rear seat belt reminder system, and updated child safety seat requirements.

Motorcoach Occupant Safety

- For 40 years, the National Transportation Safety Board (NTSB) has issued recommendations, many on its "Most Wanted List," that have been ignored by the U.S. Department of Transportation (DOT). These include requiring basic safety systems like seat belts, anti-ejection window glazing, enhanced roof strength, and tire pressure monitoring systems.
- MAP-21 includes the "Greyhound Compromise"—revised Motorcoach Enhanced Safety Act (MESA), H.R.873/S.453, language negotiated by Democratic and Republican Senators, families who have lost loved ones in motorcoach crashes, safety groups, and the leading motorcoach passenger carrier, Greyhound Lines Inc.
- The motorcoach safety provisions in MAP-21 are more comprehensive than those in H.R. 7 and ensure agency action on specific safety requirements within reasonable deadlines.

Testimony of Joan Claybrook

Consumer Co-Chair, Advocates for Highway and Auto Safety and

former Administrator, National Highway Traffic Safety Administration

On

Motor Vehicle Safety Provisions in the House and Senate Highway Bills

Before the

Commerce, Manufacturing and Trade Subcommittee

of the Energy and Commerce Committee

U.S. House of Representatives

March 22, 2012

Good morning Madame Chairman Bono Mack, Ranking Member Butterfield, and Members of the Commerce, Manufacturing and Trade Subcommittee of the House Energy and Commerce Committee. I am Joan Claybrook, Consumer Co-Chair of Advocates for Highway and Auto Safety (Advocates) and former Administrator of the National Highway Traffic Safety Administration (NHTSA). Advocates is a coalition of leading consumer, health, safety, and medical organizations and insurers working together to advance federal and state programs and policies that prevent motor vehicle deaths, injuries and costs. I appreciate being invited to testify before you today on the Motor Vehicle Safety Provisions in the House and Senate Highway Bills.

Introduction

The House Energy and Commerce Committee has a long bi-partisan history of advancing laws to improve motor vehicle safety including enactment of the 2000 TREAD Act[1] and the 2005 multi-year, multi-modal surface transportation authorization bill known as SAFETEA-LU.[2] In fact, in 2005, Subcommittee Chair Bono Mack, working with Rep. Ed Markey (D-MA), organized support among other Energy and Commerce Committee Members leading to enactment of safety standards addressing vehicle rollover prevention, side impact crash protection, occupant ejection prevention, roof crush strength, 15 passenger van safety and child safety. These standards already are saving lives and preventing injuries because those lifesaving and cost-saving safety technologies have become standard equipment in all passenger vehicles. However, there is still

[1] Transportation Recall, Enhancement, Accountability and Documentation Act of 2000, Pub. L. 106-414 (Nov. 1, 2000).
[2] Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users, Pub. L. 109-59 (Aug. 10, 2005).

an unfinished safety agenda that requires the same bi-partisan attention and leadership. My testimony today will address these priorities.

In 2010, nearly 33,000 people were killed and more than 2.2 million were injured on our nation's highways at an annual cost to society exceeding $230 Billion. Motor vehicle crashes remain the leading cause of death for all Americans between the ages of five and 34. That is why we continue to advocate for commonsense and cost-effective safety programs and standards that will further reduce the mortality and morbidity toll.

In addition, motorcoaches have become the over-the-road passenger airlines for millions of families, students, seniors and church groups, with nearly 750 million trips taken each year. Between 2009 and 2010, curbside motorcoach operators experienced a ridership growth of one third.[3] Yet, motorcoaches are not being held to the same high safety standard as passenger vehicles or commercial aviation. Motorcoach drivers are not required to meet the rigorous medical and safety requirements of airline pilots, and most of the vehicle safety design and performance standards long ago required for passenger vehicles are not yet required for motorcoaches. In 2011, there were at least 24 motorcoach crashes—far surpassing the annual average—resulting in 34 fatalities and 467 injuries. Since 1990, there have been at least 178 motorcoach crashes and fires, resulting in about 317 deaths and more than 3,000 injuries. Meanwhile, safety recommendations of the National Transportation Safety Board (NTSB) languish or are ignored for decades contributing to the severity of these crashes. I have

[3] "The Intercity Bus: America's Fastest Growing Transportation Mode--2010 Update on Scheduled Bus Service," Joseph P. Schwieterman and Lauren Fischer, DePaul University, December 2010, available at http://libraryarchives.metro.net/DPGTL/harvested/2010_depaul_intercity_Bus_study.pdf.

appended a list of recent motorcoach crashes to my testimony. Clearly, more could and should be done to protect the motoring public.

The Senate surface transportation authorization bill, the Moving Ahead for Progress in the 21st Century Act (MAP-21), S.1813, includes strong motor vehicle and motor carrier safety titles. These safety titles—the Motor Vehicle and Highway Safety Improvement Act of 2011 (Mariah's Act), S.1449, and the Commercial Motor Vehicle Safety Enhancement Act of 2011, S.1950—were passed with strong bipartisan support last week in the Senate with an overwhelming vote of 74 to 22. When enacted, these provisions have the potential to prevent passenger vehicle and commercial motor vehicle (including motorcoach) crashes, save lives, reduce injuries and save billions of dollars in costs directly attributed to highway crashes.

My testimony today will address the documented need to improve motor vehicle and motorcoach occupant safety, the technologies and remedies that are readily available to reduce death and injury on our nation's highways, and the importance of strengthening oversight and accountability of industry operations in order to ensure that we have safer vehicles, safer carriers and safer drivers. I will discuss the differences between the House and Senate safety proposals, and urge you to support and pass the motor vehicle and motorcoach safety measures in the MAP-21 legislation.

Motor Vehicle Safety

Last year, the Senate Commerce, Science and Transportation Committee proposed and passed Mariah's Act, a bi-partisan bill that is strongly supported by a broad group of consumer, safety,

medical and public health organizations as well as families that have lost loved ones in crashes. Mariah's Act has been folded into the Senate MAP-21 highway bill as the Motor Vehicle and Highway Safety Improvement Act of 2012. The Act includes provisions to improve motor vehicle safety, provide consumers with access to vehicle safety data and information, renders agency activities more transparent and provides more accountability for safety defect and enforcement programs under federal law.[4]

Passenger Safety Priorities

Many of the motor vehicle safety provisions in the MAP-21 bill should be familiar to this Committee because they were the subject of numerous congressional hearings held by the Energy and Commerce Committee, as well as the Senate Commerce, Science and Transportation Committee, in the 111th Congress. A number of similar provisions were included in the House Energy and Commerce Committee bill, the Motor Vehicle Safety Act of 2010, H.R. 5381, to reauthorize the National Highway Traffic Safety Administration (NHTSA) that was not enacted in the last Congress.

MAP-21 would require action by NHTSA to advance significant safety concerns in passenger vehicles such as new safety standards to ensure that complex electronic systems that control the vehicle meet minimum quality and safety standards (Sec. 31404); that vehicle brake systems can always override the accelerator control (Sec. 31402); that, in an emergency, push-button on-off switches that are part of keyless ignition systems can be turned off in the same manner in every make and model (Sec. 31405); and that foot pedals for the brake and accelerator are not located

[4] National Traffic and Motor Vehicle Safety Act of 1966, P.L. 89-563 (1966).

too close together (Sec. 31403). These were among the pivotal issues considered in bi-partisan hearings and investigations on sudden acceleration during the 111th Congress. Regardless of whether one believes that the underlying safety issue was caused by a vehicle malfunction or driver error, these new regulations will ensure that there is no future recurrence of the problem and that every motorist in every vehicle is protected.

Other passenger safety provisions in MAP-21 would permit manufacturers to provide more effective seat belt reminder systems for front seat occupants in order to increase the national seat belt use rate (Sec. 31202). This is critically important to safety even though most vehicle occupants already buckle up on a regular basis. The national seat belt use rate was 85 percent in 2010[5], however, the 15 percent that did not use seat belts accounted for half of all occupant fatalities. In fact, there were 11,426 fatalities among unbelted occupants in 2010.[6] The Senate bill also requires that event data recorders be installed in all passenger vehicles to provide objective data on the performance of vehicle systems in the event of a crash (Sec. 31406). Finally, the bill extends the installation of highly effective electronic stability control technology, already required on passenger vehicles, to improve truck safety by reducing loss of control crashes (Sec. 31408). Most of the 3,675 people killed in large truck crashes in 2010 were occupants of passenger vehicles or bystanders. MAP-21 requires a final rule and specifically mentions electronic stability control systems, while the provision in the House surface transportation authorization bill, the American Energy and Infrastructure Jobs Act of 2012, H.R.

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[5] *Seat Belt Use in 2010 - Use Rates in the States and Territories*, Traffic Safety Facts, Crash Stats, DOT HS 811 493, NHTSA (July 2011).

[6] *2010 Motor Vehicle Crashes: Overview*, Traffic Safety Facts, Research Note, DOT HS 811 552, NHTSA (Revised Feb. 2012).

7, only directs a study and then refers generally to crash avoidance technologies without specifying electronic stability control systems.

Child Passenger Safety

MAP-21 contains several important child passenger safety provisions that will improve the safety of young children is the rear seat. The bill requires new standards to protect children secured in child seats in both front and side impact crashes (Sec. 31501). The bill also requires that the NHTSA update the requirements for the belt system to secure child seats in vehicles, otherwise known as LATCH[7] (Sec. 31502). In addition, the Senate bill would require rear seat belt reminders to encourage passengers, especially children in booster seats and teenagers, to buckle up in the rear seat (Sec. 31503). Another provision would require a study of the technology available to detect whether an infant has been left in the rear seat and remind the driver when they exit the vehicle (Sec. 31504).

Consumer Information

MAP-21 assists consumers in their efforts to access publicly available government information on safety recalls by improving the search features of NHTSA's public databases (Sec. 31301), and by ensuring that software upgrades and other safety-related vehicle information provided by manufacturers to the agency is publicly available (Sec. 31303). The bill also provides that unless early warning data submitted to the government is exempt, it should be disclosed to the public (Sec. 31304). In addition, the bill would place a consumer information brochure in the glove compartment of each new vehicle advising the owner as to how to report safety problems to the agency (Sec. 31306).

[7] Lower anchorages and tether for children (LATCH), federal motor vehicle safety standard No. 225.

Agency Accountability

Ensuring greater accountability related to safety issues is another area addressed in the MAP-21 legislation. One provision requires that a corporate safety official at each manufacturer take responsibility for the accuracy of information supplied to the government in response to official requests as part of a safety defect or compliance investigation (Sec. 31305). This is to ensure that information submitted to NHTSA as part of a formal investigation cannot later be repudiated. The bill establishes a special hotline for vehicle manufacturer and dealership employees to report safety defect information (Sec. 31302), and affords employees who are willing to come forward with information on safety defects or noncompliance whistle blower protection to protect them against wrongful discharge or discrimination by their employer (Sec. 31308). In addition, the bill establishes clear rules to prohibit NHTSA safety officials from attempting to influence their former colleagues for two years after leaving the agency for an industry job (Sec. 31309). This provision does not prevent agency personnel from obtaining employment in the auto industry but rather requires that former agency officials refrain from trying to influence the agency, and former agency colleagues, on safety matters they worked on while employed at NHTSA. This "cooling off" period is essential to assure the public that unfair advantage, bias and undue influence are not brought to bear on sensitive defect and standards enforcement safety investigations.

The House surface transportation bill, in whatever form it takes, should also address these critical safety issues. We urge Congress to provide the public with the assurance that consumers have access to relevant information about the safety of their vehicles, that the agency is transparent in

all respects in its activities and dealings with the public and the industry, that motor vehicles are safe and free from defects, and that the agency will act responsibly and the industry will be held accountable if safety problems are identified.

Motorcoach Occupant Safety

MAP-21 also includes motorcoach safety provisions that will direct NHTSA action to advance occupant protection on newly manufactured motorcoaches within five (5) years. For over 40 years, the NTSB has investigated fatal motorcoach crashes and issued numerous recommendations, many of which are included on the Board's "Most Wanted List," that have largely been ignored or delayed by the agency. These essential safety features and systems, readily available as standard equipment in passenger vehicles and some newly-manufactured motorcoaches, include seat belts, roof crush protection, tire pressure monitoring systems and anti-ejection window glazing. Let me briefly highlight the differences between the MAP-21 motorcoach safety requirements and those in H.R. 7, the House surface transportation authorization proposal.

The Senate bill includes many of the significant provisions in the Motorcoach Enhanced Safety Act of 2011 (MESA), S. 453, a bipartisan bill sponsored by Sen. Hutchison (R-TX) and Sen. Brown (D-OH). A companion bill, H.R. 873, was introduced in the House by Rep. John Lewis (D-GA) and co-sponsored by others. The MESA bill, as adopted in MAP-21, was the result of negotiation and compromise among Democratic and Republican Senators, families who have lost loved ones in motorcoach crashes, safety groups, as well as the leading motorcoach passenger carrier Greyhound Lines Inc. Not only did Greyhound endorse the occupant protection

provisions and language contained in MAP-21, the Chief Executive Officer of Greyhound, Mr. David Leach, stood shoulder to shoulder with families of motorcoach crash victims and survivors, safety advocates, and Democratic and Republican Senators when he enthusiastically stated, "[w]e believe such improvements should be adopted industrywide[.]"[8] He went on to say that "[w]e should support the strongest safety legislation that we can, not the weakest legislation we can[.]"[9] In fact, the revised MESA bill is known as the "Greyhound Compromise" in light of Greyhound's unequivocal endorsement of the MAP-21 provisions on motorcoach safety.

Sensible Deadlines and Lifesaving Results

The most effective legislation to correct deadly and dangerous motorcoach safety deficiencies is contained in the Senate-passed legislation, S. 1813, and not H.R. 7. The Greyhound Compromise language provides a comprehensive approach to occupant protection and certain action on specific safety requirements recommended by the NTSB. The requirements in the MAP-21 bill will accomplish the goal of improving safety in just three to five years whereas provisions in H.R. 7 allow unnecessary and unacceptable delays which would result in most of the safety standards not being fully effective until six years after the date of enactment of H.R. 7. The motorcoach safety provisions in MAP-21 provide, for example, that all new motorcoaches must be equipped with seat belts at all seating positions three years from the date on which the bill is enacted. By contrast, H.R. 7 does not actually require that seat belts be installed. Instead, the House bill requires improved "occupant protection systems" which could mean better seats and compartmentalization, but not necessarily seat belts. In fact, H.R. 7 states that the standards

[8] "Greyhound Will Support Bus Equipment Mandates, CEO Says," Jeff Plungis – Bloomberg- July 14, 2011 available at http://www.bloomberg.com/news/2011-07-14/greyhound-will-support-bus-equipment-mandates-ceo-says-1-.html.

[9] *Id.*

"*may* include seat belts *or other* occupant protection systems."[10] This makes it quite clear that a final rule issued under H.R. 7 need not include a seat belt requirement, and that seat belts are left to the discretion of the agency. Although the agency has issued a proposal to require seat belts on motorcoaches, no final rule has been issued yet. Without the force and effect of a congressional statutory requirement, the agency could decide to withdraw the proposal or to proceed in a different manner. Australia has mandated three-point belts at all seats on motorcoaches since 1994 and the European Union has mandated that passengers must wear seat belts on motorcoaches since 2008.

Even assuming that the H.R. 7 provision includes seat belts as part of the occupant protection requirement, it does not require that a single seat belt be installed in a motorcoach for six years. The provision goes on to allow motorcoach owners to take another six years to equip only half of their fleet with seatbelts, and then another six years to equip the other half of each fleet. As a result, under H.R. 7, seat belts would not be required on all motorcoaches until 18 years have elapsed from the date of enactment.

Other examples abound that reflect the certainty and specificity in the Senate legislation in directing agency action to protect motorcoach passengers in a crash. For instance, MAP-21 requires "advanced glazing to be installed in each motorcoach portal[,]"[11] where H.R. 7 states more generally that the Secretary shall revise window glazing standards without specifying precisely the action that needs to be completed."[12] The House bill leaves open whether all portals and windows on each new motorcoach would be equipped with advanced safety glass to protect

[10] H.R. 7 Sec. 6309(b)(1)(A)(ii). (Emphasis added.)
[11] MAP-21 Sec. 32703(b)(2).
[12] H.R. 7 Sec. 6309(b)(1)(C).

passengers against ejection in a rollover. Likewise, the Senate bill specifically identifies the necessity to prevent and mitigate fires by addressing flammability of exterior components, smoke suppression, wheel well fires and automatic fire suppression,[13] but H.R. 7 fails to list or suggest any specific areas of concern or focus.[14] The list goes on and in each and every instance where there is a provision covering a similar issue, including roof strength, emergency evacuation and collision avoidance, the Senate MAP-21 provisions afford more direction, based on completed research and available technology, than H.R. 7.

Furthermore, MAP-21 includes a number of important safety items not found in H.R. 7. For example, to prevent rollover crashes the Senate bill requires "stability enhancing technology, such as electronic stability control and torque vectoring, to reduce the number and frequency of rollover crashes among motorcoaches."[15] Electronic stability control (ESC) was specifically mentioned in SAFETEA-LU, the 2005 surface transportation authorization bill. Because of this legislation NHTSA already has issued a final rule that has resulted in the installation of ESC systems on millions of new passenger vehicles. This technology has proven to be an invaluable safety technology on passenger vehicles and will prove highly effective on motorcoaches and other commercial motor vehicles as well. However, H.R. 7 does not mention ESC at all, stating only that the "Secretary shall *study* the effectiveness of crash avoidance technologies as countermeasures *to lessen the impact of distracted driving* in commercial motor vehicles."[16] Moreover, the language linking crash avoidance technologies such as ESC only to distracted driving may limit the use of this effective safety technology. In short, ESC is an essential crash

[13] MAP-21 Sec. 32704(1), (2), (3) & (4).
[14] H.R. 7 Sec. 6309(b)(1)(D).
[15] MAP-21 Sec. 32703(b)(3).
[16] H.R. 7 Sec. 6310. (Emphasis supplied).

avoidance technology for motorcoaches and large trucks regardless of the reason for potential loss of control of the vehicle. By not specifying ESC, H.R.7 fails to address a key factor in fatal motorcoach crashes.

In addition, MAP-21 requires direct tire pressure monitoring systems,[17] a tire safety performance standard,[18] and improved fire extinguishers.[19] H.R. 7 has no provisions that address these safety issues. Major motorcoach manufacturers such as Volvo, Prevost, MCI, Van Hool and others already offer some form of these safety features as optional equipment on newly-manufactured motorcoaches. However, each system performs differently since there is no performance standard to ensure minimum levels of protection. These safety systems should meet minimum safety requirements and be available to every passenger, on every motorcoach, for every trip.

Legislative Timelines

MAP-21 requires that all motorcoach safety improvements must be issued and full compliance obtained in much shorter and sensible timeframes. The deadline for seat belt compliance on all new motorcoaches is three years from the date of enactment of the Senate bill. Implementation of the roof strength, anti-ejection safety window and rollover crash avoidance (ESC) requirements takes four years, and direct tire pressure monitoring systems must be installed five years after enactment of the Senate bill.[20] The Senate bill would require NHTSA to issue final

[17] MAP-21 Sec. 32703(c).
[18] MAP-21 Sec. 32704(c).
[19] MAP-21 Sec. 32705(a)(1).
[20] The issuance of a number of other safety standards are discretionary depending on the outcome of agency research. Nevertheless, for those rules that NHTSA does choose to issue, final rules must be issued within three years for the tire performance standard (Sec. 32704(c)), three and one-half years for improved fire safety standards (Sec. 32704(b)), and four years for standards on improved fire extinguishers, interior impact protection, compartmentalization and collision avoidance system (Sec. 32705).

rules within a year or two, and implement the needed changes for all safety improvements within three to five years. This is doable because the technology is already available to accomplish the goals set in MAP-21. All that is needed are the performance requirements from the agency and some time to design and install the changes. As previously mentioned, all of the technologies included in the MAP-21 bill are available, affordable and already found on motorcoaches used by Greyhound and other companies. Nevertheless, H.R. 7 builds in lengthy delays that far exceed the timelines in the MAP-21 bill. No motorcoach safety final rule is required to be issued earlier than three years after the enactment of the bill, regardless of how simple and well understood the safety issue may be. Then, H.R. 7 requires an automatic postponement of the effective date of each final rule until three years after the final rule is issued.[21] Although new motorcoaches have to meet the standards after this six year period, the House bill allows a 12-year phase-in period for owners to convert their fleets to full compliance. During the 18-years it will take for this to occur, millions of passengers will be exposed to greater safety risks because of the exceedingly extensive delays in implementation of the safety features that may be enacted under H.R. 7.

Retrofit Requirements

The MAP-21 and H.R. 7 provisions regarding retrofit of existing motorcoaches also differ substantially. The Senate provision limits possible retrofit to just two safety issues, seat belts and anti-ejection advanced glazing for windows.[22] According to NHTSA, ejection due to rollover causes the highest percentage of motorcoach passenger fatalities, accounting for more

[21] H.R. 7 Sec. 6309(b)(3)(A).
[22] MAP-21 Sec. 32703(d)(2).

than half of motorcoach passenger deaths.[23] These two countermeasures are aimed at restraining occupants to either keep them in the vehicle seat or to keep them from being ejected from the vehicle in a crash. Seat belts and anti-ejection advanced window glazing have the highest potential safety impact and effectiveness in determining the difference between life and death in a crash. They also can be required without significant redesign of the motorcoach. In addition, the Senate bill requires the NHTSA to make a feasibility determination as to whether retrofit of existing vehicles will be required at the same time the agency issues the final rule with performance requirements for newly manufactured motorcoaches. The decision must be made within one year after enactment for seat belt retrofit and within two years of enactment for anti-ejection safety glazing.[24] This means that motorcoach service providers will know within a relatively short time period whether any existing motorcoaches will have to be retrofitted, and precisely what the performance requirements will be. The timing for compliance with any retrofit requirement is left to agency discretion, but would likely take less than the 12-year phase-in allotted for renovation of the existing fleet under H.R. 7.

Although H.R. 7 authorizes NHTSA to require the retrofit of any safety requirement issued for occupant protection systems, including roof strength, window glazing, fire prevention and mitigation, and emergency evacuation design,[25] there is no guarantee that the retrofit of these requirements will be feasible or cost effective to retrofit. Even so, H.R. 7 goes on to throw additional hurdles in the path of any retrofit by permitting retrofit performance standards to vary from the performance standards issued for newly built motorcoaches.[26] The House bill retrofit

[23] Motorcoach Definition: Occupant Crash Protection, 75 FR 50958, 50961-964 (Aug. 18, 2010).
[24] *Id.* 32703(d)(2)(B).
[25] H.R. 7 Sec. 6309(b)(2).
[26] *Id.* Sec. 6309((b)(2)(A).

provision then goes on to further limit the performance requirements allowed for retrofit,[27] to the point that it is difficult to see how any retrofit requirements might ever be adopted. The House retrofit process would also require the agency to establish a third party certification process.[28] Finally, the House retrofit provision is folded into the same timeline for potential retrofit requirements as for the underlying standards. Thus, no retrofit rule would be effective or apply to even a single motorcoach until six years after enactment of the law,[29] and then the additional 12-year phase-in[30] would extend the implementation of the safety retrofit until 18 years after enactment.

State Preemption and Tort Liability Protection

Finally, H.R. 7 provides the motorcoach industry with highly unusual protection against liability and State laws. The MAP-21 bill does not alter the normal course of state tort liability law or State safety regulation by legislating on these contentious issues.

First, H.R. 7 protects motorcoach manufacturers and owners against liability stemming from the failure to install safety countermeasures that may be required under H.R. 7 so long as the motorcoach manufacturer and owner abide by the compliance schedule during the 18-year implementation period.[31] This means that motorcoach manufacturers and owners cannot be held liable if a particular motorcoach does not have the state-of-the-art safety protection required by the standards issued under H.R. 7, or offered by another company, unless the manufacturer or

[27] *Id.* The provision states that retrofit standards for existing motorcoaches "are technically feasible if the equipment can be certified by the original equipment manufacturer as meeting requisite performance requirements and if the equipment is readily attachable subsequent to initial manufacture by the operator and enforced through readily visible inspection requiring no disassembly."
[28] *Id.* Sec. 6309(b)(2)(D).
[29] *Id.* Sec. 6309(b)(2)(A) & (C), and (b)(3)(A).
[30] *Id.* Sec. 6309(b)(3)(B)(i) & (B)(ii).
[31] *Id.* Sec. 6309(b)(3)(C)(i).

owner fails to meet the overly extended phase-in requirements. Beyond the three year period for the issuance of all the safety standards and then the additional three year delay in effective dates, H.R. 7 provides a 12-year phase-in schedule that only requires 50 percent of existing motorcoach fleets to be equipped with the required safety-related improvements between 13 and 18 years after enactment,[32] and does not require all existing motorcoaches to comply until the 19th year, nearly two decades, following enactment.[33] This means that a passenger who is injured on a particular motorcoach that is not equipped with the safety standards issued under H.R. 7 will have no legal recourse against the motorcoach owner so long as the owner meets the overall 50 percent compliance requirement for the owner's entire fleet.

Second, H.R. 7 preempts States and local jurisdictions from adopting or enforcing laws or regulations related to the motorcoach safety standards required by H.R. 7.[34] This prevents States from taking action to provide safety improvements for motorcoach passengers during the three years before any performance standard is even issued by NHTSA, and during the next three years before any federal standard becomes effective. It then paralyzes State law over the next 12 years, during the prolonged phase-in period, preventing protection of those passengers who may be riding in motorcoaches that were not built in compliance with safety standards that may have been issued under H.R. 7. This is, frankly, a usurpation of State police powers to protect public safety and an unpardonable effort to protect special interests over an inordinately long regulatory implementation period. Should these provisions of H.R. 7 be enacted, the public would have the worst of both worlds. Under congressional license, federal safety regulations intended to protect the public would be inexplicably and unreasonably delayed, while at the same time the public

[32] *Id.* Sec. 6309(b)(3(B)(i).
[33] *Id.* Sec. 6309(b)(3(B)(ii).
[34] *Id.* Sec. 6309(b)(3)(C)(ii).

would be deprived of any safety protection that the States might wish to enact while also being foreclosed from seeking redress through the judicial system. H.R. 7 establishes an untenable and unacceptable scenario that should not be adopted by this Committee or the House.

Conclusion

Unless Congress moves forward with a strong motor vehicle and motorcoach safety agenda as part of the surface transportation authorization bill, it is expected that more than 150,000 people will be killed in crashes and over 10 million will suffer injuries that can be serious, debilitating and costly during the next five years. The human and economic toll on families and society is staggering and unnecessary. The bi-partisan safety proposals adopted by the Senate last week will ensure that during the time frame of the surface transportation authorization bill adopted by Congress – whether for two years or five – progress will be made in addressing this preventable public health epidemic.

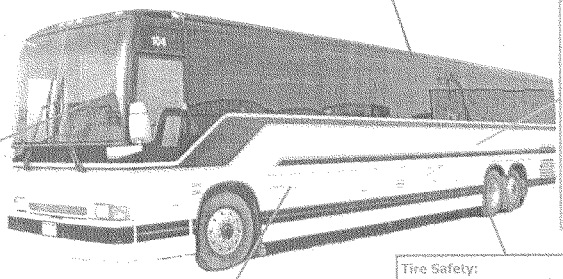
Thank you for the opportunity to testify this morning on a major safety problem. Advocates looks forward to working with the Subcommittee and the full Committee Members. Your bi-partisan leadership in 2005 to advance safety in SAFETEA-LU resulted in major improvements in motor vehicle safety that has benefited millions of families. We urge you to support these additional modest and cost-effective actions to advance safety improvements and continue efforts to achieve further reductions in highway deaths and injuries.

Motorcoach Enhanced Safety Act

Recommendations That Have Languished for Decades

Motor Carrier Oversight:
- Systematic safety reviews, ratings, and audits of motorcoach companies*
- Annual safety inspections
- Increase review and penalties to stop reincarnated carriers*

Occupant Protection:
- Lap/shoulder seat belts at all seating positions to keep passengers in their seats and in the motorcoach*
- Advanced window glazing to prevent passenger ejection*
- Stronger roof standard to prevent crush and intrusion in a crash*
- Better passenger compartmentalization to protect in a crash
- Improved occupant protection to reduce injuries from impacts with surfaces inside the motorcoach



Fire Safety:
- Built-in automatic fire suppression systems to limit spread of fires
- Improvements to suppress fuel-system fires
- Better equipment to fight fires effectively
- Updated emergency exit designs and interior lighting to expedite passenger evacuation

Safe Drivers:
- Physical fitness oversight and medical certification of motorcoach drivers*
- Driver training standard*
- Cell phones and other distracting devices prohibited*

Tire Safety:
- Tire pressure monitoring that performs at all speeds, on all surfaces, and during all weather conditions*
- Performance standards for tires

Safety Technology:
- Added stability technology to prevent motorcoach rollover*
- On-board recorders to enforce federal driving limits and reduce driver fatigue*
- Event data recorders to monitor and record vehicle operations, events and incidents*
- Collision avoidance systems

*** An asterisk denotes provisions that require DOT to issue a final rule or amends current law. All other provisions require DOT to initiate rulemaking or call for the completion of research and testing.**

ADVOCATES
for Highway & Auto Safety

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MOTORCOACH CRASHES & FIRES SINCE 1990

178 Motorcoach Crashes & Fires – At Least 317 Deaths, 3,111 Injuries

DATE	LOCATION	CRASH DESCRIPTION
1-08-12	Clinton, MT	Motorcoach traveling on I-90 hits a patch of ice, spins around and rolls over, ejecting several passengers—2 killed, 32 injured.
11-04-11	Abilene, TX	Motorcoach transporting university students drifts off the side of the road and rolls over, ejecting 12 of the 16 passengers—1 killed, 15 injured.
10-06-11	Gibbon, NE	Motorcoach traveling to Denver crashes into an overturned semitrailer on I-80—41 injured.
8-24-11	South Brunswick, NJ	Motorcoach traveling from NYC to Washington, DC collides with a tractor trailer that had slowed for traffic on the New Jersey turnpike—17 injured.
8-13-11	Mount Gretna, PA	Greyhound motorcoach traveling from NYC to St. Louis overturns on the Pennsylvania Turnpike when the driver loses control and the motorcoach hits a barrier—14 injured.
8-03-11	Whitney Point, NY	Motorcoach traveling too fast on I-81 in rainy conditions crashes and flips over—19 injured.
7-25-11	Boundary County, ID	Motorcoach traveling on Highway 95 leaves the roadway, goes into a ditch, slides down an embankment, and rolls over—8 injured.
7-22-11	Waterloo, NY	Motorcoach traveling from Ontario to NYC is rear-ended by a tractor trailer as it pulls onto the highway, causing both vehicles to catch on fire—1 killed, 30 injured.
7-17-11	Bath, NY	Motorcoach traveling from Washington, D.C. to Niagara Falls crashes when the driver loses control because of a tire blowout and runs off the road—2 killed, 35 injured.
7-01-11	San Marcos, TX	Motorcoach traveling from Laredo to Dallas strikes a highway sign, loses control, and rolls on its side after the driver falls asleep at the wheel—18 injured.
6-27-11	Donegal, PA	Motorcoach transporting Korean tourists from Kentucky to New York City rear-ends a flatbed tractor trailer on the Pennsylvania Turnpike—1 killed, 22 injured.
6-27-11	Raleigh, NC	Motorcoach veers off I-40. 1983 N.C. State NCAA Final Four hero, Lorenzo Charles, was the driver and only individual on board at the time of the crash—1 killed.
6-6-11	Minden, IA	Motorcoach transporting a marching band crashes on I-80 and rolls on its side—39 injured.
5-31-11	Caroline County, VA	Motorcoach runs off the side of the road, overturns, and lands on its roof—4 killed, 53 injured.
5-28-11	Cle Elum, WA	Motorcoach swerves on I-90, strikes a pickup truck and rolls on its side—2 killed, 21 injured.
5-7-11	New York, NY	Motorcoach driver, who was drinking while driving, hits and drags a pedestrian under a rear wheel—1 killed (pedestrian).
4-10-11	Dooly County, GA	Motorcoach carrying 47 high school students on a chorus trip swerves on I-75 to avoid crashing into a car, goes into an embankment, and hits the side of an overpass before coming to a stop—20 injured.
3-21-11	Littleton, NH	Motorcoach traveling from Quebec to Boston on I-93 rolls onto its side and into the median after the driver loses control in icy conditions—23 injured.
3-14-11	East Brunswick, NJ	Motorcoach traveling on the New Jersey turnpike drives into the median, strikes an overpass, and slams into an embankment on the side of the road—2 killed, 41 injured.
3-12-11	Bronx, NY	Motorcoach swerves, rolls onto its side, and skids along a guardrail before ramming into a support pole—15 killed, 18 injured.
2-28-11	Hagerstown, MD	Pickup truck crosses the median on I-70 and slams into a motorcoach on the shoulder of the interstate—1 killed, 6 injured.
2-27-11	Homosassa, FL	Motorcoach and passenger vehicle collide—1 killed.
2-21-11	San Bernardino, CA	Motorcoach carrying Korean church youth group drifts into opposing lane on California 189 highway, plummets down an embankment, and slams into a tree—1 killed, 23 injured.
1-12-11	Palo Alto, CA	Motorcoach carrying 35 Japanese tourists catches on fire, causing heavy heat damage to the engine area and extensive smoke damage in the passenger area.
1-11-11	Bucyrus, OH	Motorcoach carrying the University of Mount Union wrestling team collides with a snow plow when the motorcoach tries to pass the vehicle on U.S. Highway 30—1 killed, 4 injured.

9-29-10	Bethesda, MD	Motorcoach carrying tourists, including children, near I-270 crashes through guardrail on a skyramp and falls down a 45-foot embankment, rolling over once – 1 killed, 12 injured.
9-29-10	Tucson, AZ	Motorcoach carrying prison inmates rear-ends a construction vehicle on I-10 – 2 injured.
9-28-10	Charlestown, WV	Car crosses centerline and collides head-on with motorcoach, causing the bus to go over an embankment and roll onto its side – 21 injured.
9-26-10	East Ridge, TN	Motorcoach transporting college students is struck by car on I-75 – 16 injured.
9-18-10	Sanger, TX	Motorcoach en route from Dallas to Oklahoma City crashes into a highway barrier, ejecting some passengers through windows that broke from the impact – 18 injured.
9-12-10	Tillamook, OR	Tour bus catches fire on Highway 101– 8 injured.
9-11-10	Syracuse, NY	Motorcoach traveling from Philadelphia to Toronto crashes when the driver, using his own GPS device, attempts to drive under low clearance railway bridge – 4 killed, 20 injured.
8-14-10	Englewood, NJ	A New York-bound motorcoach heading to the Port Authority Bus Terminal and a police cruiser collide – 3 injured.
8-10-10	Pleasantville, PA	A motorcoach heading back to Johnstown from casinos in Harrisburg and a car collide on Route 56 – 1 killed.
8-09-10	Cedar City, UT	Motorcoach carrying Japanese tourists rolls over on I-15 – 3 killed, 11 injured.
8-08-10	Polk County, TN	Motorcoach and a car collide on Highway 64 – 1 killed.
8-04-10	Eau Claire, WI	Motorcoach and moped collide.
7-22-10	Fresno, CA	Motorcoach carrying 36 people from Los Angeles to Sacramento strikes an overturned SUV, slams into concrete center divider, clips another vehicle, travels off the right shoulder of the highway and down a 15-foot embankment before hitting a tree – 6 killed/20 injured.
6-24-10	Atlantic City, NJ	A motorcoach carrying 50 gamblers from New York City's Chinatown to the seaside casino resort crashes into two other vehicles – 24 injured.
6-21-10	Rosemead, CA	Motorcoach is involved in a head-on collision after two passenger cars collide into each other and the impact pushes them into incoming traffic – 23 injured.
6-10-10	Florence, KY	Motorcoach fire breaks out on a bus headed from Detroit to Tennessee – 1 injured.
6-03-10	Middletown, NJ	Motorcoach flips over near I-114 after the driver fell asleep at the wheel.
6-02-10	Lynchburg, VA	Two motorcoaches catch fire due to an engine component problem, causing more than $135,000 in damage, on the Liberty University campus.
5-24-10	Dearborn, MI	Motorcoach fire along eastbound I-94 closes two lanes, backs up traffic for a quarter mile.
5-20-10	High Point, NC	Motorcoach collides with van on N.C. Highway 62 – 2 killed.
4-26-10	Brunswick, GA	Motorcoach carrying high school band students crashes on I-95 – 10 injured.
4-24-10	Rogers, AK	Motorcoach carrying church members returning from a retreat in Little Rock, AK rolls over on I-40 – 2 killed/17 injured.
3-24-10	Orlando, FL	Motorcoach is rear-ended by a Walt Disney World tour bus near the entrance of Epcot theme park – 8 injured
3-16-10	Campbellton, TX	A Mexican motorcoach traveling from San Antonio to Matamoros, Mexico and carrying 40 people overturns along a southern Texas highway – 2 killed/30 injured.
3-05-10	Sacaton, AZ	Motorcoach en route from the central Mexican state of Zacatecas to Los Angeles rolls over on I-10 South – 6 killed/16 injured.
2-19-10	Buford, GA	Several motorcoaches carrying 6th grade students from Greenville, SC to Atlanta, GA are involved in a chain reaction bus crash – 3 injured.
2-13-10	Caddo Parish, LA	A pickup truck drifts into oncoming traffic and crashes head-on into a motorcoach carrying country music star Trace Adkins - 2 killed/at least 5 injured.
1-26-10	Carbondale, IL	Motorcoach crashes into the wall of the University Place Shopping Center - 4 injured.
12-20-09	LeRoy, NY	Motorcoach en route from New York City to Toronto slides off Interstate 90 after the driver nodded off.
12-19-09	Gore Hill, MT	Motorcoach en route from Helena to Great Falls collides with the rear of a pickup truck on Interstate 15 – 3 injured.
12-06-09	Glen, NY	Motorcoach carrying the rock band Weezer slides on ice, hits the median and some reflective posts, crosses over the median, goes over a guardrail and lands in a ditch – 2 injured.
12-05-09	Casper, WY	Motorcoach crashes into an overturned tractor-trailer blocking Interstate 25 in central Wyoming.- 1 killed/at least 40 injured.
12-04-09	Greenville, SC	Motorcoach carrying South Carolina students home from a field trip runs off the road and into trees – 15 injured.

11-24-09	Oakland, CA	Motorcoach catches fire closing several westbound lanes along the eastern span of the Bay Bridge.
11-20-09	Richmond, VA	Motorcoach carrying Miley Cyrus' crew drifts off the road and overturns – 1 killed/9 injured.
11-18-09	Austin, MN	Motorcoach carrying mostly senior citizens swerves off the freeway and rolls into a ditch after the driver suffered an aneurysm – 2 killed/21 injured.
11-13-09	Warrensburg, NY	Motorcoach carrying more than 30 students from a Montreal College crashes through a guard rail and lands on the median on I-87 after the driver fell asleep at the wheel – 8 injured.
11-11-09	Chatham County, GA	Motorcoach fire begins in rear tire axle, engulfing the motorcoach in flames.
10-31-09	Henry County, GA	2 the I-675 merge, flips twice and comes to a rest on its side, injuring over a dozen students.
10-10-09	McCammon, ID	Motorcoach carrying 54 high school band students crashes. Band instructor grabbed the wheel when she saw the driver slumped forward and the motorcoach veering off the road. The band instructor is fatally injured in the crash and dozens are injured.
9-27-09	Tampa, FL	Motorcoach carrying church group from Sarasota to Gatlinburg, Tennessee involved in chain reaction crash– 14 taken to hospital.
9-21-09	Columbus, OH	Motorcoach carrying incoming college students crashes into a dump truck, severing the driver's right leg.
9-21-09	Cranbury, NJ	Motorcoach crashes into tractor-trailer along the New Jersey turnpike – 6 injured.
9-18-09	Plymouth Twp, MI	Motorcoach catches fire while traveling from Toronto to Chicago along westbound M-14.
9-13-09	Pleasantville, NJ	Motorcoach catches fire while driving along the westbound lanes of the Atlantic City Expressway, near exit 5.
9-06-09	Newburyport, MA	Motorcoach catches fire while traveling northbound from New England to Main along I-95. The fire is believed to have been caused by a rear tire blowout.
9-02-09	Houston, TX	Motorcoach driver crashes into a concrete barrier on the N. Freeway HOV lane – 6 injured.
8-17-09	Houston, TX	Motorcoach traveling from Laredo to Houston catches fire. Driver is ticketed for expired license.
8-04-09	Dodge County, WI	Motorcoach carrying Special Olympics athletes crashes into a guardrail and turns over - 8 injured.
7-30-09	Moberly, MO	Motorcoach carrying high school students catches fire after a tires blows out along Highway 63 - 2 injured.
7-16-09	Toledo, OH	Motorcoach pulls over on I-75 south after catching fire. The driver noticed smoke coming from the rear wheel well.
7-13-09	Riley County, KS	Motorcoach carrying job corps students is hit by a semi truck – at least 20 injured.
7-09-09	Lauderdale County, MS	Motorcoach carrying church youth blows tire, flips 3 times and lands on its side – 2 killed/27 injured.
7-05-09	Lake George, NY	Motorcoach rolls on its side and crashes into sledge rock on the left side of the highway – 1 killed/8 injured.
7-03-09	Madison, WI	Motorcoach carrying 80 passengers crashes along Highway 151 – 17 injured.
6-26-09	Toledo, OH	Motorcoach carrying high school youth orchestra strikes the back of a semi and crashes along I-80 – at least 1 injured.
6-21-09	Indianapolis, IN	Motorcoach carrying Canadian semi-pro football team crashes into SUV – 1 killed/11 injured.
6-06-09	South StrabaneTwp, PA	Motorcoach rear-ends a tractor-trailer - 6 injured.
5-19-09	Fairfax, VA	3 motorcoaches carrying staff and students from Harrisonburg, VA elementary school involved in chain reaction crash - 37 injured.
5-14-09	Carbon County, PA	Motorcoach is heavily damaged after fire that began in the engine of the vehicle.
5-03-09	Winona County, MN	2 motorcoaches carrying Winona County DARE students from a Minnesota Twins game involved in chain reaction crash - 2 hospitalized and dozens injured.
5-03-09	Montgomery, AL	Motorcoach carrying 29 passengers, mostly children, catches fire after brake defect.
5-02-09	Perris, CA	Motorcoach carrying 28 people aboard crashes returning from Cinco de Mayo activity sponsored by city of Colton - all 28 injured.
4-27-09	Lincoln, AL	Motorcoach crashes after tire blows out - 21 injured.
4-07-09	Near Franksville, WI	Motorcoach catches fire and causes major back-up along I-94.
4-04-09	Truckee, CA	Motorcoach traveling on I-80 drifts toward the side of the road, hits a guardrail, rolls down

		an embankment, and comes to rest upside down—1 killed, 25 injured.
4-03-09	Round Rock, TX	Motorcoach carrying 42 high school band students crashes - 2 injured.
3-30-09	Millard County, UT	Motorcoach carrying 52 high school choir students crashes - 4 injured.
3-27-09	Franklin County, GA	Motorcoach carrying 40 University of New Hampshire college students catches fire after tire blows out.
3-05-09	Maysville, NC	3 Motorcoaches carrying 59 U.S. Marines in chain-reaction crash - 14 injured.
2-19-09	Beckett, MA	Motorcoach carrying minor league hockey team crashes - 5 injured.
2-15-09	West Haven, CT	Motorcoach rear-ends another motorcoach - 128 injuries.
2-07-09	Honolulu, HI	Motorcoach strikes and kills pedestrian standing at a marked crosswalk.
2-04-09	Belleplain, NJ	Motorcoach rear-ends box truck.
1-30-09	Dolan Springs, AZ	Motorcoach carrying Chinese tourists crashes near Hoover Dam - 7 killed/10 injured.
1-23-09	Near Donegal, PA	Motorcoach carrying tourists catches fire after tire blows out along PA turnpike.
12-26-08	Corona, NM	Motorcoach crashes in inclement weather - 2 killed/others injured.
12-19-08	Seattle, WA	Motorcoach carrying 80 young adults crashes through guardrail - minor injuries.
10-05-08	Williams, CA	Motorcoach traveling to casino resort crashes - 9 killed/35 injured.
8-10-08	Primm, NV	Motorcoach crashes after tire failure - 29 injured.
8-10-08	Tunica, MS	Motorcoach crashes and roof collapses during rollover - 3 killed.
8-08-08	Sherman, TX	Motorcoach carrying 55 Vietnamese-American pilgrims crashes after blowing a tire, skidding off of highway, and hitting guardrail - 17 killed/40 injured.
5-11-08	Mount Vernon, MO	Motorcoach tour bus carrying gospel singer crashes – 1 killed/7 injured.
4-05-08	Albertville, MN	Motorcoach carrying students and chaperones home from a band trip to Chicago crashes, killing a 16 year-old student and injuring dozens.
1-17-08	Primm, NV	Motorcoach crashes and catches fire - 25 injured.
1-06-08	Mexican Hat, UT	Motorcoach carrying 51 passengers ran off curvy road, rolled several times, roof was split open, and tires were stripped off. Passengers were thrown from the bus. A contributing factor was the driver's negotiation of the turn - 9 killed.
1-02-08	Victoria, TX	Motorcoach crashes probably due to driver fatigue - 1 killed.
1-02-08	Henderson, NC	Motorcoach crashes into tractor-trailer - 50 injured.
12-5-07	Lafayette, IN	Motorcoach traveling on I-65 loses traction in snowy conditions, overcorrects, goes off the road, spins three times and hits a concrete bridge—21 injured.
11-25-07	Forrest City, AR	Motorcoach crashes – 3 killed/15 injured.
11-19-07	Ridgeville, SC	Motorcoach runs off I-26 and into trees—1 killed, 30 injured.
6-30-07	Atlanta, GA	Motorcoach traveling on I-85 hits a median wall and utility poles—2 killed, 2 injured.
6-29-07	New Milford, PA	Motorcoach carrying diverted airline passengers crashes through barriers on an exit ramp and overturns—1 killed, 12 injured.
6-25-07	Bowling Green, KY	Motorcoach crashes probably do to driver fatigue - 2 killed/66 injured.
5-20-07	Clearfield, PA	Motorcoach runs off I-80, hits an embankment, and lands on its side—2 killed, 32 injured.
3-02-07	Atlanta, GA	Motorcoach carrying Bluffton University baseball team crashes through an overpass bridge wall and fell onto Interstate 75 landing on its side – 7 killed/21 injured.
9-06-06	Auburn, MA	Motorcoach rollover crash - 34 injured.
8-28-06	Westport, NY	Motorcoach rollover crash - 4 killed/48 injured.
3-30-06	Houston, TX	Motorcoach carrying girls' soccer team crashes and overturns - 2 killed/more injured.
2-18-06	Pauls Valley, OK	Motorcoach carrying 45 passengers on I-35 overturns and skids on its roof before coming to rest on its side—2 killed, 2 serious injuries, many minor injuries.
2-13-06	Atlantic City, NJ	Casino-bound motorcoach slides down an exit ramp when the driver loses control, goes over an embankment and rolls over, landing on its wheels—36 injured.
11-26-05	Santa Maria, CA	Motorcoach drifts off the freeway, rolls and then slides at least 100 yards on its side before hitting a tree. The driver may have been fatigued—2 killed, 7 injured.
10-25-05	San Antonio, TX	Motorcoach crashes into two 18-wheelers after tire failure - 1 killed/3 injured.
10-16-05	Osseo, WI	Motorcoach crashes - 4 killed/35 injured.
9-23-05	Wilmer, TX	Motorcoach carrying 44 assisted living facility residents and nursing staff as part of the evacuation in anticipation of Hurricane Rita caught fire. 23 killed/of 21 injured.
9-2-05	Opelousas, LA	Motorcoach driver loses control and the motorcoach crosses the median and overturns on its side—1 killed, 12 injured.
7-25-05	Baltimore, MD	Motorcoach crashes – 14 injured.
7-1-05	Sacramento, CA	Motorcoach traveling from Seattle to Sacramento swerves to avoid a passenger vehicle and

		overturns—34 injured.
1-29-05	Geneseo, NY	Motorcoach crashes - 3 killed/20 injured.
11-14-04	Alexandria, VA	Motorcoach carrying 27 high school students crashes - 11 injured.
10-09-04	Turrell, AR	Motorcoach crashes - 14 killed/15 injured.
8-06-04	Jackson, TN	Motorcoach crashes - 2 killed/18 injured.
7-26-04	Lexington, SC	Motorcoach traveling on I-20 crashes into tractor trailer and passenger vehicle, and a fire breaks out—2 killed, 55 injured.
6-24-04	Phoenix, AZ	Motorcoach crashes - 1 killed/38 injured.
5-24-04	Anahuac, TX	Motorcoach crashes - 1 killed.
2-22-04	North Hudson, NY	Motorcoach crashes - 47 injured.
11-12-03	Apache Co., AZ	Motorcoach crashes - 44 injured.
10-13-03	Tallulah, LA	Motorcoach crashes into tractor-trailer - 8 killed/7 injured.
2-14-03	Hewitt, TX	Motorcoach crashes - 5 killed/others injured.
10-01-02	Nephi, UT	Motorcoach crashes - 6 killed/20 injured.
6-23-02	Victor, NY	Motorcoach crashes - 5 killed/41 injured.
6-09-02	Loraine, TX	Motorcoach crashes into tractor-trailer - 3 killed/29 injured.
4-24-02	Kinder, LA	Motorcoach crashes - 4 killed and driver medically incapacitated.
10-03-01	Manchester, TN	Motorcoach crashes - 6 passengers killed/unknown injuries.
8-19-01	Pleasant View, TN	Motorcoach crashes - 1 killed/38 injured.
5-28-01	Bay St. Louis, MS	Motorcoach crashes - 16 injured.
1-20-01	Allamuchy, NJ	Motorcoach crashes - 39 injured.
1-02-01	San Miguel, CA	Motorcoach crashes - 2 killed/3 injured
6-30-01	Fairplay, CO	Motorcoach crashes - 45 injured.
8-27-00	Eureka, MO	Motorcoach crashes - 25 injured.
12-21-99	Canon City, CO	Motorcoach crashes - 3 killed/57 injured.
5-09-99	New Orleans, LA	Motorcoach crashes - 22 killed/21 injured.
4-30-99	Braidwood, IL	Motorcoach crashes - 1 killed/23 injured.
3-02-99	Santa Fe, NM	Motorcoach carrying 34 middle school children crashes - 2 killed/35 injured.
12-24-98	Old Bridge, NJ	Motorcoach crashes - 8 killed/14 injured.
6-20-98	Burnt Cabins, PA	Motorcoach crashes - 7 killed/16 injured.
9-12-97	Jonesboro, AR	Motorcoach crashes - 1 killed/6 injured.
7-29-97	Stony Creek, VA	Motorcoach crashes - 1 killed/32 injured.
6-06-97	Albuquerque, NM	Motorcoach crashes - 1 killed/35 injured.
8-02-96	Roanoke Rapids, NC	Motorcoach crashes due, driver was fatigued - 19 injured.
10-14-95	Indianapolis, IN	Motorcoach crashes - 2 killed/38 injured.
7-23-95	Bolton Landing, NY	Motorcoach crashes - 1 killed/30 injured.
4-24-94	Chestertown, NY	Motorcoach crashes and rolls over - 1 killed/20 injured.
1-29-94	Pueblo, CO	Motorcoach crashes and rolls over - 1 killed/8 injured.
9-17-93	Winslow Twp, NJ	Motorcoach crashes because truck drifted into lane - 6 killed/8 injured.
9-10-93	Phoenix, AZ	Motorcoach crashes and rolls over because of driver fatigue - 33 injured.
6-26-93	Springfield, MO	Motorcoach crashes - 1 killed/46 injured.
7-26-92	Vernon, NJ	Motorcoach crashes - 12 passengers ejected/ 6 killed.
1-24-92	South Bend, IN	Motorcoach crashes - 2 killed/34 injured.
6-26-91	Donegal, PA	Motorcoach crashes - 1 killed/14 injured.
8-03-91	Caroline, NY	Motorcoach crashes - 33 injured.
2-02-91	Joliett, PA	Motorcoach crashes - 2 killed/44 injured.
5-18-90	Big Pine, CA	Motorcoach crashes - 2 killed/43 injured

The list is compiled by Advocates for Highway and Auto Safety from reports documented in the media and investigations conducted by the National Transportation Safety Board (NTSB) and is not a census of all bus crashes or fatalities. For the purposes of this list, the term motorcoach refers to an over-the-road bus that carries more than 15 passengers including the driver.

Mrs. BLACKBURN. Thank you, Ms. Claybrook.
Ms. Gadhia.

STATEMENT OF AMI V. GADHIA

Ms. GADHIA. Good morning, Chairman Blackburn.
Mrs. BLACKBURN. Slide the microphone a little closer.
Ms. GADHIA. Is that better?
Mrs. BLACKBURN. That is perfect.
Ms. GADHIA. Good morning, Chairman Blackburn and Ranking Member Butterfield. My name is Ami Gadhia, and I am Senior Policy Counsel with Consumers Union, the public policy and advocacy arm of Consumer Reports.

CU believes that the vehicle safety provisions passed by the Senate as a part of its Surface Transportation Bill will provide NHTSA with critical new authorities to help promote consumer vehicle safety.

However, CU also believes that there are ways in which the Senate language can be further strengthened to address certain critical consumer safety issues and urges the House to include these additional provisions in its own bill.

CU supports the requirement that NHTSA issue rules regarding vehicle stopping distance, brake override, and pedal placement. We have recommended the issuance of safety standards in these areas for several years and believe that their adoption will provide important safety features in passenger vehicles.

We are also glad to see a proposal to establish a council for vehicle electronics, vehicle software, and emerging technologies, and a proposal to require NHTSA to set a performance standard for electronic systems in cars.

We support the provisions for grants to States that enact and enforce anti-distracted driving laws and graduated driver's licensing laws for teenagers. We also strongly support a requirement that NHTSA prioritize the setting of new safety standards for car seats for children as well as prioritize performing new research into emerging child safety concerns.

CU applauds provisions making improvements to NHTSA's public database of consumer safety reports. This database is a vital tool for NHTSA, automakers, safety advocates, and the public to identify emerging hazard trends. This tool, in turn, can help save lives.

However, this database has not been as consumer friendly or as organized as it could be. The Senate passed a bill that changes this by requiring NHTSA to improve the database's organization, functionality, and searchability. Consumers will also benefit if NHTSA makes vehicle recall information available on the web and if the agency makes this recall information searchable by make, model, and VIN. All of these changes will make a big difference for consumers seeking information about the safety of the cars they own or plan to purchase.

Recall efficacy is another important issue. According to NHTSA, the average consumer response rate to vehicle recalls is roughly 70 percent. Giving NHTSA the authority to require manufacturers to issue additional recall notices and to take additional steps to locate and notify each individual registered as the owner or leasee can

also help improve recall completion rates, thereby helping to make our roads safer.

We also support making data gathered under NHTSA's Early Warning Reporting System available to the public. We have previously recommended that consumer complaint numbers submitted by manufacturers to NHTSA under the EWR System should be made by public by NHTSA and should be easily searchable.

Requiring EDRs or Event Data Recorders in all new cars from model year 2015, onwards with appropriate privacy controls and disclosures will mean that more of these data can help police and accident investigators reconstruct what happened in a crash.

Finally, in the event that a manufacturer violates the law, raising the maximum civil penalty that NHTSA could levy for violations from $17 million to $250 million will help act as a deterrent against future violations that imperil public safety. It should be noted that the $250 million figure is the outermost limit of what NHTSA could possibly fine a company for a series of violations.

As noted, we are happy to see several of our recommendations in the Senate-passed bill, but there are additional elements that are missing that we urge the committee to take up as it considers Surface Transportation legislation.

First, gear shifters should be designed so that a driver can quickly identify the neutral position and easily shift gears to regain control of a car in a panic situation. There are also additional improvements needed in the child safety seat standards that NHTSA administers. CU recommends that the agency revise FMVSS 225 to allow anchors and tethers to be used with car seats for children to at least 65 pounds or greater.

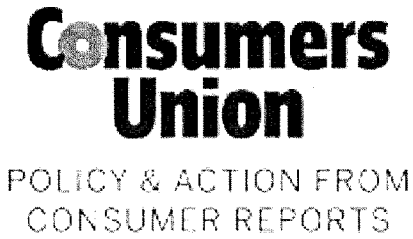
We next urge the House to include in its legislation language requiring rental car companies to make any recall-related repairs before they rent cars to consumers. Regarding distracted driving, NHTSA is currently in the process of finalizing its in-car distraction guidelines for manufacturer. In order to ensure the widest application of these guidelines, CU recommends that the guidelines be incorporated into NHTSA's New Car Assessment Program or NCAP.

CU would also like to see vehicle roof strength and seat back strength requirements improved. Specifically, we would like to see a dynamic rollover test, not simply a static roof crush test as is currently the case.

As the House moves forward with its consideration of its own bill, the CU urges you to include those provisions described in your legislation as well as the additional provisions we have described.

We thank the committee for the opportunity to present our recommendations and look forward to assisting you as you move forward.

[The prepared statement of Ms. Gadhia follows:]



Statement of

Ami V. Gadhia

Senior Policy Counsel

Consumers Union

Before the

Subcommittee on Commerce, Manufacturing, and Trade

of the House Energy and Commerce Committee

March 22, 2012

Chairmen Upton and Bono-Mack, Ranking Members Waxman and Butterfield, and members of the Subcommittee, thank you for the opportunity to testify on the passenger vehicle safety provisions in the surface transportation bill recently passed by the Senate. My name is Ami Gadhia, Senior Policy Counsel with Consumers Union (CU), the public policy and advocacy arm of *Consumer Reports®*.[1]

CU believes that the vehicle safety provisions passed by the Senate as a part of its surface transportation bill will provide the U.S. National Highway Traffic Safety Administration (NHTSA) with critical new authorities to help promote consumer vehicle safety. This bill, the "Moving Ahead for Progress in the 21st Century Act ("MAP-21", or S. 1813), includes language that gives NHTSA additional tools to help reduce injuries and fatalities on our roadways, and to help make cars safer. My testimony will highlight the benefits of some of these provisions.

However, CU also believes that there are ways in which the Senate language can be further strengthened to address certain critical consumer safety issues, and urges the House to include these additional provisions in its own bill. I will address these additional needed provisions in my testimony as well.

[1] Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

I. IMPORTANT VEHICLE SAFETY PROVISIONS IN SENATE-PASSED BILL

We support the requirement that NHTSA issue rules regarding vehicle stopping distance, brake override, and pedal placement.[2] CU has recommended the issuance of safety standards in these areas for several years[3], and believes that their adoption will provide important safety features in passenger vehicles.

Another important section in the Senate-passed bill would give NHTSA the ability to study and promulgate new rules regarding electronic systems in cars. The unintended acceleration concerns that caught everyone's attention in 2010 demonstrated that NHTSA needs to improve significantly its abilities to identify, diagnose, and act upon electronics issues in passenger vehicles in order to protect consumer safety. We are glad to see a proposal to establish a Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies, and a proposal to require NHTSA to set a performance standard for electronic systems in cars.

We also support the provisions for grants to states that enact and enforce anti-distracted driving laws and graduated drivers' licensing laws for teenagers.

We also strongly support a requirement that NHTSA prioritize the setting of new safety standards for car seats for children, as well as prioritize performing new research into emerging child safety concerns.

CU applauds provisions making improvements to NHTSA's public database of consumer safety reports. This database, administered by NHTSA's Office of Defects Investigation, is a vital tool for the agency, automakers, safety advocates, and the public to identify emerging hazard trends; this tool in turn can help save lives. However, this database has not been as

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[2] We understand that NHTSA has recently put out for comment a proposed rule on pushbutton ignitions.
[3] "Consumers Union calls for changes to strengthen U.S. car-safety net," available at http://news.consumerreports.org/cars/2010/02/consumers-union-calls-for-changes-to-strengthen-us-carsafety-net.html.

consumer-friendly or as organized as it could be. The Senate-passed bill changes this by requiring NHTSA to: improve the database's organization and functionality; allow data to be searched, aggregated, and downloaded; improve consistency of presentation of vehicle safety issues; and improve searchability through standardization of commonly used search terms. Consumers will also benefit if NHTSA makes vehicle recall information available on the web, and if the agency makes this recall information searchable by make, model, and vehicle identification number (VIN). All of these changes will make a big difference for consumers seeking information about the safety of the cars they own or plan to purchase.

An improved NHTSA database will also allow *Consumer Reports*® to more thoroughly analyze and publish this analysis of consumer complaints. Through easier data access, *Consumer Reports*® and other independent groups like ours could do more to support NHTSA by flagging any spikes we see in problems with specific vehicles. Such information would be useful for the agency and car owners/buyers, as well as automakers.

Recall efficacy is another important issue. After an auto manufacturer and NHTSA have done their part and issued a recall notice for a non-compliant or defective vehicle or part, consumers have a critical safety role to play in ensuring that recall-related repairs are completed in a timely way. However, according to NHTSA, the average consumer response rate to vehicle recalls is roughly 70 percent.[4] Giving NHTSA the authority to require manufacturers to issue additional recall notices if the first one is insufficient can help improve recall repair rates. Permitting NHTSA to order the manufacturer to take additional steps to locate and notify each individual registered as the owner or lessee or the most recent purchaser or lessee, and to order

[4] See "AUTO SAFETY: NHTSA Has Options to Improve the Safety Defect Recall Process," U.S. Government Accountability Office, June 2011. Available at: http://www.gao.gov/assets/320/319698.pdf.

the manufacturer to emphasize the magnitude of the safety risk posed, in such an additional notification, can also help improve recall completion rates, thereby helping to make our roads safer.

We also support making data gathered under NHTSA's "Early Warning Reporting" (EWR) system available to the public. Manufacturers are required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act to report claims data on serious injuries, warranty data, property damage for alleged defects, customer satisfaction campaigns, consumer advisories and other similar information to NHTSA. That information is given to NHTSA via the EWR system.[5] But only the tallies for fatalities, injuries and property damage and production numbers are currently made public under the EWR system; consumer complaints to the manufacturer are currently kept confidential. We have previously recommended that consumer complaint numbers submitted by manufacturers to NHTSA under the EWR system should be made public by NHTSA and should be easily searchable. Bringing this information out of the dark means that it can be used to help improve auto safety.

In addition, it is important to make it easier for consumers to report vehicle defects and safety problems to NHTSA by including instructions to that effect in the vehicle owner's manual. *Consumer Reports*® has long encouraged consumers to report major safety problems both to NHTSA and to the car's manufacturer. Dealers should also do their part by educating new owners about the complaints program, and encouraging them to report problems. The more public complaints there are to analyze, the greater the chance that serious problems can be identified at an early stage.

Event data recorders (EDRs) are devices in cars that record data such as vehicle speed and differential velocities, throttle position, air-bag deployment, brake application, and safety

[5] See: http://www-odi.nhtsa.dot.gov/ewr/qb/documents/NHTSA-ODI-EWR-Facts.pdf

belt usage in the event of a car crash. Requiring EDRs in all new cars from MY 2015 onwards, with appropriate privacy controls and disclosures, will therefore mean that more of these data can help police and accident investigators reconstruct what happened in a crash. Pursuant to the Senate-passed bill, NHTSA will also be required to modify the EDR regulation to require the retrieval of the EDR data on commercially available equipment in a specified data format. Previously, both NHTSA and other investigative or public safety personnel have been hampered in their work by the need for proprietary retrieval tools to access EDR data.

Finally, in the event that a manufacturer violates the law, raising the maximum civil penalty that NHTSA could levy for violations from $17 million to $250 million will help act as a deterrent against future violations that imperil public safety. While the $250 million figure is the outermost limit of what NHTSA could possibly fine a company for a series of violations, this cap can help ensure that violations do not become a "cost of doing business" for a large, multi-billion dollar company.

II. SAFETY PROVISIONS THAT SHOULD BE STRENGTHENED IN OR ADDED TO HOUSE VEHICLE SAFETY LEGISLATION

As noted above, while we are happy to see several of our recommendations make it into the Senate-passed bill, there are additional elements that are missing that we urge the Committee to take up as it considers surface transportation legislation.

First, as CU has discussed since the unintended acceleration concerns arose in 2010, NHTSA should mandate intuitive, clearly labeled transmission shifters in all new cars. If a car is accelerating out of control, our engineers have advised that hitting the brakes and shifting into Neutral is a driver's best strategy. However, the advent of gated and electronic shifters can make

finding Neutral difficult if the driver is in a panic. Shifters should be designed so that a driver can quickly identify the Neutral position and easily shift gears to regain control.

There are also additional improvements needed in the child safety seat standards that NHTSA administers. CU recommends that the agency revise Federal Motor Vehicle Safety Standard (FMVSS) 225 (regarding child restraint anchors and tethers, or LATCH), to allow them to be used up to at least 65 pounds. While we understand that NHTSA has initiated a research program to look into weight limits for LATCH use, we urge the agency promptly initiate a final rulemaking so that FMVSS addresses the use of LATCH for child safety seats to be used with higher-weight children.

We next urge the House to include in its surface transportation legislation language requiring rental car companies to make any recall-related repairs before they rent cars to consumers. There are 1.6 million rental vehicles, including car-sharing, in service in the United States.[6] However, rental companies are not currently required to ground a vehicle subject to a recall – sometimes with deadly consequences.[7] Consumers are at the mercy of the rental car company when picking up a car, and rely on the company to provide a safe, up-to-date vehicle. Consumers are not able to research the recall history of a rental vehicle the same way they would a vehicle they wish to purchase, since the rental vehicle is often selected for them by the rental car company right before pickup. By way of contrast, new car dealers are required by law to conduct recall-related repairs prior to selling a vehicle. We therefore urge the House to close this loophole and require rental car companies to follow the same rules currently followed by new-car dealers.

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[6] http://www.acraorg.com/2012/02/facts-about-auto-safety-recalls-and-rental-cars/

[7] "Enterprise Rent-A-Car admits negligence in crash that killed Santa Cruz sisters," available at http://www.santacruzsentinel.com/ci_15348018.

Regarding distracted driving, NHTSA is currently in the process of finalizing its guidelines for manufacturers regarding "in-car" distractions, such as the streams of textual information that appear on dashboard screens. CU is pleased to see the development of these guidelines. However, in order to ensure the widest application of these guidelines, CU recommends that the guidelines be incorporated into NHTSA's New Car Assessment Program (NCAP). Once made a part of the NCAP, in-car distractions could be evaluated on a star-rating system, like other critical safety features, and consumers could utilize the ratings as they make purchasing decisions.

In addition, we would like to see the vehicle safety provisions of the surface transportation bill address seat back strength. CU believes that this standard needs updating, especially as manufacturers try to decrease the weight of vehicles.

CU would also like to see vehicle roof strength requirements strengthened. Specifically, we would also like to see a dynamic rollover test, not simply a static roof crush test as is currently the case. A static test gives us an idea of how strong a car's roof is, but it does not tell us anything about the dynamics of the occupants in the vehicle in a rollover. Many fatalities occur when the occupants hit their heads on the roof of the car or on the ground once the car has rolled over, even though the roof has not deformed. CU therefore recommends that NHTSA adopt a test that would evaluate the complete vehicle system – as the agency does in frontal and side crash tests – so credit can be given for seat belt pretensioners and side airbags that deploy in a rollover to help keep the occupant in the seat and away from impact with either the roof of the car or the ground.

Further, while we appreciate the improvements that are to be made to the NHTSA public consumer complaint database, we believe that the data provided by the consumer complaint

database and the agency's Early Warning Reporting (EWR) system should be integrated, so as to make it easier for investigators to spot issues and for consumers to find useful safety information. Consumers should not have to visit different site sections to see all of this information, or be forced to search it using tools that are less than user-friendly. All complaint information should be visible via a single consumer-facing site. And this service must include intuitive tools that allow users to easily find information for particular models and compare vehicle safety records.

Finally, we note that portions of the Senate-passed bill would give NHTSA an "out" if the agency is not able to meet its deadlines for rulemakings or if it deems that there is no need for a rulemaking on a particular matter pursuant to 49 U.S.C. 30111.[8] CU feels that such language will only serve to delay – or permanently prevent – the agency from taking final action on critical auto safety measures. We urge the House to remove such language from its vehicle safety provisions, should they take them up.

III. CONCLUSION

The recently-passed Senate surface transportation bill contains a number of provisions that will help make cars safer for consumers. As the House moves forward with consideration of its own surface transportation bill, CU urges you to include those provisions in its own legislation, as well as to include additional provisions that will make even greater strides for safety. We thank the Committee for the opportunity to present our recommendations, and look forward to assisting you as you move forward.

[8] "Motor Vehicle Safety: Standards and Compliance," Title 49 *U.S. Code* 30111.

Mrs. BLACKBURN. Thank you for your testimony.

At this time we are going to recess to go vote. We have got just under 2 minutes left on the clock to cast our vote. What we are going to try to do is cast the vote and come back during the recommittal. We will see how that works when we get to the floor. We have got three amendment votes and then a recommittal.

So our goal is to not hold you needlessly. We do have some questions we would like to get on the record, but at this time we will consider the committee in recess.

[Recess.]

Mrs. BLACKBURN. I will call us back into order, in session. Thank you all for bearing with us and recognize myself for 5 minutes for questions.

Mr. Bainwol and Mr. Stanton, I would like to begin with you. We have talked about the safety mandates in the Senate bill. Mr. Strickland has talked about some of the safety guidelines. I know many of those came from the industry, but I want to look specifically at the safety mandates that are in the Senate version of the bill right now, and what I would like to know going back to your comment, Mr. Bainwol, about affordability of safe cars, what would these mandates, what would they add to the sticker price of a new car, and then how do the new regulatory mandates affect your efforts and your abilities to develop and implement your own safety technologies that you bring forward through R&D, and then the third component of this since we are looking at the average age of a car on the road right now being 10–1/2 years, do you have concerns regarding the increasing costs and affordability of cars and whether that puts the price of safety beyond the means of many Americans in this economy?

So, Mr. Bainwol and then Mr. Stanton.

Mr. BAINWOL. There is a lot to that, but let me try to unpack it a bit. I do think the critical thing here is making sure that we can trigger the replacement process. Mandates that build the cost of a vehicle that make it unaffordable means that we are not realizing the objective, which is to save lives, and so I think everybody at the table has a common objective, and that is how do you maximize the savings of live, and for us that means a prudent, data-driven process where you make priorities and you determine where you get the most bang for the buck, and you do the research to make sure that there is no unintended consequences and that it is efficacious and that there will be a consumer demand for it.

What that really means in short is that from a practical perspective we think NHTSA's plan is a pretty good one, and we think that the notion of adding political regulatory earmarks, which is basically what the Senate has done, is not a great idea because it interferes with the ability to execute the NHTSA plan. It does raise costs. We can't really project what the cost would be because we don't know how they would define the mandate, but it does raise cost. It does confuse the mission, and I don't think it leads to an outcome that we all prefer, which is safer cars.

Mrs. BLACKBURN. Thank you. Mr. Stanton.

Mr. STANTON. Yes. I would put it in a little bit bigger context as you know that we have, are on the chart to hit 54–1/2 miles per gallon by 2025, and the cost increase that the government esti-

mated just to go to the 2016, would be about $1,000 per car and from 2017, to 2025, about another $2,000, and I just testified before the National Academy of Sciences, and they are looking at standards from 2010, to 2030, and where we are going, and I think we are working with the administration on fuel cell vehicles and EVs and California wants 15.4 percent of their vehicles to be electric vehicles or fuel cell vehicles by 2025.

So there are costs that are involved in that, and then when you add the safety requirements, and our organization and all of our members are really about enhancing vehicle safety. We have been working with NHTSA on all of the rulemakings. We, as my testimony I hope conveyed, is that we don't want fruitless requirements or redundant requirements, but the affordability at the end of the day. We are doing OK. I mean, 2009 was a really bad year, '10 was a little bit better, '11 and '12, we are looking now maybe at 13–1/2 million units, and that is good for the industry, but we need to keep the affordability of the vehicles, the affordability has to be there, or we will not accomplish our fuel efficiency goals or our safety goals.

So it is a big concern, and as we go through it, we work with our member companies and we work with the regulators to make sure that we get the best value for the buck.

Mrs. BLACKBURN. Thank you, and I only have 27 seconds left, but at this time, Mr. Butterfield, I am going to yield to you for questions.

Mr. BUTTERFIELD. Thank you.

Motorcoach ridership is up, and yet motorcoaches are not being held to the same safety standards as passenger vehicles. H.R. 7 does not require bus manufacturers to comply with key safety requirements for 6 years after enactment, and operators are not required to fully adopt the new buses for 18 years.

Ms. Claybrook, is that correct or incorrect?

Ms. CLAYBROOK. That is correct. The 18-year provision is for retroactivity. The 6 years is for the new buses.

Mr. BUTTERFIELD. And what is your take on all of this?

Ms. CLAYBROOK. Well, my take is that the National Transportation Safety Board for 40 years has been telling both the Department of Transportation and the bus industry to improve their bus safety, and very, very little has ever happened. And I don't think it is going to happen unless you have these mandates.

The compromise that the consumer groups and the families of the victims had with the—in the Senate bill were very reasonable. It was signed off on by the Greyhound Corporation, the CEO personally, said it was totally feasible, and we think that that, the Senate bill then with that compromise in it is perfect and that anything less than that is unfortunate.

And as I mentioned, the cost of the Senate bill is 10 cents per passenger. This is an industry that has huge numbers of passenger riders every year. These buses last for 20 years. If you fix them up, they are going to provide safety again and again and again, day after day after day. And so it is well worth the investment.

Mr. BUTTERFIELD. Thank you. All right. Number two. A number of provisions in the Senate bill were based on technical assistance provide by NHTSA. Administrator Strickland's testimony men-

tioned one such provision, giving NHTSA new authority to address hazards caused by vehicles or equipment imported by an entity other than the original manufacturer.

Ms. Gadhia, and I may be mispronouncing that, do you believe that it is important for NHTSA to be able to work with Homeland Security to take action against imported vehicles or vehicle equipment that may be hazardous? What types of limitations are we currently facing in ensuring that imported goods do not violate consumer protection laws?

Ms. GADHIA. Yes. I think that is an important addition in the Senate legislation. Obviously you have got concerns, and consumers would like to know that the vehicles that they are driving, whether domestically produced or foreign imports, are meeting all the safety requirements. And what I do understand also is that in the Senate legislation that particular section regarding import safety makes the provision that if a car due to be imported is subject to a recall and that recall repair is made, that there is no longer any kind of holdup. So we think that is an appropriate consumer protection.

Mr. BUTTERFIELD. All right. I am going to yield back.

Mrs. BLACKBURN. Mr. Butterfield yields back.

Ms. Schakowsky for 5 minutes.

Ms. SCHAKOWSKY. Thank you. Mr. Bainwol, I wanted to ask you a question, but let me just first say that I think, I hope all of us are happy that the automobile industry is doing well. I was one of those proud to support the support for the industry and glad to see the industry back on its feet big time.

At the end of your testimony you said safer but you really meant affordable, had to correct yourself. I think consumers don't want to have to choose particularly, but you said in your testimony, I want to quote, "As a Nation we can better utilize the full benefits of vehicle safety technologies when we get vehicle occupants properly restrained and drunk drivers off the road while safety belt usage is increasing. Only half the vehicle occupants killed in crashes, over half of vehicle occupants killed in crashes are not restrained by safety belts or child safety seats."

And then on page seven of your testimony you state that Section 31503 of the Senate bill, which would require a rear seatbelt reminder system, should be deleted.

You know, I find that really contradictory and hypocritical frankly. Would you respond?

Mr. BAINWOL. Sure. I would be delighted to. It is true, and you can slice the data a number of different ways, but it definitely true that of the 32, 33,000 fatalities that a huge proportion of those come from either drunk driving or folks who are not seat belted or some combination, and so to pin the exact number is a little tough because you have both causalities.

So point one is dealing with both of those behavioral questions is probably the best thing we can possibly do to improve——

Ms. SCHAKOWSKY. OK. I have very limited time. OK. So we agree on that.

Mr. BAINWOL. I am trying to be responsive. So the best thing we can do is deal with these behavioral problems.

Ms. SCHAKOWSKY. OK.

Mr. BAINWOL. The seatbelt issue to which you refer——

Ms. SCHAKOWSKY. Uh-huh.

Mr. BAINWOL [continuing]. Is an element of that issue, but it is really not the same issue. We are talking about latches, I believe, that—are you talking about the latches?

Ms. SCHAKOWSKY. No. I am talking about——

Mr. BAINWOL. Rear seatbelt warnings.

Ms. SCHAKOWSKY. Yes.

Mr. BAINWOL. OK. As I understand the rear seatbelt warnings are now part of NHTSA's rulemaking plan, one.

Ms. SCHAKOWSKY. Well, Ms. Claybrook, would you comment on that?

Ms. CLAYBROOK. There is no reason if you have belt reminders in the front seat not to have them in the backseat. In the backseat you have children primarily who are riding. I don't understand why the industry is behaving this way.

In fact——

Ms. SCHAKOWSKY. No, no. You are done. I am asking Ms. Claybrook now.

Ms. CLAYBROOK. In fact, the belt reminders have really worked, and we should protect the most precious cargo in the vehicle, and that is our children.

Ms. SCHAKOWSKY. Let me ask you another questions. Isn't it true that auto industry initially resisted seatbelts altogether, airbags, and now use, now market the safety vehicles that they produce as something good? So is a market-driven approach to safety the way to go?

Ms. CLAYBROOK. No. Well, market only, you mean? No.

Ms. SCHAKOWSKY. Yes.

Ms. CLAYBROOK. You have to require them because the industry has been a reluctant partner in safety forever, and when you have the clarity of a statutory requirement, it is wonderful for the industry in many ways. They stop fussing and fuming, and they get around to doing the engineering. And that is what we really want is for them to have a clear mandate that gives them a deadline and then they know they have to do it, and they stop trying to use their lawyer, and they start using their engineers.

Ms. SCHAKOWSKY. All right. Let me get to the latch, and I wanted to ask Ms. Gadhia and good luck on your new addition to the family.

Ms. GADHIA. Thank you.

Ms. SCHAKOWSKY. The safety of child-restraint systems has come a long way. There is no question, and many parents now use the latch system to install car seats, but the latch system approved weight limits are lower than the weight limit on many car seats that are being installed using latch. The Senate bill has provisions suggesting the use of larger car seats and older and heavier children using them.

I wonder if you could speak on the importance of these efforts, and do you think that most parents know that their car seats may be, may need to be reinstalled as their child ages?

Ms. GADHIA. The provisions in the Senate bill are absolutely critical, and we appreciate that. We appreciate the Senate provisions and what they do require NHTSA to do with regards to child safety seats.

What is also critical is making sure that NHTSA is exploring a dynamic side impact test with regards to child safety seats, but I think you are absolutely right, that consumers are not aware with the compatibility of those latch anchors, those latch tethers which are so important for safety with car seats, and that is something that is partially addressed by the Senate bill, but we would also like to see NHTSA further address.

Mrs. BLACKBURN. I want to thank our witnesses for being with us today and to remind our members that there are 10 days to submit questions. I know many of us have additional questions. I know that some of you have additional comments that you would like to submit for the record, so we will have that 10 days, but in order to keep from holding you here through a new series of votes, we are going to complete our work.

And I am going to ask unanimous consent to include into the hearing record the statement of Representative Bill Shuster and statements from the following organizations, all of which we have shared in advance with the minority: The Rubber Manufacturers Association, the Motor and Equipment Manufacturers Association, Dorel Juvenile Group, Anchor Trailways and Tours, National Automobile Dealers' Association, Owner-Operator Independent Drivers Association.

So ordered.

[The information follows:]

Bill Shuster

Congressman Bill Shuster
House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
Hearing: "Motor Vehicle Safety Provisions in House and Senate Highway Bills"
Thursday, March 22, 2012

Chairman Bono Mack, Ranking Member Butterfield, and members of the Subcommittee, thank you for the opportunity to provide testimony on these important issues.

On the Transportation and Infrastructure Committee safety is a top priority. And personally, across all modes of transportation, ensuring transportation safety is of critical importance to me. I also want to extend my deepest sympathy to the families who have lost loved ones in motorcoach accidents, as well as to those who have been injured.

While the intercity motorcoach industry, including scheduled service and charter tour operations, is an extremely safe mode of transportation, recent accidents suggest there continues to be room for improvement. I am proud to be the sponsor of H.R. 1390, the Bus Uniform Standards and Enhanced Safety (BUSES) Act of 2011, legislation focused on increasing oversight and enforcement of bus safety, ensuring only the best, most well-trained drivers transport passengers, and undertaking research and testing that may lead to further regulations governing the safety of this flexible, cost effective, and heavily used mode of transportation.

The Transportation and Infrastructure Committee held a hearing title "How to Best Improve Bus Safety on Our Nation's Highways" on June 13, 2011 focused on these important issues. This hearing combined with input gathered from federal agencies and numerous stakeholders was extremely valuable in my efforts to address motorcoach safety issues.

As you know, H.R. 7, the American Energy and Infrastructure Jobs Act of 2012, addresses motorcoach safety issues and includes legislative provisions based on the BUSES Act. These provisions will play an important role in improving the safety of an already extremely safe industry of approximately 35,000 motorcoaches, which provide 750 million passenger trips annually with a safety record of 0.03 fatalities per 100 million miles travelled.

H.R. 7 addresses three critical safety priorities. First, to ensure the safety of the travelling public, we must ensure the enforcement of current regulations and take steps to root out bad actors who seek to skirt regulations. Second, only the best and most well-trained and able drivers should be allowed to transport passengers. And finally, improving safety standards for motorcoaches must be based on sound scientific research, testing and analysis, and USDOT's research and testing should be done within time frames that will allow it to view any changes in one safety area in conjunction with changes in other safety areas in order to prevent compromising safety in any area.

Thank you again for the opportunity to provide testimony today and for your interest in this important issue. I look forward to continuing to work with all of my colleagues to ensure the safety of the travelling public and to make a safe industry even safer.

RUBBER
manufacturers
association

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March 20, 2012

Honorable Mary Bono Mack, Chairwoman
House Energy and Commerce Committee
Subcommittee on Commerce, Manufacturing and Trade
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Bono Mack:

I am writing on behalf of the Rubber Manufacturers Association[1] to communicate the tire manufacturing industry's concerns with provisions contained within S. 1813, which has passed the Senate and been referred to the House for consideration.

Safety is the highest priority for tire manufacturers. Tires are a critical motor vehicle safety component and have performed superbly for decades. More than 250 million registered vehicles equipped with more than one billion tires drive approximately three trillion miles every year. RMA members are constantly conducting research and development into new technology to further enhance product performance. Tires provide optimum performance when properly used and maintained. Consumers should continue to have great confidence in these highly engineered products.

RMA and its members promote tire safety through individual company initiatives and through an industry financed program called Be Tire Smart – Play Your PART which educates motorists about the importance of tire maintenance to ensure safety performance and optimum vehicle fuel economy.

RMA and its members have been working with an automotive industry coalition to address a number of serious concerns with several provisions within S. 1813. A number of these provisions were contained in legislation that was rejected by the last Congress after considerable deliberation. They should be rejected again.

Of particular concern to RMA and its members are proposed changes to the Early Warning Reporting System (EWRS). NHTSA receives vast amounts of data under EWRS from auto, tire and automotive component manufacturers on a quarterly basis. This information includes fatality, injury, property damage claims; detailed production data; warranty claims; field reports; foreign recalls and; dealer communications. This information is fully available to federal safety regulators who are best qualified to use the information to determine whether a safety issue exists.

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[1] The Rubber Manufacturers Association (RMA) is the national trade association for tire manufacturers that produce tires in the U.S. RMA's eight tire manufacturer member companies operate 27 manufacturing plants, employ thousands of Americans and ship about 90 percent of the original equipment (OE) tires and 80 percent of the replacement tires sold in the United States. RMA's tire manufacturer member companies include Bridgestone Americas Inc., Continental Tire the Americas, LLC., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation.

Concurrent with creating EWRS, NHTSA conducted a rigorous rulemaking process and determined that fatality, injury and property damage claim information would be publicly disclosed. The decision to disclose a limited subset of data reflected an understanding that early warning information represents merely allegations of possible safety issues, not findings of fact about automobiles or automotive components. Additionally, NHTSA made the determination that certain information would receive confidential treatment to protect manufacturers' proprietary data.

S.1813 would have NHTSA revisit a carefully crafted and successful EWRS regulation that also has been ratified by federal courts. A presumption of disclosure for EWRS information which has already been determined by NHTSA and the courts to be confidential business information would establish a shadow regulatory system operated by personal injury lawyers seeking opportunities to second guess the judgment and actions of federal safety officials.

NHTSA should be permitted to continue to protect information that it has already determined to be proprietary and critical to a manufacturer's competitiveness. Furthermore, public disclosure of proprietary information may provide companies that do not manufacture in the U.S. with key insights to production, marketing and sales strategies for companies that produce tires in the U.S. This would potentially put U.S. tire manufacturers at a competitive disadvantage.

The proposed changes to EWRS in S. 1813 are unnecessary and should be removed from the legislation. Thank you for your consideration.

Sincerely,

Charles A. Cannon
President and CE

Motor & Equipment Manufacturers Association
Your First Call for Global Intelligence on the Motor Vehicle Supplier Industry

1030 15th Street, NW, Suite 500 East • Washington, DC 20005
202-393-6362 • Fax: 202-737-3742 • www.mema.org

March 21, 2012

The Honorable Mary Bono Mack
Chairwoman
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable G. K. Butterfield, Jr.
Ranking Member
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Bono Mack and Ranking Member Butterfield:

The Motor & Equipment Manufacturers Association (MEMA) represents over 700 companies that manufacture and remanufacture motor vehicle parts for use in the light vehicle and heavy-duty original equipment and aftermarket industries.[1] Motor vehicle parts suppliers are the nation's largest manufacturing sector, directly employing 685,892 U.S. workers and contributing to over 3.2 million jobs across the country.

Thank you for the opportunity to submit written testimony regarding "Motor Vehicle Safety Provisions in House and Senate Highway Bills" to the Subcommittee on behalf of motor vehicle parts manufacturers. MEMA urges Congress to pass surface transportation reauthorization legislation as it is critical to manufacturers who rely on our nation's infrastructure to move parts throughout the supply chain in a timely fashion.

The legislation recently passed by the U.S. Senate includes a number of safety provisions that will directly impact motor vehicle parts manufacturers. Some of these provisions will only affect our original equipment supplier members who design, engineer and manufacture parts required for the assembly of motor vehicles regulated by the National Highway Traffic Safety Administration (NHTSA).

[1] MEMA represents its members through four affiliate associations: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA). The motor vehicle parts supplier industry is a leader in developing technologies critical to making today's vehicles safer and more fuel efficient and is investing in product development to help meet future consumer demand.

Other provisions will primarily impact our aftermarket supplier members who manufacture and remanufacture the products necessary to repair and maintain over 247 million cars and trucks on the road today.

Each year, more than 250 new light vehicle models are sold in the United States, and each model contains 8,000 to 12,000 individual parts or components. Many of these are critical to safety and manufactured by suppliers, including mandated technologies such as airbags, seatbelts, and electronic stability control, as well as new advanced safety systems such as adaptive cruise control, advanced all-wheel drive, collision warning systems, mirror displays and blind spot detectors. The supplier industry works closely with vehicle manufacturers and with NHTSA to manufacture and design these new technologies.

MEMA supports many aspects of the legislation, but we have raised concerns regarding other provisions in the safety title of the bill. We would like to address specific issues.

Sections 31209, 31210 and 31211. Importation Provisions.

MEMA recognizes the importance of quality products for installation by the vehicle manufacturer as well as for the repair professional in the aftermarket. The Automotive Aftermarket Suppliers Association (AASA), MEMA's aftermarket affiliate association, has focused substantial resources on these challenges, including the creation and implementation of an industry-led campaign, "Know Your Parts." The goal of "Know Your Parts" is to promote the use of quality replacement parts from trusted full service manufacturers by repair professionals.

NHTSA currently has extensive authority to prevent defective products from coming into the U.S. market and does require the manufacturer or importer of record to take responsibility when problems surface. Manufacturers that import parts must comply with Customs and Border Protection (CBP) and Department of Homeland Security reporting requirements in order to be a registered importer. Importers also must post a bond at a minimum level of $50,000 to cover taxes and duties, including anti-dumping and countervailing duties.

MEMA worked closely with the Chairman and Ranking Member of the Senate Commerce Committee to make improvements to the provisions in the legislation passed by that committee to ensure the safety of imported vehicles and equipment. The provisions in the Senate-passed legislation will not increase regulatory burdens to manufacturers who import products. However, these provisions are duplicative given existing requirements with which established and responsible manufacturers and suppliers are already complying. The additional requirements placed on manufacturers in the Senate bill will not provide added safety benefits in the market.

At the same time, bad actors are importing substandard parts into the United States. A better approach would be to direct these provisions specifically at these bad entities. If additional steps are warranted, the government should focus on these shippers, who do not have a manufacturing presence in the United States, while not placing unnecessary burdens on companies who have an established history of importing quality components.

Section 31304. Public Availability of Early Warning Data.

It is unnecessary to initiate an additional rulemaking focused on access to early warning data under the Freedom of Information Act (FOIA). NHTSA spent considerable time conducting an informed analysis of the confidentiality of early warning data under FOIA Exemption 4 and the agency should not be required to revisit this issue. This data can be misused by competitors to misstate product performance, to determine warranty costs, and to gather market intelligence regarding various vehicle components. Since warranty data impacts parts and components provided by suppliers to vehicle manufacturers, the industry is keenly aware of the impact of a new rulemaking.

Public disclosure of this data may also unintentionally deter the introduction of new safety technologies into the vehicle fleet in the United States. Specifically, automakers may be less inclined to install safety innovations that help avoid crashes, such as predictive emergency braking systems, if they perceive a higher risk of litigation. Despite the substantial harm that disclosure of this information will likely cause, this information is of limited relevance as an indicator of safety performance. Congress should not permit NHTSA data to be used in this manner.

Sec. 31310. Study of Crash Data Collection

The Senate-passed legislation calls for NHTSA to initiate a comprehensive review of the National Automotive Sampling System (NASS) and to provide a report back to Congress. The NASS database provides critical motor vehicle collision and injury causation data, which enables suppliers and other industry stakeholders to conduct in-depth benefit analyses for future crash avoidance and other advanced safety technologies. Additionally, this data helps to guide company decisions as to where best to invest research and development resources relative to the creation of new products. It is important that the review focus not only on increasing the number of crashes investigated, but also on enhancing the number of data elements collected from each crash. MEMA encourages the committee to support this study to allow for future enhancement of the NASS.

New Technology Mandates

New regulatory requirements must focus on technologies that will provide measurable safety and performance results. Congress must allow the regulatory system to be data-driven and should not mandate the end product. Any other process will lead to potentially unnecessary rulemakings, place increased burdens on NHTSA's limited fiscal resources, and slow the progress on current regulatory efforts by the agency. Through the rulemaking process, NHTSA must be given the discretion to judge if a rulemaking is feasible and in the best interest of motor vehicle safety. Furthermore, Congress must allow time for the agency to fully consider this data and must provide sufficient lead times for vehicle manufacturers and their supplier network to comply.

Advanced Commercial Vehicle Safety Technology

As in the light vehicle market, several new advanced safety technologies have been developed and manufactured for use in the heavy-duty vehicle category. These advanced systems, such as stability control systems, brake stroke monitoring systems, collision mitigation systems, and lane departure warning systems will address many of the causes of heavy-duty vehicle accidents as identified in the 2006 Large Truck Crash Causation Study. MEMA encourages Congress to consider encouraging fleet owners

to purchase and install these advanced safety features, either through financial incentives or credit for improved safety scores through regulatory programs.

In closing, MEMA thanks the committee for the opportunity to share thoughts on the safety language in the surface transportation legislation. Should you or your staff have additional questions, please contact Catherine Boland at 202-312-9241 or cboland@mema.org.

Sincerely,

Ann Wilson
Senior Vice President, Government Affairs

March 21, 2012

The Honorable Mary Bono Mack
Chairwoman
Subcommittee on Commerce,
Manufacturing & Trade

The Honorable G.K. Butterfield
Ranking Member
Subcommittee on Commerce,
Manufacturing & Trade

Re: DJG Response to the Motor Vehicle and Highway Safety Improvement Act of 2012

Dorel Juvenile Group (DJG) appreciates the opportunity to comment on the proposed Motor Vehicle Safety Provisions of the Highway bill that recently passed the Senate. DJG's comments are directed specifically to Division C, Title I, Motor Vehicle and Highway Safety Improvement Act of 2012 of the legislation. The DJG comments will be made to specific sections per the Senate bill.

- Section 31203 Civil Penalties: Civil penalties increased to $250 million (up from approximately $17 million after inflation adjustment of the $15 million statutory cap). This amount is excessive for the Child Restraint Industry and would effectively put any Child Restraint Manufacturer out of business if imposed. The current penalty cap of approximately $17 million is already beyond the means of most, if not all, CRS manufacturers. Moreover, there is no basis to believe that there is any issue about the compliance of CRS manufacturers with NHTSA regulations (including reporting of defects) that would warrant such a dramatic and potentially crippling change to the civil penalties at NHTSA.
- Section 31208 Extend prohibition on importing noncompliant vehicle and equipment to defective vehicles and equipment: Prohibit sale, offer for sale, introduction into interstate commerce, or importation of an item of motor vehicle equipment (including a CRS) that is the subject of a Part 573 report (1) (either for defect or noncompliance). There is an exception for motor vehicle imports that are scheduled to be repaired before sale to ultimate consumers, but no such exception for motor vehicle equipment. DJG feels CRS manufacturers should be given the same opportunity to import products that are subject to a Part 573 report, as long as they will be remedied prior to sale.
- Section 31304 Public Availability of early warning data: Establishes a presumption in favor of "maximum public availability of" EWR/TREAD data which, for CRS

(1) 49 CFR Part 573 Defect and Non-Compliance Responsibility and Reports.

manufacturers, includes highly sensitive production data. This provision should not be enacted for several reasons. The release of CRS production data means competitors would have availability to sales and timing of product and this would give an unfair advantage to competitors. In addition, the raw, uninvestigated complaint numbers and field reports could be easily misunderstood and unfairly be used competitively against the reporting manufacturer by existing competitors or by new entrants, or inflict unjustified product damage in the marketplace as the unverified information is spread on blogs, or other social media.

- Section 31305 Corporate responsibility for National Highway Traffic Safety Administration Reports: Establishes new requirements and liabilities for a "senior official responsible for safety" in each company regulated by NHTSA, who would have to sign each submission to NHTSA in connection with an ODI or OVSC investigation, and who would be personally liable for a civil penalty of up to $5 million for submitting false, misleading or incomplete information. Under U.S. law (2), DJG's officers and employees are already obligated to make complete and honest responses to the government, and DJG always intends to do so. This provision seems to add nothing to the law, except to impose personal liability on the signing official. This type of personal liability is not reasonable to impose on an individual, particularly if the new standard is to impose liability for submitting "incomplete" information -- which is equated in the legislation to "false or misleading" information for our products. The amount of data and information for DJG CRS products for any given investigation is often staggering and there is a real opportunity to miss something inadvertently, which could be construed in twenty-twenty hindsight as "incomplete", even if the omission is discovered by the company and voluntarily supplemented later. Although the legislation appears to limit liability to occasions of "knowing and willful violation," this is a legal standard that is subject to second-guessing by regulatory officials in the course of an investigation. This is a potential cost that DJG cannot envision any "senior official" in a company wanting to put himself or herself at this level of risk and exposure and which increases the cost of doing business in the United States.
- Section 31501. Child Safety Seats

  (a) Protection for Larger Children.—

  Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a final rule amending Federal Motor Vehicle Safety Standard Number 213 to establish frontal crash protection requirements for child restraint systems for children weighing more than 65 pounds.

  This section should be deleted, or it will be construed as requiring something more than the recent NHTSA final rule of February 27 , 2012 amending FMVSS 213 (77 Fed. Reg. 11626).
- Section31502 Child restraint anchorage systems.

  (2) Amend Federal Motor Vehicle Safety Standard Number 213 (relating to child restraint systems) or Federal Motor Vehicle Safety Standard Number 225 (relating

to child restraint anchorage systems)—(A) to establish a maximum allowable weight of the child and child restraint for standardizing the recommended use of child restraint anchorage systems in all vehicles;
This was also part of the February 27, 2012 final rule. DJG has issues with the way the maximum allowable weight was derived and will raise these concerns directly to the NHTSA.

Thank you for the opportunity to comment and please contact Dorel Juvenile Group if there any questions regarding these submissions.

Respectfully Submitted,

Terry Emerson

Director of Quality Assurance

Dorel Juvenile Group

(2) 18 U.S.C. 1001

"Together We Go Places"

March 21, 2012

The Honorable Marsha Blackburn
217 Cannon Building
Washington, D.C. 20515

202-225-3004 fax

Dear Representative Blackburn:

Anchor Trailways and Tours serves in your district and other parts of Middle Tennessee. We furnish an array of passenger transportation services to the community including charters, tours and shuttles for area schools, churches and social groups when visiting special or sporting events and attractions.

Anchor Trailways employs over 100 people in our community. Our financial investment in our community represents over $10 Million Dollars.

Tomorrow, the House Subcommittee on Commerce, Manufacturing and Trade, of which you are a member, is conducting a hearing to further learn the differences the recently passed S. 1813 and the pending H.R. 7 as it pertains to motorcoach safety.

Many of the mandates contained in S. 1813 are overlapping, unnecessary and are currently undergoing research and testing by responsible Federal agencies. Many of the mandates are simply unworkable as the time frames in which the amendment would require each mandate to be accomplished are not consistent with proceeding in a prudent and logical fashion.

The American Energy and Infrastructure Jobs Act of 2012, (HR 7), as reported by the House Transportation and Infrastructure Committee, provides for the most rational and reasonable approach to enhanced bus and motorcoach safety. HR 7's bus and motorcoach safety provisions have been the subject of hearings and discussions amongst the industry and interested parties for over four years. Most of its bus and motorcoach safety provisions were largely based on a bill authored by Congressman Bill Shuster, HR 1390, the Bus Uniform Standards and Enhanced Safety Act of 2011, which enjoys strong industry support. This bipartisan legislation recognizes the complexities of motorcoach engineering and operations; mandating that science must drive policy rather than unsubstantiated conclusions.

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On behalf of the employees of Anchor Trailways, we thank you for your support and consideration.

Warmest regards,

Jared Stancil, Vice President

C: United Motorcoach Association

Submitted Testimony of the National Automobile Dealers Association

Before the

House Subcommittee on Commerce, Manufacturing and Trade

a Hearing Entitled

"Motor Vehicle Safety Provisions in House and Senate Highway Bills"

March 22, 2012

Madam Chairman, Congressman Butterfield, thank you for the opportunity to submit testimony regarding the motor vehicle safety provisions in the House and Senate highway bills (H.R. 7/S. 1813).

The National Automobile Dealers Association (NADA) represents almost 16,000 of America's franchised auto and truck dealerships. NADA's members sell, service, and repair new and used cars and trucks. NADA's membership penetration is approximately 90% of all the new car and truck dealerships in the nation, including both domestic and international nameplates. The majority of NADA's members are small, family-owned and community-based businesses, and NADA's members employ almost one million people nationwide.

America's new franchised automobile dealers are committed to improving road safety. In 2011, NADA launched "Dealers Driving Road Safety", a program that brought together a core group of auto dealers to educate and encourage other dealers to host safe driving events at their dealerships, such as promoting child passenger safety, safe teen driving and rural road safety. To bolster those efforts, earlier this year, the NADA Charitable Foundation initiated a micro-grant program whereby qualified dealers could sponsor a road safety event at their dealership and be reimbursed up to $500. The goal of the program is to encourage auto dealers to sponsor road safety programs tailored to meet the local safety needs of the communities they serve.

Some dealers are already making a difference. For example, Fitzgerald Auto Malls, with dealerships in Maryland, Florida and Pennsylvania, has installed or checked more than more than 41,300 child passenger safety seats since 1999. The DCH Group, headquartered in New Jersey, is the nation's leader among dealerships to promote safe teen driving.

The efforts of America's auto dealers to improve road safety are complemented by the auto manufacturers' commitment to safety. Automakers have stood shoulder to shoulder with auto dealers to petition state legislatures to pass life-saving primary seat belt laws. Today, a majority of states have primary seat belt laws, and seat belt usage has never been higher due in part to

those efforts. Vehicles in the showrooms today have never been safer, due to the auto industry's commitment to develop and deploy the latest vehicle safety technologies.

But for the public to reap the benefits of the latest automotive safety technologies, the vehicle must be affordable to the average American. Cutting edge safety technologies such as lane departure warning or crash imminent braking must be widely deployed in the fleet to have a meaningful impact on safety. So if government regulations make cars unaffordable for more and more Americans, deployment of safety improvements will be delayed.

Currently, the average price of a new vehicle is $30,300. There are 20 new vehicle safety mandates either being implemented, proposed, on the horizon, or in S. 1813. These new mandates vary in cost.

The cost of these new safety mandates, however, pale in comparison to the new NHTSA/EPA/California Air Resources Board (CARB) fuel economy mandates for model year 2017-2025. This proposed rule is the most expensive auto regulation of all time (costing $151 billion), and comes on the heels of the 2010 fuel economy rules (costing $51 billion). All of the Obama Administration fuel economy mandates combined would raise the average price of a vehicle by about $3,000 when fully implemented.[1]

The cumulative cost of all the new and pending regulations is relevant to safety because more expensive vehicles delay fleet turnover. NADA recently conducted a study that found that the Administration's $3,000 average price increase from its fuel economy rules alone would regulate 6.8 million people out of the new car market.[2] These 6.8 million people would no longer qualify for auto financing necessary to purchase a new car with the latest safety technologies solely because of the Administration's fuel economy mandates. And while some have said these 6.8 million Americans could still buy a used car, Members should be aware that when new car prices rise, so do used car prices.

Because the Administration has never publicly disclosed the $3,000 cumulative cost of its fuel economy mandates to consumers (but has routinely disclosed its estimated cumulative benefits), NADA commends Office of Information and Regulatory Affairs director Cass Sunstein for his recent action directing "federal agencies to consider the cumulative effects of their regulations as a part of a broader effort to cut down on redundant and unnecessary rules."[3] NADA looks forward to the Administration calculating and disclosing to the public the total regulatory-driven

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[1] The $3,000 average vehicle price increase may be low, as a recent NADA study of EPA's price projections for heavy duty truck emissions found that EPA's estimates was off by 320%. See attached study: *A Look Back At EPA's Cost and Other Impact Projections for MY 2004-2010 Heavy-Duty Truck Emissions Standards* (February, 13 2012).

[2] See attached study: David Wagner et al, *The Effect of Proposed MY 2017-2025 Corporate Average Fuel Economy (CAFE) Standards on the New Vehicle Market Population*, pg. 5, (Feb. 13, 2012).

[3] Emily Yehle, "*White House order agencies to weigh rules' cumulative impacts*," Energy and Environment Daily, (March 20, 2012).

price increases to the average car resulting from all vehicle safety mandates, the cumulative costs of its fuel economy mandates for model years 2011-2025, the Tier 3 anti-smog regulations, and the California fuel economy regulations (including the zero emission vehicle mandate for those automakers not exempt). Adding up the price increases resulting from all the regulatory mandates on vehicles is important, because that cost is what all consumers will have to pay every time they buy a new car. The new OMB directive should end the practice of an agency disaggregating regulatory costs while aggregating regulatory benefits, which is misleading to the public.

NADA also recommends that if the Administration wishes to "cut down on redundant and unnecessary rules" that it reconsider why it takes three different regulators (NHTSA, EPA and CARB) to regulate fuel economy three different ways pursuant to three different laws. Simply by regulating fuel economy pursuant to the CAFE program that Congress renewed in 2007[4] would eliminate "redundant and unnecessary rules" as well as save taxpayers millions of dollars.[5]

NADA is also concerned that with the $210 billion cumulative price tag for these fuel economy rules, fewer resources will be available to develop new safety technologies by the automakers and their suppliers. If nearly all the automakers' research and development resources are focused on fuel economy, new safety technologies could languish in the laboratory.

Finally, NHTSA's primary mission is to reduce traffic fatalities and injuries on our Nation's roads. Highway safety is not the mission of EPA or CARB. When NHTSA was assigned by Congress in 1975 to be the sole regulator of fuel economy standards, it was given this task in part because Congress was concerned about highway safety. Since 2009, however, NHTSA is no longer the sole regulator of fuel economy, due to the actions of the executive and judicial branches. Given the nexus between vehicle safety and fuel economy, Congress should consider whether it is wise for NHTSA's safety mission to be subordinated to accommodate EPA's and California's global warming agenda.

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[4] Pub. L. No.110-140, 121 Stat. 1492 (2007).

[5] EPA has calculated that it has spent $25 million regulating fuel economy since 2007. See: *Hitting the Ethanol Blend Wall: Examining the Science on E15 Before the Committee on Science, Space, and Technology*, 112th Cong., 1st Session (July 7, 2011) (question for the record by Rep. Chuck Fleischmann to EPA director Margo Oge).

The Effect of Proposed MY 2017-2025 Corporate Average Fuel Economy (CAFE) Standards on the New Vehicle Market Population

Wagner, et al

2/13/2012

The Effect of Proposed MY 2017-2025 Corporate Average Fuel Economy (CAFE) Standards on the New Vehicle Market Population

February 2012
David Wagner, Paulina Nusinovich, Esteban Plaza-Jennings
National Automobile Dealers Association

Introduction

New vehicles are a major purchase relative to income for most consumers, who face two significant barriers to entering the new vehicle market. The first barrier of insufficient financial resources to purchase a vehicle without a loan leads to the second barrier of minimum lending standards. Due largely to this insufficient financial resources challenge, a large portion of new vehicle purchases are assisted by financing, which is highly integrated into the new vehicle market. Consumers who do not meet the minimum lending standards are highly likely to lack the financial resources to purchase a new vehicle without financing; thus whether or not a household's financial profile meets the minimum lending standards for the lowest cost available new vehicle is a close approximation of his or her inclusion in the new vehicle market.

Debt service is the only portion of the household expense budget that is considered during the qualification process for nearly all automotive financing, and a maximum debt service to income ratio (DTI) joins credit scores and a maximum loan to value ratio as the three most important specific qualification standards. All three of these standards must be met to qualify under most lending situations. Lending institutions differ in their use of DTI. The flexibility enjoyed by underwriters varies by lending institution and the maximum DTI allowed for standard financing varies from 35 – 40%.[1]

Federal fuel economy mandates are designed to boost the fuel economy of the population of new vehicles offered to consumers, potentially reducing fuel costs. However, the net present value of any future fuel savings, while important for households in the purchase decision, is not relevant to loan qualification. In short, consumers are not able to finance future fuel savings with current borrowing. Lending benchmarks, such as the DTI do not account for fuel costs.

The proposed fuel economy standards for model years (MY) 2017– 2025 will increase the gross up-front cost to consumers of a new vehicle purchase due to higher costs of production and related costs. By increasing the cost of new vehicles without providing offsetting value in the context of the lending process, proposed CAFE standards will increase DTI ratios and cause some consumers to no longer qualify for a loan on the least expensive new vehicle, thus removing them from the new vehicle market.

We seek to determine how significant this group is by focusing on a consumer's ability to meet one of the standards, the maximum debt to income ratio. This analysis is not concerned with the

[1] Standard financing DTI based on review of Bankrate.com and discussions with the financial services industry.

choices consumers make within a given market; it is concerned with whether or not a consumer is included or excluded from a market. As such, the analysis assumes the most lenient qualification: a consumer is considered part of a market if he or she has the financial resources to purchase at least one of the products for sale in that market. Specifically, our analysis assumes a household is part of the new vehicle market if its debt to income ratio would remain at or below the lending standards maximum to acquire a loan to purchase the least costly new vehicle.

Analysis Method

The Bureau of Labor Statistics Consumer Expenditure Survey (CES) records the financial profile and purchase behavior of a large sample of consumers each year. We are utilizing the 2008 and 2009 CES for this analysis.[2] Each household reports information sufficient to calculate a current debt to income ratio. This includes payments on automobile loans, on residential mortgages, and other consumer loans, as well as all significant sources of income. Payments on automobile loans are excluded to simulate each consumer unit's financial profile prior to considering a new vehicle purchase. Household financial profiles are adjusted to approximate the transition from the time of the survey to 2010.

As discussed, our approximation of the new vehicle market population is the number of licensed drivers with sufficient financial resources to meet a debt to income ratio lending benchmark when purchasing the lowest cost new vehicle. Currently, the lowest cost new vehicle is the 2011 Chevrolet Aveo. Including incentives, taxes, and fees, this vehicle costs approximately $12,750 in 2010 dollars.

Each consumer unit is assumed to have $1,000 in liquid savings available for a down payment, leading to minimum loan size of $11,750. We assume a term of 72 months for the loan needed for the purchase of this vehicle, at the current prevailing annual interest rate of 4%, leading to a monthly payment of $183.

We assume a maximum debt to income ratio at which a borrower can receive standard financing of 40%. This includes all debt service payments for mortgages and consumer loans as a percentage of pre-tax income. Households with a higher debt to income ratio may be able to obtain a loan, but such loans would carry above market interest costs and are not considered for this analysis.

The analysis is structured to produce conservative estimates of the number of households and licensed drivers removed from the new vehicle market by proposed fuel economy mandate related cost increases. CES survey data may potentially underestimate household debt service to the extent that survey respondents fail to report all outstanding loans. Current interest rates are historically low, and are thus likely to be higher in the MY 2017-2025 timeframe. Lastly, the analysis assumes the financial resources of the household are available to each licensed driver

[2] 2010 survey data was not available for purposes of this analysis.

within it, should they attempt to procure financing for a potential new vehicle purchase. To the extent that this is not the case, the estimation method will overestimate the financial resources available to some respondents. No changes to real household income levels or the relative price of new vehicles are assumed other than those caused by the proposed regulation. Both of these are likely to increase in the future and the relative levels of these increases will cause this analysis to either mildly overstate or understate the findings.[3]

Findings

Based on analysis of the CES data, income (Figure 1) and affordability density (Figure 2) curves are estimated, representing the percentage of households with a DTI at or below a 40% maximum after hypothetical vehicle purchases of varying costs are added to the family budget. An estimated 93% of all consumer units have a financial profile that would allow them to meet the 40% maximum debt to income ratio after purchasing the current minimum cost new vehicle ($12,750).

When hypothetical scenarios are tested in which the minimum cost of a new vehicle increases, the portion of households with sufficient financial resources declines. For example, if the minimum cost of a new vehicle were to increase from the current $12,750 to $17,750, the portion of consumer units who have the financial resources to purchase such a vehicle while maintaining a debt to income ratio at or below 40% would decrease from 92.8% to 88.5%, or 4.3 ppts (Figure 3). This represents 5 million households, or 10.6 million of the 245 million licensed drivers expected for MY 2025.[4]

The proposed MY 2017-25 fuel economy mandates will increase the price of new vehicles, though credible estimates of the size of the increase vary. The National Highway Traffic Safety Administration (NHTSA) estimates it will cost an average of $2,937 in 2010 dollars to comply with the MY 2011-MY 2025 standards. This figure includes $95 for MY 2011,[5] $945 for MY 2016,[6] and $1,896 for MY 2025 rule.[7]

[3] For example, if real household incomes increase significantly more than real new vehicle prices (excluding the cost of meeting the new regulation) this would increase the number of households within the market both before and after the inclusion of the CAFE compliance costs, such that our findings may overstate or understate the impact of those costs on the new vehicle market population.
[4] Estimated from Federal Highway Administration Data for 1970 – 2008, based on a declining rate of increase.
[5] 74 Fed. Reg. 14196, 14413 (Mar. 30, 2009)
[6] 75 Fed. Reg 25324, 25635 (May 7, 2010)
[7] 76 Fed. Reg 74854, 74889 (Dec. 1, 2011)

We evaluate two other cost scenarios: $4,803 in 2010 dollars reflecting the NHTSA costs referred to above scaled up using RPE adjustments,[8] and a $12,349 average per vehicle "worse case scenario."[9]

Based on the NHTSA $2,937 cost estimate, the proposal will increase the minimum cost of a new vehicle to approximately $15,700 in 2010 dollars and remove 3.1-4.2 million households or 5.8-6.8 million licensed drivers from the new vehicle market by 2025, assuming incomes, non-vehicle debt burdens and the 40% maximum debt to income ratio standard remain constant. A $4,803 cost increase would remove 5.4-5.9 million households or 10.0-11.0 million licensed drivers from the new vehicle market by 2025. Lastly, a $12,349 cost increase would remove 14.9 million households or approximately 27.7 million licensed drivers from the new vehicle market by 2025.

A significant cost increase would have impacts throughout the automobile market. The number of licensed drivers belonging to a household with sufficient financial resources to purchase vehicles at higher costs would decrease (Figure 4). 6.6, 10.5 and 26.4 million licensed drivers would be removed from qualifying for the purchase of the minimum cost new vehicle[10] which accommodates more than 5 people (or more than 2 child safety seats) assuming the $2,937, $4,803 and $12,349 cost increases, respectively. The number of licensed drivers that fall out of affordability declines as the current cost of a vehicle increases. For example, 5.8, 9.4, and 23.5 million licensed drivers would be removed from qualifying for the purchase of the minimum cost luxury vehicle[11], assuming the $2,937, $4,803, and $12,349 cost increases, respectively.

Used vehicle demand would be pressured upward by any significant price increase in the new vehicle market. A portion of this pressure would come from the people who were removed from the new vehicle market by falling below the loan qualification threshold. Due to the distinctions between the two markets, an estimation of the price increase and resulting reduction in the pool of qualifying buyers for particular benchmark used vehicles is beyond the scope of this analysis. However, it can be assumed that a significant number of licensed drivers at low income levels would be impacted by expected new market cost increases leading to used vehicle price increases.

The impact of CAFE based cost increases would vary by state. We estimate the largest portion (4.3%, representing 228,000 licensed drivers) of households removed from the new vehicle market for Tennessee, based on the $2,937 cost estimate (Figure 6). Kentucky is also estimated to lose a relatively large portion of households (4.2% representing 145,000 licensed drivers).

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[8] Michael Whinihan, Ph. D., Dean Drake and David Aldorfer, "Retail Price Equivalents and Incremental Cost Multipliers: Theory and Reality."

[9] NADA/ATD, *A Look Back At EPA's Cost and Other Impact Projections for MY 2004-2010 Heavy-Duty Truck Emissions Standards*, February, 2012. This scenario is based on an evaluation of EPA's failure to accurately predict the per-vehicle regulatory costs associated with its MY2004-2010 commercial truck tailpipe standards.

[10] Currently selling for approximately $20,000.

[11] Currently selling for approximately $35,000.

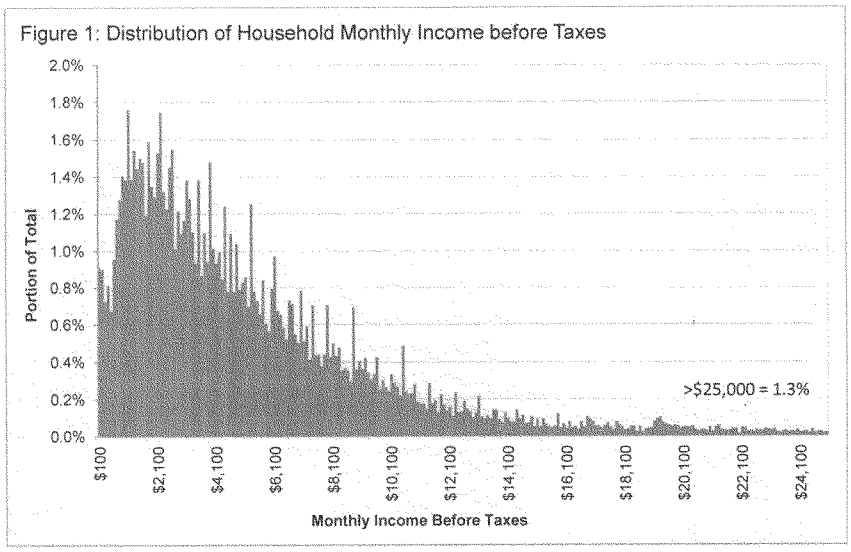
Figure 1: Distribution of Household Monthly Income before Taxes
2.0%
1.8%
1.6%
1.4%
1.2%
1.0%
0.8%
0.6%
0.4%
0.2%
0.0%
Portion of Total
>$25,000 = 1.3%
$100
$2,100
$4,100
$6,100
$8,100
$10,100
$12,100
$14,100
$16,100
$18,100
$20,100
$22,100
$24,100
Monthly Income Before Taxes

Figure 2: Portion of Households below Maximum Debt to Income Ratio after Vehicle Purchase

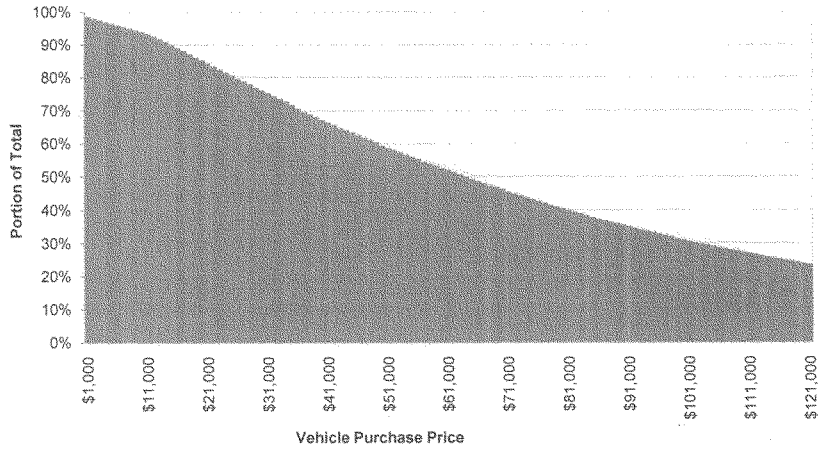

Figure 3: Portion of Households Removed from New Vehicle Market after Price Increases from the $12,750 Benchmark

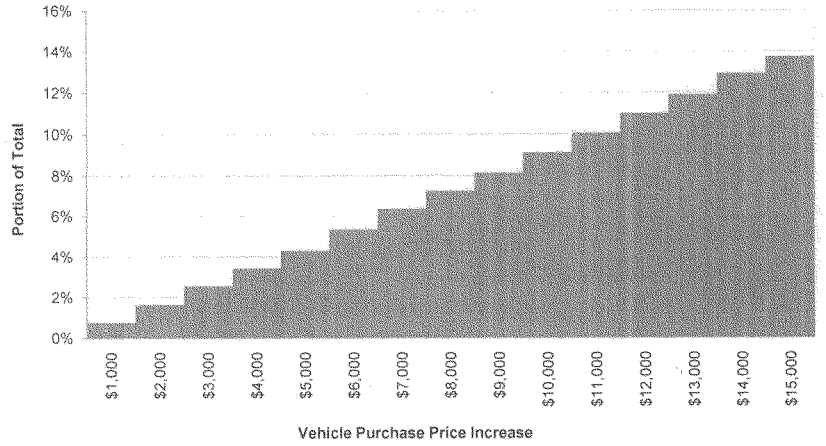

Figure 4: Number of Licensed Drivers Who Move above Maximum DTI

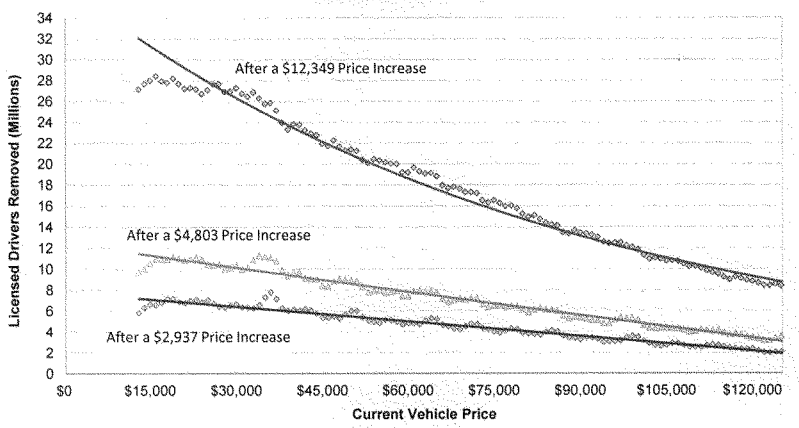

Figure 5: Portion of Households and Quantity of Licensed Drivers Removed from the New Vehicle Market by 2025 based on CAFE based Price Increase Scenarios

	Price ↑ $2,937		Price ↑ $4,803		Price ↑ $12,349	
State*	% of Households Removed	Quantity of Licensed Drivers Removed in 1,000s	% of Households Removed	Quantity of Licensed Drivers Removed in 1,000s	% of Households Removed	Quantity of Licensed Drivers Removed in 1,000s
AK	1.1%	7	1.9%	11	7.1%	42
AL	2.9%	130	4.1%	186	14.3%	641
AZ	1.9%	88	2.8%	135	12.4%	590
CA	2.1%	580	3.4%	970	9.7%	2735
CO	2.4%	88	3.8%	141	11.8%	438
CT	1.1%	37	1.8%	59	5.7%	190
DC	1.1%	4	3.0%	11	7.8%	30
DE	2.8%	20	4.1%	30	6.8%	49
FL	3.1%	497	4.9%	793	12.3%	1968
GA	2.6%	188	4.6%	329	11.6%	828
HI	1.8%	18	2.7%	28	5.1%	53
ID	1.3%	15	2.1%	24	8.4%	96
IL	2.7%	269	4.0%	398	10.8%	1084
IN	1.2%	67	2.2%	125	9.8%	554
KS	0.3%	8	0.7%	18	3.7%	92
KY	4.2%	145	6.7%	234	15.3%	534
LA	2.4%	94	4.1%	158	12.2%	476
MA	1.9%	107	3.2%	188	10.0%	579
MD	0.8%	37	1.6%	69	6.0%	265
ME	2.4%	28	4.0%	47	13.3%	155
MI	2.0%	176	3.4%	301	11.5%	1014
MN	0.7%	27	1.4%	52	7.0%	263
MO	1.6%	79	3.0%	147	7.4%	365
NE	1.8%	30	3.6%	59	11.6%	189
NH	2.6%	32	3.4%	41	8.8%	106
NJ	1.7%	125	2.6%	183	9.1%	649
NV	1.4%	26	2.2%	40	8.8%	164
NY	3.1%	442	5.1%	721	12.8%	1804
OH	2.4%	228	3.8%	359	10.5%	1001
OR	2.4%	78	3.2%	104	8.6%	279
PA	2.1%	218	3.4%	353	11.2%	1171
SC	3.0%	109	4.9%	179	12.3%	445
TN	4.3%	228	6.7%	350	15.5%	812
TX	2.1%	349	3.3%	557	10.1%	1690
UT	2.4%	46	4.3%	83	13.8%	266
VA	1.9%	122	2.7%	170	7.4%	466
WA	2.0%	108	2.7%	150	6.7%	365
WI	3.1%	147	4.4%	208	9.2%	432

*Some states omitted due to lack of sample

A LOOK BACK AT EPA'S COST AND OTHER IMPACT PROJECTIONS FOR MY 2004-2010 HEAVY-DUTY TRUCK EMISSIONS STANDARDS

Patrick Calpin and Esteban Plaza-Jennings

2/13/2012

A LOOK BACK AT EPA'S COST AND OTHER IMPACT PROJECTIONS FOR MY 2004-2010 HEAVY-DUTY TRUCK EMISSIONS STANDARDS

Patrick Calpin, Esteban Plaza-Jennings
American Truck Dealers
February 2012

ABSTRACT:

In 1997, 2000, and 2001, the U.S. Environmental Protection Agency (EPA) published rules establishing a series of new emissions mandates for heavy-duty trucks to be phased-in between model years (MY) 2004 and 2010.[1] Typical of EPA's motor vehicle standards, these "technology forcing" mandates analyzed the development and implementation of new emission control strategies and technologies.

The adoption of these new control strategies and technologies directly resulted in higher prices for new heavy-duty trucks. These mandates also resulted in significantly higher operating costs, attributable largely to increased maintenance requirements, reduced reliability, and lower fuel economy. Together, these higher prices and operating costs led to significant disruptions in the new truck marketplace. These included significant layoffs caused by unprecedented truck pre-buys and sales "cliffs," capital constraints for truck and engine manufacturers (OEMs), suppliers, and dealers; and the departure of certain businesses from the heavy-duty truck market.

This paper examines the degree to which, and possible reasons why, EPA's estimated regulatory impact dramatically underestimated real world costs of the regulation. An analysis of actual sales data, including cost escalators associated with the MY 2004-10 standards, shows that EPA underestimated compliance costs by a ***factor of 2-5***. These higher-than-projected costs resulted in, among other things, significantly lower-than-projected new truck sales which necessarily reduced the environmental benefits associated with these standards. While it is an important issue, this paper does not attempt to quantify the degree to which EPA's projected environmental benefits were not realized.

I. THE 2004-2010 TRUCK EMISSIONS MANDATES

As shown in Table 1, the MY 2004-10 truck standards largely were designed to reduce emissions of three diesel fuel combustion byproducts; nitrogen oxides (NOx); particulate matter (PM), and non-methane hydrocarbons (NMHC). A 1998 legal settlement required seven truck engine OEMs to comply with the MY 2004 mandates two years early (MY 2002). All other engine and truck OEMs began compliance starting with MY 2004.

The second set of mandates began to phase-in in MY 2007. As shown in Table 1, they were designed to reduce MY 2002-04 emissions by roughly 90 percent. The 0.01 g/bhp-hr. PM standard took effect in 2007, with tighter NOx and NMHC standards phased in over three years.

[1] 62 Fed. Reg. 54694, *et seq.* (October, 21, 1997); 65 Fed. Reg. 59896, *et seq.* (October 6, 2000); 66 Fed. Reg. 5001, *et seq.* (January 18, 2001). The model year for heavy-duty trucks typically begins on January 1 (*ie.*, MY 2004 runs from 1/1/04-12/31/04).

Table 1: EPA MY 2004-10 Truck Emissions Targets

Regulation	NOx	PM	NMHC
2004	2.5 g/bhp-hr	0.10 g/bhp-hr	2.5 g/bhp-hr
2007-10	1.2- 0.20 g/bhp-hr	0.01 g/bhp-hr	0.14 g/bhp-hr

To meet the MY 2002-10 mandates, engine and truck OEMs had to design, test, and incorporate a host of new strategies and technologies. Cooled exhaust gas recirculation (EGR), which reduces NOx emissions by displacing oxygen with inert gases during combustion, was the primary compliance strategy for almost all truck and engine OEMs. EGR often necessitated that changes be made to the trucks themselves (e.g., to accommodate larger cooling systems). To address tighter MY 2007-10 NOx standards, most engine and truck OEMs chose selective catalytic reduction (SCR), an aftertreatment strategy that reduces emissions by injecting a catalyst or diesel exhaust fluid (DEF) into the exhaust stream. PM emission reductions were addressed largely with aftertreatment technologies such as filters and traps.

II. THE REACTION OF NEW TRUCK CUSTOMERS TO EPA'S STANDARDS

Implementation of EPA's MY 2004-2010 emissions mandates directly resulted in higher truck prices, increased operating costs, reduced reliability, and lower fuel economy performance, which caused dramatic disruptions to the new truck marketplace. As detailed later in this paper, EPA's regulatory analyses grossly underestimated these impacts or missed them altogether.

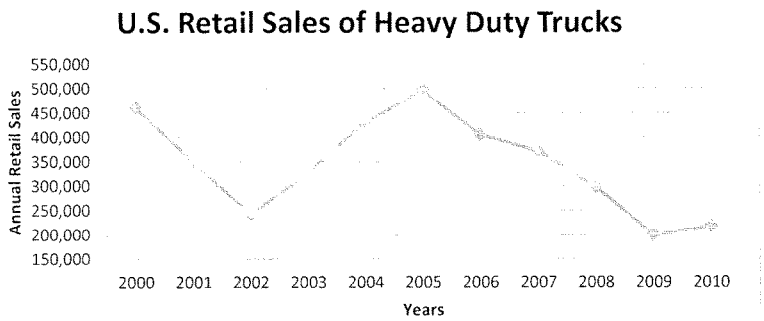

Figure 1: Annual U.S. Retail Sales for Class 4-8 Heavy-Duty Trucks.[2]

Many informed prospective new truck purchasers rushed to "pre-buy" trucks with pre-compliant technologies to avoid the effects of EPA's mandates. As seen in Figure 1 below, a surge of orders came in for pre-MY 2004 equipment, after which orders slumped significantly. Also, in 2006, orders surged for pre-MY 2007 equipment, and then fell off precipitously. Lastly,

[2] All data from Ward's Communications.

in the 2009 time-frame, orders poured in for pre-MY 2010 equipped trucks.[3] In each instance, the marketplace anticipated and sought to avoid the higher prices and poorer performance of compliant technologies. As detailed later in this section, these marketplace distortions led to employment swings, capital constraints, and even some business failures[4].

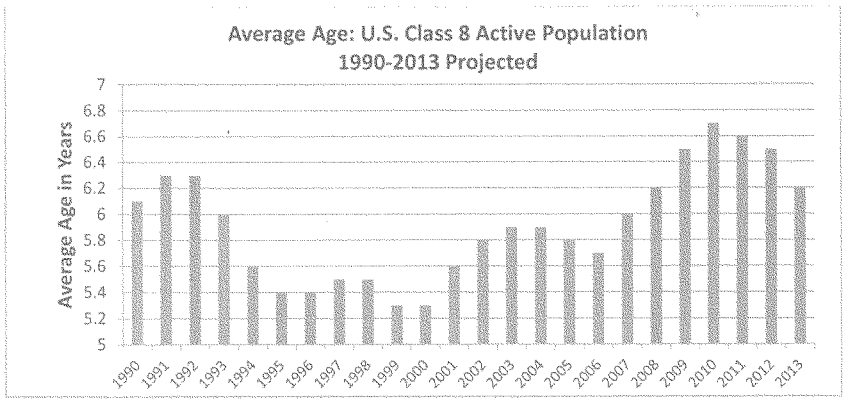

Figure 2: Average Age of Heavy-Duty Truck Fleet 1990-2013[5]

A National Economic Research Associates (NERA) survey concluded that pre-buy purchases made in anticipation of the MY 2007 standards totaled an additional 104,077 units in 2005 and 2006.[6] This was followed by a decline of 149,272 units in 2007 and 2008.[7] The pre-buy in 2009 was less pronounced and somewhat difficult to separate out from a significant decline in commercial truck demand that year related to the severity of the economic recession. In fact, sales of Class 8 trucks hit their lowest level since 1991.[8] In addition, many operators elected to hold onto their older trucks for longer than they otherwise would have, predictably incurring the higher operating costs and reliability risks of doing so. When faced with higher truck pricing and lower truck performance, prospective new truck customers acted rationally. This reluctance to buy new trucks has resulted in an aging truck fleet largely made up of trucks built prior to 2004. As evidenced by Figure 2 below, the commercial truck fleet now averages 6.6 years of age, about 11 months older than the historical average dating back to 1979.[9] This

[3] Jim Mele, *Economists See Milder Pre-Buy in '09*, Fleet Owner (January 22, 2008).

[4] Truck and engine OEMs temporarily or permanently exiting the heavy-duty market at least in part due to EPA's mandates include Caterpillar Inc., Sterling Trucks, General Motors Medium-Duty Truck (Chevrolet/GMC), Mitsubishi-Fuso Truck of America, Inc., Hino Trucks, and UD Trucks Co.

[5] Saum, Chairman, Beltway Companies, presentation to Diesel Technology Forum, June 17, 2011, graphic by ACT Research, LLC.

[6] NERA, *Customer Behavior in Response to the 2007 Heavy-Duty Engine Emission Standards: Implications for the 2010 NOx Standard*, page 11, (November 14, 2008).

[7] Ibid.

[8] Commercial trucks generally are categorized by gross vehicle weight rating (GVWR) and vehicle class. EPA further defines "heavy-duty vehicles" as light heavy-duty (Classes 2B-5; 8,500-19,500 GVWR), medium heavy-duty (Classes 6-7; 19,501-33,000 GVWR) and heavy heavy-duty (Class 8; 33,001and above GVWR).

[9] Daley and Clothier, *Oldest Trucks Since 1979 May Mean Output to Rise 56%*, Bloomberg (November, 19, 2010).

aging fleet of older, higher polluting trucks is counterproductive to the pollution reduction targets EPA hoped to meet with its mandates.[10]

These pre-buys and decisions by operators to keep older trucks longer had a significant economic impact. EPA acknowledged the market disruptions caused by the new regulations but waved them off as business cycle activity not necessarily related to the new emissions standards.[11] This was hardly the case as the pre-buys occurred in tandem with the new emissions mandates. For example, when faced with declining sales following the pre-buy, Volvo laid off 300 workers in March of 2001 and another 300 workers in April of that year.[12] In 2006, Volvo's Deputy Chief Executive Officer warned that the new environmental regulations would cause such a precipitous decline in sales that Volvo would have no choice but to lay off more people.[13] Volvo ended up laying off nearly 600 workers in 2006; the direct result of the new emissions mandates.[14] Also in 2006, Peterbilt cut their workforce by almost half.[15] Freightliner laid off nearly 1,800 workers in 2007,[16] followed by another layoff of 2,100 workers, and the complete shut down a manufacturing plant in 2009.[17]

Fleet purchasers echo these numbers. Fleets pre-bought new trucks in 2006 to reduce their average fleet age in preparation for the MY 2007 standards.[18] Fleet managers cited concerns over cost and decreased reliability as a main motivating factor.[19] As noted above, in addition to causing significant economic disruptions, these pre-buy/cliff cycles concurrently reduced projected environmental benefits as the adoption of new and more environmentally friendly technologies was delayed.

Other prospective purchasers turned to the used truck market.[20] Additionally, there has been a surge in truck rebuilding activity, often involving glider kits.[21] Glider kits are new truck frames and bodies typically married to used or rebuilt powertrain and suspension components. Like with used trucks, glider kits do not use new technology engines, further reducing the environmental benefits predicted by EPA to result from its standards.[22]

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[10] Thornton, Dorothy, *et. al. Compliance costs, regulation and environmental performance: Controlling truck emissions in the US.* Regulation & Governance (2008).
[11] Diesel Progress, *10 Questions with Margo Oge, Office of Transportation and Air Quality*, EPA (February 2007).
[12] The Roanoke Times, *More Layoffs Ahead at Volvo* (March 29, 2001).
[13] Forbes.com, *Big Trucks on a Bumpy Road* (November 16, 2006).
[14] The Sun, *Volvo to Lay Off 600 at Hagerstown Plant* (October 28, 2006)
[15] The Tennessean, *Peterbilt to Cut Ranks by Half* (November 28, 2006)
[16] Napa Valley Register, *Truck Maker Announces Layoffs* (January 28, 2007).
[17] World Truck News, *Freightliner Plans Massive Charlotte-Area Layoff* (January 28, 2009).
[18] Tire Business, *Strong Economy Bodes Well for Trucking,* (January 2, 2006)
[19] Leone, *Carriers Split Viewpoints on Benefits Of Buying Before 2010 Regulations,* Transport Topics (March 24, 2008).
[20] Owner-Operators Independent Drivers Association (OOIDA) data shows that the percentage of its members buying new trucks has dropped by 30 percent. Scott Grenerth (Professional driver and member of OOIDA), Testimony before the House Committee on Oversight and Government Reform, (October 12, 2011).
[21] Transport Topics, *Glider Kits Give New Life to Trusty, Older Trucks* (January 17, 2011).
[22] When the marketplace avoids EPA-mandated vehicles, it both diminishes projected environmental benefits and calls into question EPA's estimates of private benefits and costs. This is also a concern with EPA's MY 2017-2025 light-duty greenhouse gas (GHG) proposal and the expected second round of GHG rules for commercial trucks.

III. EPA'S PROJECTED COSTS OF COMPLIANCE

1. Fixed Costs

EPA conducted studies analyzing and projecting the effects of the MY 2004-10 rules.[23] Projected regulatory benefits included improved environmental quality and human health, while projected costs[24] focused on control strategies and technologies necessary for compliance. EPA broke out its projected compliance costs for light heavy-duty, medium heavy-duty, and heavy heavy-duty trucks and engines. Due to data constraints, this paper examines only the projected and actual compliance costs associated with medium heavy-duty and heavy heavy-duty trucks.

EPA's cost projections were made for a nine-year time frame and accounted for decreasing fixed and variable costs. As shown in Table 2 for heavy heavy-duty trucks, EPA projected that MY 2004-2005 trucks meeting MY 2004 standards would incur average costs of $803. For MYs 2006-2008, EPA projected a $688 average per vehicle MY 2004 standards compliance cost, with the decrease due to a 20 percent learning curve on fixed costs. For MYs 2009-2012, EPA projected average per vehicle MY 2004 compliance costs of $368, a decrease reflecting the expiration of fixed costs by MY 2009, and a 20 percent learning curve for variable costs.

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[23] EPA, *Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines*, (September, 1997); EPA, *Regulatory Impact Analysis: Control of Emissions on Air Pollution from Highway Heavy-Duty Engines*, EPA 420-R-00-010 (July 2000); EPA, *Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements*, EPA 420-R-00-026 (December 2000).

[24] EPA's projected costs appear to represent an average marginal cost/per truck based on a Retail Price Equivalent (RPE) for emission control technologies. Specifically:

> Costs of control include variable costs (for incremental hardware costs, assembly costs, and associated markups) and fixed costs (for tooling, R&D, and certification). For technologies sold by a supplier to the engine manufacturers, costs are either estimated based upon a direct cost to manufacture the system components plus a 29 percent markup to account for the supplier's overhead and profit, or when available, based upon estimates from suppliers on expected total costs to the manufacturers (inclusive of markups). Estimated variable costs for new technologies include a markup to account for increased warranty costs. Variable costs are additionally marked up to account for both manufacturer and dealer overhead and carrying costs. The manufacturer's carrying cost was estimated to be four percent of the direct costs accounting for the capital cost of the extra inventory, and the incremental costs of insurance, handling, and storage. The dealer's carrying cost was marked up three percent reflecting the cost of capital tied up in inventory.
>
> EPA, *RIA*, EPA 420-R-00-026 at v-2 (December 2000).

Neither EPA's projected costs nor the actual costs discussed here-in include the application of the 12% federal excise tax or state sales taxes.

Table 2: EPA's Projected Heavy Heavy-Duty Compliance Costs (Costs are in 1999 dollars)

MY Year	2004 Standards[25]	2007-10 Standards[26]
2004	$803	N/A
2005	$803	N/A
2006	$688	N/A
2007	$688	$3,227
2008	$688	$3,227
2009	$368	$2,618
2010	$368	$2,618
2011	$368	$2,618
2012	$368	$1,866

Table 2 also shows similar EPA projections for the MY 2007-10 standards, suggesting that for MYs 2007-2008, the average per vehicle cost of compliance would be $3,227. Due to an assumed 20 percent learning curve on fixed costs, EPA projected this average per vehicle cost would drop to $2,618 for trucks built in MYs 2009-11. For MY 2012, EPA projected average per vehicle compliance costs for the MY 2007-10 standards to decline to $1,866, the result of a 20 percent learning curve applied to the variable costs.

EPA conducted similar cost projections with similar adjustment factors for medium heavy-duty trucks and engines. Table 3 shows projected average medium heavy-duty truck costs of $657 to meet the MY 2004 standards for MYs 2004-2005, dropping to $571 for MYs 2006-2008, and dropping further to $275 for trucks built in MYs 2009-2012.

Table 3: EPA's Projected Medium Heavy-Duty Compliance Costs (Costs are in 1999 dollars)

Year	2004 Standards[27]	2007-10 Standards[28]
2004	$657	N/A
2005	$657	N/A
2006	$571	N/A
2007	$571	$2,564
2008	$571	$2,564
2009	$275	$2,096
2010	$275	$2,096
2011	$275	$2,096
2012	$275	$1,412

[25] EPA, *RIA*, EPA 420-R-00-010 at 88 (July 2000). EPA only gives cost estimates for the 2004, 2006, and 2009 MYs. Based on an oral conversation with EPA staff, Table 2 uses these same numbers to fill the gaps in between.
[26] EPA, *RIA*, EPA 420-R-00-026 at V-38 (December 2000). EPA only gives cost estimates for the 2007, 2009, and 2012 MYs. Based on an oral conversation with EPA staff, Table 2 uses the same numbers to fill the gaps in between.
[27] See footnote 25.
[28] See footnote 26.

Table 3 also shows EPA's projected average medium heavy-duty truck compliance costs for the MY 2007-10 standards to be $2,564 for MYs 2007-2008, $2,096 for MYs 2009-2011, and $1,412 for trucks built for MY 2012.

2. Operating Costs

In addition to projecting direct vehicle cost increases, EPA estimated some of the indirect costs associated with its mandates, designating them as "life-cycle operating costs." According to EPA,

> Operating costs include the cost for vehicle and engine maintenance, and the cost for vehicle consumables such as fuel, oil, filters and tires. The new standards and technologies introduced beginning in 2007 are expected to change vehicle operating costs.[29]

Indeed, EPA estimated increased life-cycle operating costs of $3,785[30] for a MY 2007 Class 8 truck, in *addition* to a $3,227 higher up front price. This paper does not attempt to compare EPA's estimated life-cycle operating costs to actual operating costs. However, data suggests that DPF and trap maintenance intervals have occurred much more often than projected, at $300-500 per service. This is particularly true for units in vocational use.[31] Moreover, the lost earnings associated with trucks out of service, due to reliability issues, far exceed any service and parts costs associated with these mandates. As discussed below, real and perceived increased operating costs, along with real and perceived declines in performance, significantly contributed to the marketplace disruptions arising from EPA's standards.

IV. ACTUAL PER TRUCK COMPLIANCE COSTS VS. EPA COST PROJECTIONS

Actual individual sales data and widely reported pricing information paint a clear picture of the higher per truck costs resulting from compliance with EPA's mandates. The primary data used in this paper to analyze actual per truck costs were individual sales invoices and OEM sales documents covering truck sales involving the majority of heavy-duty truck and engine OEMs.[32] Many invoices contained specific cost line items (surcharges or escalators) delineating cost increases attributable to the MY 2004-10 mandates. These surcharges are understood to reflect the wholesale costs (to the dealer) of the emission reduction strategies and technologies used. They do not include dealer mark-ups (if any) or taxes.

For example, certain Western Star truck invoices listed specific escalators labeled "2002/2004 Engine Emissions Escalator...$4,148.00." and certain Volvo invoices read "2007 EPA surcharge net/net no discount...$7,500" A November 20, 2009, Peterbilt dealer bulletin detailing 2010 pricing read, in part:

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[29] EPA, *RIA, EPA 420-R-00-026* at V-29 (December 2000).
[30] EPA life-cycle operating costs, in 1999 dollars, do not include increased fuel economy costs.
[31] Steve Sturgess, *2010 DPF Maintenance*, Trucking Info (January 22, 2010).
[32] The number of surcharge data points do not represent all potentially available data for all regulated truck OEMS, but rather data readily available from surveyed dealers.

> Effective with the January 1, 2010, price level, a surcharge will be added to the invoice for chassis built with a 2010 EPA emissions compliant after-treatment. This surcharge is non-discountable and will be applied as follows: ISX…$9,250 Surcharge…ISL, PX-8, PX-6 - $7,000.

Figure 3 below shows the average surcharge, by OEM, for MY 2010 compliant heavy heavy-duty trucks. These escalators account only for costs associated with the MY 2010 round of emissions mandates. According to vehicle/engine manufacturers, compliance costs associated with the MY 2004 and MY 2007 mandates were incorporated into base invoice price of MY 2010 compliant trucks.[33] The EPA comparative cost projection shown also does not include compliance costs for the MY 2004 and MY 2007 standards. *On average, actual cost increases for MY 2010 compliant heavy heavy-duty trucks were nearly three times what EPA projected.*

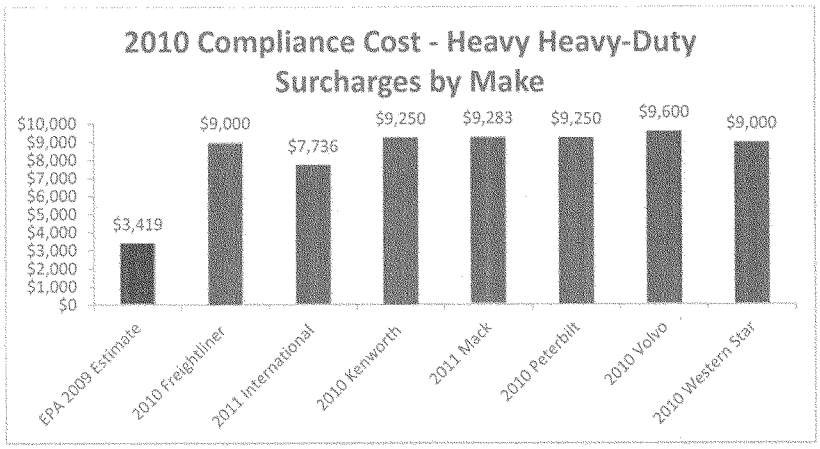

Figure 3: 2010 Compliant Heavy Heavy-Duty Surcharges by OEM.[34]

Figure 4 below shows the average MY 2010 surcharge, by OEM, associated with MY 2010 compliant medium heavy-duty trucks. Again, EPA's projection, provided by comparison,

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[33] In other words, the surcharges only account for the costs associated with meeting a specific level of emission standards. For example, the 2004 surcharge accounts for the 2.5 g/bhp-hr NOx standard (figure 6), the 2007 surcharge accounts for the 1.2 g/bhp- hr NOx standard (figure 5), and the 2010 surcharge accounts for the 0.20 g/bhp- hr NOx standard (figures 3 & 4). In order to calculate total regulatory costs, these incremental costs must be added together.

[34] The X-axis lists truck OEMs and year of invoice. The Y-axis lists per vehicle regulatory compliance premiums. Dollars are standardized to 2010 with surcharges adjusted for inflation. The EPA estimate is a MY 2009 projection made in December 2000, inflation adjusted. This is used because EPA only made per vehicle cost increase estimates for MY 2007, 2009, and 2012. Figure 3 uses the 2009 cost increase to be conservative, since using the 2012 estimate would likely undervalue EPA's cost predictions for MY 2010 trucks.

does not include MY 2004 and MY 2007 compliance costs. *On average, actual cost increases for MY 2010 compliant medium heavy-duty trucks were over two times what EPA projected.*

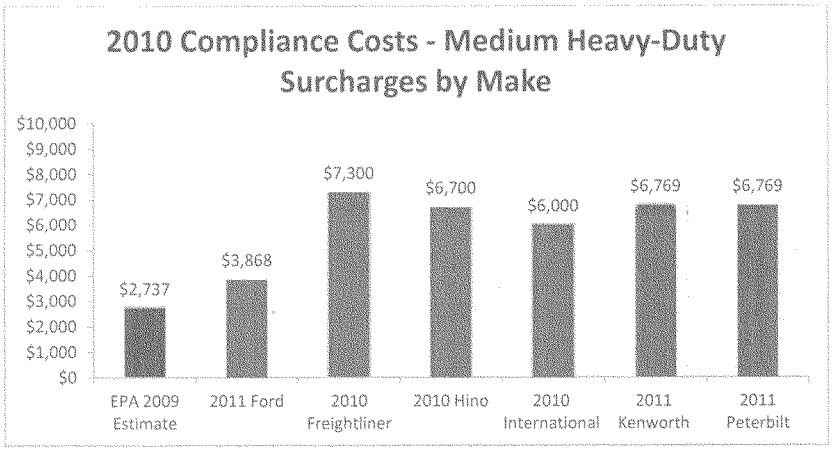

Figure 4: 2010 Compliant Medium Heavy-Duty Surcharges by OEM.[35]

Figure 5 below shows the average MY 2007 surcharge, by OEM, associated with MY 2007 compliant heavy heavy-duty trucks. Again, EPA's projection, provided by comparison, does not include MY 2004 compliance costs. *On average, actual cost increases for MY 2007 compliant medium heavy-duty trucks were nearly two times what EPA projected.*

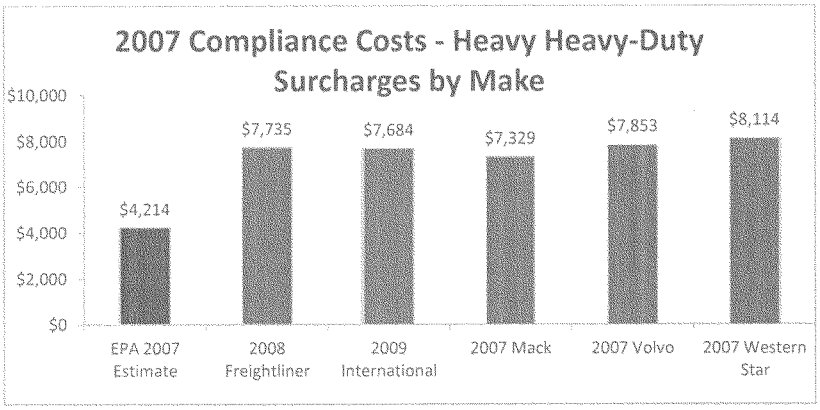

Figure 5: 2007 Compliant Heavy Heavy-Duty Surcharges by Truck OEM[36]

[35] Please see foot note 34.

Figure 6 below shows the average MY 2004 compliant surcharge, by OEM, associated with MY 2004 compliant medium heavy-duty trucks, along with EPA's projection. *On average, actual cost increases for MY 2004 compliant heavy heavy-duty trucks were up to five times what EPA projected.*

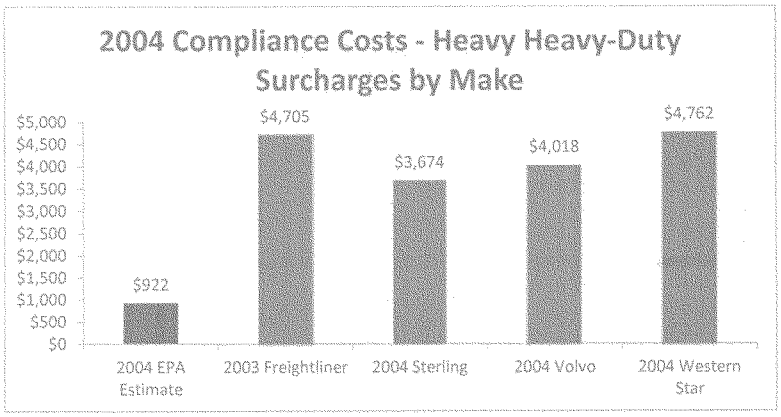

Figure 6: 2004 Compliant Heavy Heavy-Duty Surcharges by Truck OEM[37]

Figures 3-6 show that EPA's cost analyses underestimated *by two to five times* the actual costs of compliance with the MY2004-10 truck emissions mandates. As shown in Figure 7 below, it is possible to total up average per truck compliance costs for the MY 2004-2010 standards. According to representatives from various manufacturers, this comparison is appropriate because, as described above, each round of surcharges does not include costs incurred to comply with the prior round(s) of emissions mandates. *A comparison of EPA's total projected costs for heavy heavy-duty trucks versus actual data for four OEMs shows that on average, actual cost increases were 4 times what EPA projected.*[38]

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[37] The X-axis lists truck OEM and year of invoice. The Y-axis lists the per vehicle regulatory compliance premium. Dollars are standardized to 2010 with surcharges adjusted for inflation. Notably, a 2005-2008 retrospective study conducted by NERA Economic Consulting and Air Improvement Resource, Inc. similarly projected that, on average, heavy heavy-duty truck prices would increase by $7,000 to meet the MY 2007 standards.

[38] The X-axis lists truck OEM and year of invoice. The Y-axis lists the per vehicle regulatory compliance premiums. Dollars are standardized to 2010 with surcharges adjusted for inflation. EPA's MY 2004 estimate is based on its first year projection for a MY 2004 compliant vehicle. See Table 3. The 2003 Freightliner invoice is comparable to the MY 2004 EPA as both reflect compliance with the same standard.

[39] OOIDA attempted to calculate a total average per truck regulatory cost figure associated with the MY 2004-2010 standards. OOIDA's analysis, based on MSRP values and increased warranty costs, calculates that EPA's rules caused truck prices and warranty costs to increase an average of $20,000-30,000. Scott Grenerth (Professional driver and member of OOIDA), Testimony before the House Committee on Oversight and Government Reform, (October 12, 2011).

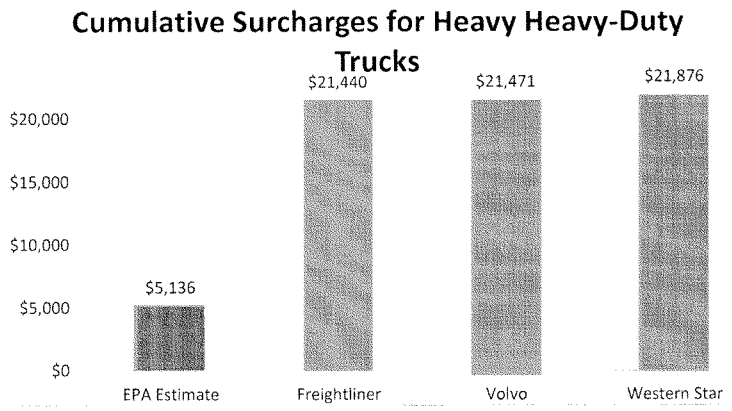

Figure 7: EPA Projection of Total MY 2004-2010 Heavy Heavy-Duty Compliance Costs Compared To Actual Total Surcharges for Three OEMs[39]

V. OTHER CONCERNS ARISING OUT OF EPA'S MY 2004-2010 TRUCK EMISSIONS MANDATES THAT CONTRIBUTED TO MARKETPLACE DISRUPTIONS

1. Decreased Truck/Engine Reliability

In 2000, EPA stated that, "engine manufacturers have been very successful in developing a mix of technologies to lower PM and NOx concurrently while continuing to improve fuel economy and engine durability."[40] This may have been the case up until the MY 2004-2010 standards took effect, but experience with their implementation paints a different picture. Particularly with respect to trucks and engines designed to meet MY 2004 and 2007 standards, fleets and owner-operators have experienced significant reliability, operating cost, and fuel economy concerns. A recent J.D. Power and Associates study suggests that:

> With the new technology required to meet emissions standards, today's engines simply are more problematic than the previous generation. So, while it's possible that manufacturers can continue to improve the quality of the engines, it's unlikely that they'll quickly get back to the pre-2004 levels.[41]

J.D. Power's conclusions are supported by individual fleet experiences. For example, it has been reported that for the eighth largest carrier in the U.S., "maintenance costs for Schneider's 2007

[39] EPA's estimate is the sum of projected MY 2004, 2007, 2010 costs. Actual compliance cost totals are the sum of each OEM's MY 2004, 2007, and 2010 surcharges. All numbers are adjusted for inflation to 2010 dollars. The three OEMs shown are the only ones for which surcharge data was available for all three compliance rounds.
[40] EPA, *RIA*, EPA 420-R-00-010 at 26 (July 2000).
[41] J.D. Power, *Heavy-duty Engine Quality, Satisfaction Up Since Last Year*, Commercial Carrier Journal (September 1, 2011)

model trucks were about 28.2% higher than vehicles manufactured before October 2002."[42] Reliability is critical for commercial fleets and owner-operators both because of the costs of keeping trucks in operation and the even greater potential costs associated with out-of-service equipment.[43] In addition to higher truck prices and operating costs, anticipated reliability issues are often cited as contributing to the marketplace disruptions discussed herein.[44]

2. Decreased Fuel Economy Performance

For its MY 2004 rule, EPA projected that fuel injection and variable geometry turbochargers would offset the fuel economy penalties of EGR systems. In fact, EPA even projected that its MY 2004 rules would decrease fuel consumption by as much as 1.5 percent.[45] For its MY 2007-2010 rule, EPA projected no declines in fuel economy performance.[46]

EGR systems may be effective at reducing NOx emissions, but they undeniably reduce the fuel economy performance that would otherwise have been achieved. For example, Judy McTigue, director of marketing and planning research for Kenworth Trucks, stated that "2007-compliant engines equipped with exhaust gas recirculation systems suffered a fuel economy penalty of 5% to 9%."[47] EGR systems also contributed to a loss of 50 to 100 horsepower from heavy-duty engines.[48] According to OOIDA, this fuel economy penalty equates to a truck consuming an extra 800 additional gallons of fuel per year, on average.[49] At $4.00/per gallon, that is an extra $3,200/year/truck that EPA failed to account for in its projections. In addition, EPA also failed to account for the proportionate amount of extra GHGs emitted, ironic given that the agency has since issued a rule governing GHGs from commercial trucks and is in the process of developing a second. Not unlike reliability concerns and higher prices, lower fuel economy performance is often cited as a major reason why fleets and owner-operators avoided purchasing trucks equipped with engines designed to meet the MY 2004 and 2007 standards. Subsequent introduction of SCR has mitigated EGR-related fuel economy performance degradations, but the new truck fleet has yet to reach pre-MY 2004 fuel economy levels.[50]

VI. LESSONS LEARNED: EXPLAINING EPA'S GROSS UNDERESTIMATIONS

In light of the dramatic marketplace impacts that directly resulted from the actual regulatory costs associated with EPA's MY 2004-2010 truck emissions mandates, it is

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[42] Leone, *Carriers Split Viewpoints on Benefits Of Buying Before 2010 Regulations*, Transport Topics (March 24, 2008).
[43] Scott Grenerth (Professional driver and member of OOIDA), Testimony before the House Committee on Oversight and Government Reform, (October 12, 2011).
[44] Deborah Lockridge, *The Pre-Buy Ride*, Heavy Duty Trucking (August, 2007).
[45] EPA, *RIA, EPA 420-R-00-010* at 85 (July 2000).
[46] EPA, *RIA*, EPA 420-R-00-026 at V-29 (December 2000).
[47] Fleet Owner, *Dealing with DEF*, (October 22, 2010).
[48] Ibid
[49] U.S. House, Committee on Oversight and Government Reform, Sub-Committee on Regulatory Affairs, Stimulus Oversight, and Government Spending, *Running on Empty How the Obama Administration's Green Energy Gamble Will Impact Small Business & Consumers*, Hearing (October 10, 2011).
[50] Volvo Trucks North America, *SCR and Fuel Efficiency* (2009)

incumbent upon the agency to review and resolve the flaws with its cost projection methodology. By misjudging future regulatory costs, EPA (and other agencies) not only give an inaccurate picture of the negative impacts arising from those costs, but also overstate potential benefits. In this case, the dramatic new truck sales disruptions resulted in a delay of the environmental benefits projected for the "timely" introduction of cleaner engine-equipped trucks. As stated above this paper makes no attempt to quantify the actual benefit reductions associated with real-life compliance, however, the fact that they were significantly reduced is undeniable.

1. Long-Lead Time Rulemakings: A Mixed Blessing

EPA began to analyze the costs and benefits of its MY 2004-2010 truck emissions mandates in 1997. At the time, the agency touted the positive aspects of codifying future mandates well before they are to take effect by stating:

> In previous rules to set heavy-duty engine emission standards, EPA has typically allowed engine manufacturers about four years of preproduction lead time. This four-year lead time, the period called for in the Clean Air Act, has given manufacturers sufficient opportunity to complete the research, development, retooling, and certification efforts necessary to comply with promulgated emission standards. The requirements for the 2004 model year do not follow this pattern. The Statement of Principles and the Advance Notice of Proposed Rulemaking gave the engine manufacturers a good idea of the level of the emission standards and other related requirements a full eight years before 2004.[51]

Longer than necessary lead times are beneficial in principle, but can have significant unintended consequences where "technology forcing" standards are involved and compliance depends on hard-to-predict variables. All things being equal, the further away projections occur from an intended effective date, the less likely an agency will be able to accurately predict which technologies and strategies will be used, what they will cost, and whether and what degree they will be affordable and acceptable to potential customers.

2. NOx Reduction Technologies

The Regulatory Impact Analysis (RIA) for EPA's MY 2007-2010 rules was drafted in 2000, a full seven to ten years before actual implementation.[52] EPA recognized then that while enhanced EGR would serve as the primary NOx reduction compliance technology for the MY 2004 emissions standards, it would be insufficient to meet the more stringent MY 2007-2010 mandates. In 2000, EPA predicted specifically that, in conjunction with EGR, NOx adsorbers would be needed to achieve the 0.20 g/bhp-hr target. EPA did not predict and thus did not project the costs associated with SCR, the emission control strategy ultimately elected by most OEMs. EPA did not focus on SCR because, at the time, the agency lacked the assurances necessary to approve it as an enforceable approach. EPA was concerned specifically with urea

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[51] EPA, *Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines*, at 83 (September 1997).
[52] EPA, *RIA*, EPA 420-R-00-026 (December 2000).

infrastructure issues and user compliance mechanisms.[53] Despite an officially neutral stance, EPA indicated a bias for NOx adsorbers over SCR,[54] publically acknowledging its difficulty in recognizing that NOx adsorbers would have anything but wide application to address MY 2010 standards.[55]

EPA's support for NOx adsorbers arose out of a preference for hardware-only solutions versus approaches involving both hardware and operator input. This bias conflicted with significant OEM preferences for SCR, in part based on experience with using the technology in Europe.[56] In the end, most engine OEMs elected to adopt SCR technology to meet the MY 2010 0.20 g/bhp-hr target, consistent with policies issued by EPA.[57]

The NOx adsorber vs. SCR experience supports two points:

1. The further out in time compliance dates are set and the further ahead technologies and strategies are analyzed, the greater the likelihood projections will be wrong. Such uncertainties may be reduced by, among other things, providing for, analyzing, and projecting a range of potential compliance options.

2. Uncertainties inherent in cost/benefit analyses may be reduced by shortening the time frames in question and by providing for a range of costs and benefits for any given technology or strategy analyzed. Obviously, the SCR NOx reduction strategy, never rigorously analyzed in the EPA RIAs associated with these standards, ended costing significantly more to implement than what EPA projected NOx adsorbers would cost.

VI. CONCLUSION

All regulatory mandates have consequences, some intended and recognized, others either unintended or ignored. These consequences often involve real costs to the regulated entities and to, as in this case, related parties such as customers and employees. Forecasted public and private benefits can end up being dramatically overstated. Thus, it is incumbent upon EPA (and all regulatory agencies) to properly analyze, characterize, and project the costs and benefits of its proposals, especially where long lead times and production mandates are involved. Failing to do so only serves to undermine the efficacy of the regulatory process.

In this instance, EPA underestimated the up-front cost premiums associated with its truck mandates by a factor of 2-5 times. In addition, EPA also failed to accurately analyze and project

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[53] Johnson, *EPA Quietly Works Against Promising Engine Technology*, Transport Topics (January 6, 2003).
[54] Ibid.
[55] Malloy, *2010 Options Could Force Radical Leap*, Transport Topics (March 15, 2004).
[56] SCR is 'the only solution on earth today' that will meet the new regulations, said Pierre Lecoq, SVP, Global Product Development, Volvo Powertrain in Abramson, *Volvo Says SCR the Only Way to Meet 2010 Emission Rules*, Transport Topics (October 18, 2004); "DDC [Detroit Diesel Corporation] and Freightliner LLC, the nation's largest producer of Class 8 trucks, and others favor the use of urea because it can boost fuel economy in trucks and help achieve EPA's emissions targets for 2007" in Wislocki, *Urea supporters ready to seek EPA approval for SCR engines*, Transport Topics (September 8, 2003).
[57] See *e.g.*, 76 Fed. Reg. 312886, *et seq.* (June 7, 2011).

higher truck operating costs, reduced truck reliability, and lower truck fuel economy performance. Consequently, EPA's mandates resulted in significant and costly marketplace disruptions and reduced regulatory benefits. Notably, dealers are beginning to see instances of emissions tampering in their shops and on their used truck lots, suggesting how aggressive mandates also may not achieve desired benefits.

Unless mandated by statute, EPA should avoid promulgating mandates many years in advance covering long time periods as doing so necessarily involves uncertainty regarding key factors influencing the cost and performance of compliance strategies and technologies.

Statement for the Record of

TODD SPENCER
EXECUTIVE VICE PRESIDENT
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Before the

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

Regarding

MOTOR VEHICLE SAFETY PROVISIONS IN HOUSE AND SENATE HIGHWAY BILLS

MARCH 22, 2012

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On behalf of

Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 229-5791
Fax: (816) 427-4468

Chairwoman Bono Mack, Ranking Member Butterfield, and members of the Subcommittee, it is a privilege to submit this testimony on behalf of the Owner-Operator Independent Drivers Association (OOIDA).

My name is Todd Spencer. I have been involved with the trucking industry for more than 30 years, first as a truck driver and owner-operator; and then as a representative for our nation's small business trucking professionals. I am currently the Executive Vice President of the OOIDA.

As you are most likely aware, OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The approximately 150,000 members of OOIDA are small businessmen and women in all 50 states who collectively own and operate more than 200,000 individual heavy-duty trucks.

The majority of the trucking community in this country is made up of small businesses, as 93 percent of all carriers have less than 20 trucks in their fleet and 78 percent of carriers have fleets of just six or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of motor carriers operating in the United States.

I am submitting this statement on behalf of OOIDA and our nation's hundreds of thousands of small business truckers. Before discussing the specifics of today's hearing, I want to highlight the trucking industry's current safety record and the role truck drivers play in highway safety.

Long-haul trucking has never been safer – and the key to the safety of the industry is not a new government regulation or mandated technology. The keys to this level of safety are the hundreds of thousands of professional drivers out on the road every day. The Department of Transportation's statistics clearly show an improving trend over the course of three-plus decades. Additionally, it is important to recognize that trucking is not at fault in the majority of involved accidents.

Despite this historic level of safety, federal regulators and special interest groups continue to push regulations and mandates on small business truckers while ignoring meaningful actions such as addressing detention time at shipping and receiving facilities. From the HOS revisions to mandated electronic on-board recorders and continued attempts to require speed limiters, these efforts are rarely based upon sound science and clear cost benefit analysis. Instead, they are based upon the impression that truckers are inherently unsafe on the road, a proposition that the facts clearly do not support. Professional truckers play an important role in our nation's economy, exclusively hauling around 70 percent of our nation's freight; however, the current regulatory environment seems focused on only seeing them as a problem.

NHTSA's Role in Commercial Motor Vehicle Safety Policy

While today's hearing will largely focus on the role that the National Highway Traffic Safety Administration (NHTSA) plays in setting automobile safety policy, NHTSA is playing a greater role in setting safety policies regarding commercial motor vehicles (CMV).

Trucking is regulated by numerous federal agencies and multiple state agencies. The Department of Homeland Security has rules pertaining to cabotage and numerous necessary credentials for commercial drivers (e.g. FAST and TWIC). The Environmental Protection Agency regulates truck emissions. The Food and Drug Administration has begun the process to regulate food transportation. Within the Department of Transportation, multiple agencies regulate trucking. The Federal Motor Carrier Safety Administration (FMCSA) generally focuses on safety-related regulations impacting the operation of a CMV. Examples of this include hours-of-service requirements, hazardous materials transportation rules, and medical certifications for CMV drivers. Additionally, many state agencies such as the California Air Resources Board have wide ranging power that in fact regulates interstate trucking.

NHTSA's intersection with the trucking industry comes from its role setting motor vehicle safety and fuel economy standards. Historically, NHTSA has focused on setting safety and fuel economy standards for automobiles, with very little focus on commercial motor vehicles, especially heavy-duty trucks. However, the past few years have seen a marked increase in NHTSA's engagement in these areas, from proposing and moving forward with several new safety-related rulemakings as well as playing a role in developing newly finalized Medium- and Heavy-Duty Vehicle Greenhouse Gas and Fuel Efficiency regulations with the Environmental Protection Agency.

What OOIDA has seen during the course of this increased regulatory role for NHTSA is a limited focus on the nature of the trucking industry, especially the fact that regulatory mandates from NHTSA that are placed on heavy-duty truck manufacturers are mandates that eventually will be paid for by truck purchasers. This will come not only through both higher purchase prices for new trucks, but also through impacts to a motor carrier's operations and higher repair bills. For many of these mandates, OOIDA does not doubt their effectiveness in improving safety or fuel economy in certain situations and operating environments, but feels that their cost-effectiveness and safety impact has not reached a level that justifies a national mandate.

Provisions of Note in the House Highway Bill (H.R. 7)

Study of Heavy-Duty Truck Cab Crashworthiness Standards (Sec. 6309)
OOIDA strongly supports this provision, which directs the Department of Transportation to examine roof strength and other occupant protection standards for heavy-duty trucks. Last summer, OOIDA, along with the American Trucking Associations, wrote NHTSA requesting that the agency conduct a comprehensive research and data analysis of how crashworthiness standards for truck cabs could have safety benefits for drivers. Seven hundred truck drivers lose their lives each year in either single or multi-vehicle accidents – many of these lives would likely be saved with stronger truck cabs and occupant protection devices such as airbags, all of which are standard in passenger cars.

Studies of Crash Avoidance and Collision Mitigation Technologies in CMVs (Secs. 6310 & 6311)
As noted above, OOIDA recognizes the potential safety benefits of various crash avoidance and collision mitigation technologies in certain operating situations and environments. We appreciate H.R. 7's focus on continuing study of these technologies to better assist the

Department of Transportation, Congress, and the trucking industry, including small business and owner-operator truckers, weigh the benefits and costs of these technologies.

Opposition to the Sutton Amendment (Amendment # 74)
H.R. 7 resists the push by some special interest groups to legislate new safety mandates on the trucking industry. Representative Sutton's amendment, which would mandate safety standards that require electronic stability control systems for CMVs, goes in the opposite direction of the House bill. The language in the Sutton amendment is similar to Section 31408 of the Senate bill, which is discussed below in greater detail. For those reasons, small business truckers oppose the Sutton amendment and urge its defeat should it come to a vote on the House floor.

Provisions of Note in the Senate Highway Bill (S. 1813)

Commercial Motor Vehicle Rollover Prevention and Crash Mitigation (Sec. 31408)
This provision is an excellent example of how mandates on manufacturers lead to significant cost increases to the end users of heavy-duty trucks. Over the past decade, the price of a new heavy-duty truck has risen by between $30,000 and $50,000 directly due to various regulations issued by the Environmental Protection Agency. This has led to a significant drop in the number of small business truckers who are able to afford a brand new truck.

Section 31408 not only sets hard deadlines for NHTSA to issue a rule regarding rollover prevention and crash mitigation in heavy-duty trucks, but it also sets out the specific requirements of that rule, mandating the use of electronic stability control in all new trucks. **OOIDA estimates that such technology will cost approximately $1,500 per truck. There were over 171,000 new heavy-duty trucks sold in 2011 – meaning that this mandate will cost over $250 million each year and will reach a cost of over $1 billion in only four years.** All of this while the benefits of this technology across the entire trucking industry have yet to be proven. According to data from the Department of Transportation, rollovers of heavy-duty trucks are less common than all other groups of vehicles, and only a small percentage of fatalities from truck rollovers occur at the "first event" before the vehicle leaves the road. This technology has a limited benefit on preventing a rollover once the vehicle leaves the highway and it may result in additional accidents due to changes in the handling characteristics of a vehicle, and any cost-benefit analysis should reflect this reality.

Again, OOIDA does not dispute that in certain situations this technology may potentially lessen the likelihood of an accident – that is why we have supported legislation like H.R. 1706, the Commercial Motor Vehicle Advanced Safety Technology Tax Act of 2011, which would provide a tax credit to purchasers of this technology. This would allow all motor carriers, including small business truckers, to make the decision to invest in this technology based upon factors such as their operating environment.

Crashworthiness standards (Sec. 32203)
The Senate's bill contains similar cab crashworthiness language to the House bill, and we urge that this language, which simply calls for a NHTSA evaluation of cab crashworthiness standards for heavy-duty trucks, be included in any final highway reauthorization bill.

Upcoming NHTSA Commercial Motor Vehicle Regulations

In addition to highlighting provisions of note in the House and Senate highway bills, OOIDA wants to raise concerns about several on-going or soon to be started rulemakings led by NHTSA that will have an impact on the trucking industry. Each of these rulemakings will result in significant new mandates on truckers, increasing the cost for small business truckers to buy a new truck and raising the operating costs for these businesses through higher repair bills and insurance costs. Additionally, these mandates will have a direct impact on the operating capabilities of small business motor carriers, leading to negative impacts on the economy.

Heavy Vehicle Speed Limiters (RIN 2127-AK92)
NHTSA is currently preparing to release a Notice of Proposed Rulemaking (NPRM) to mandate speed limiters on heavy-duty trucks (http://regs.dot.gov/rulemakings/201203/report.htm#67). This is in response to a petition from the American Trucking Associations, Road Safe America, and a number of major motor carriers. Through comments to NHTSA during consideration of this petition, OOIDA outlined a number of concerns regarding speed limiters while highlighting its opposition to such a regulatory mandate on the trucking industry. Those concerns include:

- Speed limited trucks lead to speed differentials on our nation's highways. Research shows that these differentials lead to increased vehicle interactions, which then lead to increased accidents. The safest highways are those where traffic travels at the same rate of speed.
- Major fleets today are free to activate speed limiters on their trucks, and many have done so for business-related reasons. Because of the loss of productivity on our Interstate roads, which are our safest roads and have speed limits above those set by the vehicle speed limiter, drivers may have to push harder on roads that are not Interstate routes and have speed limits below the limit set by the speed limiter.
- Without question, trucks operating below the typical rate of traffic are viewed by motorists as rolling road blocks. When one speed limited truck tries to pass another speed limited truck, truckers call it an "elephant race," while other motorists have many other, more colorful, names for this situation. Creating that kind of a highway environment undermines safety, increases vehicle interactions, and increases the likelihood of "road range."

Electronic Stability Control Systems for Heavy Vehicles (RIN 2127-AK97)
This regulation (http://regs.dot.gov/rulemakings/201203/report.htm#70) is similar to the mandate called for by both Section 31408 of the Senate bill and the Sutton Amendment to H.R. 7. OOIDA has significant concerns over the data and other information that the Department is using to justify the cost of this rulemaking, which is set to come in at over $1 billion over just a four year period.

Heavy-Duty Truck Greenhouse Gas and Fuel Efficiency Rules (2019 - ?)
NHTSA's Fiscal Year 2013 budget request calls for funding the initial steps of this rulemaking, which will build upon the first ever EPA/NHTSA GHG and Fuel Efficiency rules for heavy-duty trucks that was finalized in September 2011. OOIDA opposed that regulation, which will add an

additional $6,200 to the cost of a new heavy-duty truck, and we are extremely concerned about the direction the agencies are taking with this next round of regulation, which is coming while the ink is barely dry on last year's regulation.

The typical owner-operator will spend twice as much on fuel for the truck than they will take home in family income in a year. As such, no one, certainly not a government agency with limited to no understanding of the trucking industry, has a greater incentive than the small business trucker to operate their vehicle as fuel efficiently as possible. They certainly do not need government regulations forcing them to buy a truck that meets some prescribed government efficiency standard, but that misses the operating and efficiency requirements they need for their business. Trucking is an extremely diverse industry, and the ability for a truck owner to match the options and capabilities of their truck to their business needs is critical. However, in its next round of rulemaking, EPA and NHTSA are seeking to further reduce the ability of a truck purchaser to have access to the maximum available options. Additionally, the agencies are seeking to install fuel efficiency regulations on trailers, which will have a significant impact on the trucking industry, especially if plans to restrict the types of trailers that certain types of tractors can pull.

Conclusion

OOIDA supports enactment of a highway reauthorization and reform bill as soon as possible, but that legislation needs to resist efforts to push new mandates on small business truckers. It is important to note that despite calls from small business truckers to focus on areas that will surely save truck driver lives – such as examining the crashworthiness of truck cabs – NHTSA has decided to only focus on regulations that will result in significantly higher costs for truckers with limited cost-benefit justification. Both the House and Senate bills contain important provisions, and we look forward to working with both chambers as they work to finalize highway reauthorization legislation.

Thank you again for the opportunity to submit this statement for the record.

Mrs. BLACKBURN. We, again, thank you. We look forward to continuing a hearing next week. We are going to be looking at some of the privacy issues that are in front of us.

Your patience has been appreciated, and we appreciate the information you brought to us.

Hearing is adjourned.

[Whereupon, at 12:18 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

QUESTIONS FOR THE RECORD
for Administrator David L. Strickland
U.S. House of Representatives
Committee on Energy and Commerce
"Motor Vehicle Safety Provisions in the House and Senate Highway Bills"
March 22, 2012

The Honorable Mary Bono Mack

1. **Your testimony noted that some of the rulemakings in the Senate bill are not on NHTSA' s agenda. Which ones are not on your agenda?**

   Response: The list below identifies rulemakings in the Senate bill that we have not initiated rulemaking. However, we are conducting research on some of these matters that could support rulemaking, as indicated in the NHTSA Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan 2011-2013 and the U.S. DOT Motorcoach Safety Action Plan.

   - Civil penalty criteria (§31203) - Not later than one year after enactment, issue a final rule providing an interpretation of the penalty factors described in 49 U.S.C. 30165(c).

   - Conditions on importation of vehicles & equipment (§31209) – Specifies that the Secretary may by rule require manufacturers (and importers) offering a motor vehicle or motor vehicle equipment for import to provide certain information; condition the import of a motor vehicle or motor vehicle equipment on the manufacturer's compliance with the requirements; provide an opportunity to the manufacturer before imports are restricted; and establish a process for petitions for reinstatement of the ability to import motor vehicle or motor vehicle equipment

   - Promotion of defect reporting (§31307) - Within one year after enactment issue regulations that require passenger motor vehicle sticker describing process for submitting defect complaint and similar information in owner's manual.

   - Pedal placement standard (§31403) - Within three years of enactment, complete a rulemaking to establish a FMVSS that would mitigate potential obstruction of pedal movement, unless Secretary determines that such a standard would not meet requirements and considerations of National Traffic and Vehicle Safety Act (Vehicle Safety Act).

   - Electronic systems performance standard (§31404) - Within four years of enactment, complete a rulemaking to establish a FMVSS that would establish minimum performance requirements for electronic components, interaction of such components, security needs for those systems to prevent unauthorized access and effect of

surrounding environments on those systems, unless Secretary determines that such a standard would not meet requirements and considerations of Vehicle Safety Act.

- Prohibition on electronic visual entertainment in driver's view (§31407) - Not later than two years after enactment, issue FMVSS prohibiting electronic screens showing visual entertainment if they are visible to driver.

- Child safety seats (§31501) - Not later than four years after enactment, amend FMVSS 213 to specify test parameters that better replicate real world conditions in frontal impacts.

- Child restraint anchorage systems (§31502) - Not later than one year after enactment issue proposal to amend FMVSS to improve visibility of lower anchorages and tethers and establish maximum allowable weight of child and child restraint and not later than three years after enactment issue final rule, unless Secretary determines that such a standard would not meet requirements and considerations of Vehicle Safety Act.

- Rear seat belt minders (§31503) - Not later than two years after enactment issue proposal to amend FMVSS to provide a safety belt warning system for rear seats and not later than three years after enactment issue final rule, unless Secretary determines that such a standard would not meet requirements and considerations of Vehicle Safety Act.

- Unattended passenger reminder (§31504) - Not later than one year after research and testing mandated by this section, issue a proposal to establish a FMVSS to mandate an unattended passenger reminder, unless Secretary determines that such a standard would not meet requirements and considerations of Vehicle Safety Act.

- Rulemaking on visibility of agricultural equipment (§31601) - Not later than two years after enactment issue rule to improve daytime and nighttime visibility of agricultural equipment that may be operated on a public road.

- Regulations for improved occupant protection, passenger evacuation, and crash avoidance (§32703) - Not later than two years after enactment, issue commercial vehicle regulation requiring advanced glazing on motorcoaches. Not later than three years after enactment, issue commercial vehicle regulation requiring tire pressure monitoring system on motorcoaches.

- Standards for improved fire safety (§32704) - Not later than 42 months after enactment, issue final rules on flammability of exterior components, smoke suppression, wheel well fires, automatic fire suppression, and passenger evacuation, unless Secretary determines that such a standard would not meet requirements and considerations of Vehicle Safety Act.

- Occupant protection, collision avoidance, fire causation, and fire extinguisher (§32705) - Not later than two years after completion of research and testing, issue FMVSS for improved fire extinguishers, interior impact protection, compartmentalization and forward and lateral crash warning systems if Secretary determines that standards on those subjects are warranted based on the requirements and considerations of Vehicle Safety Act.

- Event data recorders (§32710) - Not later than two years after completing evaluations, issue standards and regulations for motorcoach event data recorders.

a. **How many of the standards required by the Senate legislation can you establish without legislation?**

Response: Except for the agricultural equipment provision (§31601), the National Traffic and Motor Vehicle Safety Act of 1966 does not need to be amended in order to enact the standards mandated by the bill. The agricultural equipment provision (§31601) would expand the agency's jurisdiction beyond motor vehicles as currently defined by statute.

b. **What advantage, if any, is there to having Congress require NHTSA to work on standards you are already working on? Are there any disadvantages?**

Response: Statutory mandates prioritize NHTSA's regulatory activity, although not necessarily based on the same risk evaluations that NHTSA would use on its own. The amount of flexibility afforded by the Congress in the establishment of regulatory requirements, publication dates, and phase-in schedules dictate whether the rulemakings are feasible and can significantly affect the total cost of the regulation. The disadvantage of any mandate is that it could require the agency to give priority to a matter that would not necessarily warrant such priority based on objective criteria.

2. **Do you support S. 1813's ban on NHTSA employees being hired to work for manufacturers? What would be the consequences for NHTSA if such a ban were to be implemented?**

Response pending.

3. **Since manufacturers began providing early warning data to NHTSA under the TREAD Act, has the number of safety recalls increased or decreased? Please provide recall counts broken down by year.**

Response: Early warning reporting (EWR) began in the third quarter of 2003. The following lists the total number of safety recalls since 2003 by year:

2003	600
2004	698
2005	645
2006	613

2007	713
2008	781
2009	570
2010	722
2011	651

An examination of the number of recalls per year may not provide a complete picture. The number of recalls does not necessarily reflect the volume of vehicles and items of equipment addressed by those recalls. For example, in 2008 there were over 22 million vehicles and items of equipment affected in 781 recalls; in 2000 there were over 44 million vehicles and items of equipment affected in just over 620 recalls.

4. **As the number of vehicle standards has increased, are there more cases where manufacturers fail to comply? Is compliance with the standards generally getting better or worse?**

Response: If a motor vehicle or motor vehicle equipment subject to the Federal motor vehicle safety standard (FMVSS) does not comply with a requirement of those standards, the manufacturer is required to provide NHTSA and owners with notification of the noncompliance and to remedy the noncompliance without charge. This is referred to as a "recall." In the last five years, a total of 547 recalls were conducted to remedy a noncompliance with an FMVSS, involving over 5.1 million vehicles. As noted above in response to question 3, the actual number of recalls does not necessarily reflect the volume of motor vehicles or motor vehicle equipment affected by the recalls. Therefore, it is difficult to conclude from this data whether compliance with safety standards is generally worsening or improving.

5. **Would S. 1813's presumption in favor of "maximum public availability" of early warning data require you to modify the agency's prior determinations regarding confidentiality of the data? Would you object to elimination of this provision?**

Response: The presumption in favor of "maximum public availability" would not require the agency to modify its prior determinations regarding confidentiality of data. NHTSA has done extensive analysis of what information should be disclosed and what information should be withheld. We do not oppose the elimination of this provision.

6. **Do you see any significant safety benefit from having a separate hotline for employees of manufacturers and dealers to call NHTSA? Would it be equally efficient having those employees simply identify themselves as such using the existing hotline?**

Response: We do not see a significant safety benefit from having a separate hotline for employees of manufacturers and dealers to call NHTSA. Employees of manufacturers and dealers can and have contacted the agency through various means. We believe continued improvements in outreach in promoting the Auto Safety Hotline to the general public and service community is the most efficient strategy for achieving the safety benefits that may be realized from such information.

7. **What was the basis for the maximum penalties in the Toyota cases? In those cases, did the company hold relevant safety information that had not been provided to the agency through the TREAD submissions?**

   Response: Based on the gravity of the violation, the agency determined that the Toyota cases warranted the maximum penalties. In those cases, we are not aware of Toyota holding relevant safety information that the company was obligated to submit to the agency through the TREAD submissions.

8. **Please list the 10 highest penalties NHTSA has assessed for safety-related violations by company, date, and violation.**

   Response:

Company	Penalty	Date	Violation
Toyota	$16,375,000	12/2010	Untimely recall of vehicles – pedal entrapment/unintended acceleration
Toyota	$16,375,000	4/2010	Untimely recall of vehicles – sticky pedal/unintended acceleration
Toyota	$16,050,000	12/2010	Untimely recall of vehicles – relay rods
BMW	$3,000,000	2/2012	Untimely recalls in 2010 and 2011
General Motors Corp.	$1,000,000	7/2004	Untimely recall of vehicles – wiper failures
American Products Co.	$650,000	4/2003	Manufacture and sale of noncompliant lamp assemblies
K-Mart	$475,000	5/1991	Untimely recall of turn signal flashers
Firestone	$450,000	5/1980	Manufacture and sale of noncompliant tires
Ford	$425,000	3/1999	Untimely recall of vehicles – ignition switches (fires)
General Motors Corp.	$405,457	4/1978	Untimely recall of vehicles – quadrajet carburetors (fires)

9. **Several years ago, the GAO convened a group of safety experts to discuss the problem of ensuring that importers (and foreign manufacturers) have sufficient capital to conduct safety recalls if necessary and found no consensus concerning whether or how this should be done. How do you envision approaching the problem?**

Response: For more than 10 years, NHTSA has conducted a program that requires importers of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) to be registered with the agency. NHTSA's procedures for the registration of importers of nonconforming vehicles require an applicant to furnish proof of acquiring a prepaid mandatory service insurance policy underwritten by an independent insurance company to ensure that the applicant will be able financially to remedy any noncompliance or safety related defect in a motor vehicle it has imported. This program was established to ensure that the importer will be able technically and financially to conduct a safety recall campaign for a motor vehicle or motor vehicle equipment that contains a defect related to motor vehicle safety or does not comply with an applicable FMVSS.

NHTSA would draw upon its experience in conducting the registered importer of nonconforming vehicles program if similar financial responsibility requirements were to be imposed on other importers, such as importers of motor vehicle equipment. However, the number of importers of motor vehicle equipment is significantly greater than importers of nonconforming vehicles.

a. **Are you concerned that establishing financial responsibility requirements for importers might cause other nations to impose unreasonable requirements on our manufacturers when they export vehicle equipment?**

   Response: We do not anticipate that the imposition of financial responsibility requirements on importers of replacement equipment will lead to retaliatory actions by foreign governments that will have a significant impact on our own manufacturers because the volume of motor vehicle equipment exported from the U.S. is relatively low.

10. **What is the status of your review of existing regulations pursuant to Executive Order No. 13563?**

Response: The Department of Transportation published a Plan for Implementation of Executive Order 13563 – Retrospective Review and Analysis of Existing Rules. The list below identifies the items specified in the Plan and the current status of those regulations.

FMVSS 126, Electronic Stability Control for Light vehicles	Evaluation published in 2011 and on web. "Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation" (NHTSA Report No. DOT HS 811 486), http://www-nrd.nhtsa.dot.gov/Pubs/811486.pdf
FMVSS 201, Occupant Protection in Interior Compartment (Upper Interior Padding)	Evaluation published in 2011 and on web. "Evaluation of the 1999-2003 Head Impact Upgrade of FMVSS No. 201 Upper-Interior Components" (DOT-HS-811-538)
FMVSS 138, Tire Pressure	Data collected in 2011, draft study being reviewed internally.

Monitoring Systems (survey of tire pressures)	
Fuel Economy, Survey of Fill up Times	Data collected in 2011, results published in November 2011, "Preliminary Regulatory Impact Analysis, Corporate Average Fuel Economy for MY 2017-2025 Passenger Cars and Light Trucks" and in Docket # 2010-0131-0167.
National Child Restraint Use – Special Study	Data collected in 2011, being prepared for analysis.
FMVSS 208, Occupant Crash Protection (Advanced air bags)	Delayed due to other priorities; projected completion of examination of the effectiveness of the rule is 2013.
FMVSS 210, Seat Belt Assembly Anchorages (Force application device)	Proposed rule published 3/30/2012. Open for public comment.
FMVSS 108, Lamps, Reflective Devices, and Associated Equipment (Color boundaries)	Developing a final rule. Currently, we expect to publish in 2012.
FMVSS 205, Glazing Materials (Window glazing – adopt GTR)	Developing a proposed rule. Currently, we expect to publish in 2012.
FMVSS 121, Air Brake Systems (Increase requirements)	Needs additional research.
FMVSS 109, New Pneumatic and Specialty Tires (Delete resistance to beat unseating test and strength test)	Needs additional research.
FMVSS 139, New pneumatic radial tires for light vehicles	Needs additional research.
49 CFR 575.104, Uniform Tire Quality Grading Standards	Needs additional research.
FMVSS 110, Tire Selection	Needs additional research.

and Rims for Passenger Cars	
FMVSS 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars	Needs additional research.
Pedestrian Safety GTR	Needs additional research.
FMVSS 111, Rearview Mirrors (Safety on garbage trucks)	Developing a final rule. Currently, we expect to publish in 2012.
Event Data Recorder (open data for safety & innovation in cars)	Developing a proposed rule. Currently, we expect to publish in 2012.
Auto Software Transparency	Initial research is underway.
Texting Cell Phone Use (signal jammer)	Signal jamming is illegal under Federal Communications Commission (FCC) regulations. However, research is underway on applications that can be installed on cellular phones to restrict or block features such as voice calls, text, and data transmissions while the vehicle is in motion.
Texting While Driving, New Cell Phone Technology – FDImobile	Research is underway. However, the agency would not endorse a specific manufacturer's product.
Release data files for vehicle fuel economy and CAFE	NHTSA currently expects to be able to provide this information in a user-friendly format (like CSV) after completion of a major database redesign project, estimated at the end of 2013.
Examine Software for Vehicle Safety, Not Just Hardware	Initial research is underway.

11. Everything else being equal, is it still true that the occupant of a small vehicle is at greater risk of injury in an auto accident than the occupant of a larger vehicle? Can you quantify the increased risk factor? How will increased CAFE standards affect car size and fatality rates?

Response: When a lighter and a heavier vehicle collide, everything else being equal, it is still true that the occupants of the lighter vehicle are at greater risk of injury than the occupants of the heavier vehicle. This is due to the laws of physics. Nevertheless, it does not necessarily

mean that mass reduction in response to CAFE will increase fatalities. For example, if mass reduction occurs in the heaviest vehicles, such as large pickup trucks and SUVs, it will have a beneficial net effect because it will reduce risk to the occupants of lighter vehicles, such as small cars, if they collide with these pickup trucks and SUVs.

Furthermore, "mass" is not the same thing as "size." Vehicles can be made lighter without making them any smaller – for example, by using lighter and stronger materials while keeping them as long and wide as they were before. NHTSA's "footprint-based" CAFE standards are intended to discourage size reduction while allowing mass reduction. This will help prevent increases in loss-of-control crashes such as rollovers.

In a November 2011 report, NHTSA estimated the impact on societal fatality rates of mass reduction while holding footprint constant. ("Societal" fatality rates include occupants of all vehicles in the crash as well as pedestrians; footprint, a measure of size, is wheelbase times the average front and rear track width.)

As part of its proposal to establish CAFE standards for model years 2017-2025, NHTSA applied the estimates in the November 2011 report to estimate the safety effects of mass reductions ranging from 20 percent in the heavier pickup trucks and SUVs to little or nothing in the lighter cars, averaging out to 10 percent over all vehicles. Vehicle size, as measured by footprint, would stay the same. The agency found that, with this combination of mass reduction and no changes in footprint, the results would be safety-neutral: the net effect on fatalities would be close to zero.

12. **We received testimony identifying certain mandatory standards you would have to promulgate pursuant to S. 1813 where evidence of a widespread problem - such as the visibility of and access to LATCH child seat anchorages - is lacking. Does NHTSA have data supporting the need for a rulemaking to improve the visibility of these anchorages?**

Response: The agency has been collecting data to determine whether there is a need for a rulemaking to improve the visibility of these anchorages. The agency conducted real world surveys and laboratory evaluations of the use and usability of LATCH child seat anchorages, the final reports of which are being developed. The agency is also leveraging information from surveys conducted by other organizations. The agency is currently evaluating other issues related to using LATCH in the center rear seat, identification and accessibility of tether anchorages, weight limit differences between child safety seats and tether anchorages, and labeling of anchorage locations.

13. **In a recent list of the costliest regulations issued or proposed by this Administration, NHTSA' s rearward visibility rulemaking was among the top 10 most expensive. Why? Is it consistent with the cost of previous NHTSA rulemakings?**

Response: As directed by Congress, the agency considered several countermeasures to address the safety problem of backovers. Of those countermeasures, in its proposed rule published in December 2010, the agency indicated that a rear visibility system that includes a

rear-mounted video camera and an in-vehicle visual display is the most effective solution to address the safety problem contemplated by the Congress.

A comparison on a per vehicle cost basis of the most costly safety countermeasures is below. Some of these cost estimates were made several years ago, and they have all been brought up to 2010 dollars. However, industry learning on how to reduce costs over time may not have been captured in some of these estimates (particularly the frontal air bag estimates). We have provided costs on a system basis. Rear visibility cameras are the sixth most costly system according to our estimates.

Safety Countermeasure	Costs (in 2010 dollars)
Anti-lock brakes plus Electronic Stability Control	$532
Frontal Air Bags	$466
Side Air Bag System	$313
Seat Belts in all Seating Positions	$157
Side Impact Structure and Padding	$154
Rear Visibility Cameras	$137 to $148

a. **Now that a number of vehicle models have had rear video cameras for several years, is there data regarding the number of fatalities or injuries in backover accidents involving those cars with cameras? If so, does the data indicate how effective the cameras are in helping prevent backover casualties? Was the information considered during the rulemaking process?**

Response: Vehicles equipped with this type of technology are not present in sufficient numbers in the vehicle fleet or in the crash data for the agency to estimate effectiveness for this rulemaking based on such data. As explained in the proposed rule, the agency has evaluated the effectiveness of cameras by conducting controlled tests with video cameras and found them quite effective in protecting people in the path of vehicles who are not seen by drivers without the benefit of cameras.

14. **We still have too many highway fatalities attributable to alcohol-impaired driving. We are also seeing statistics of increased fatalities related to distracted driving. If we could eliminate those behaviors, what would remain as the top priority which would reduce fatalities the most?**

Response: Eliminating impaired driving and distracted driving would save many thousands of lives annually. The next highest priority, also capable of saving thousands of lives a year when fully implemented, is the full range of crash avoidance technologies such as: advanced braking systems to help drivers avoid forward collisions; warning systems relating to lane departure and blind spots that can help drivers make better decisions and avoid collisions in

the first place or help them recognize when they are distracted or fatigued; and pedestrian collision avoidance systems. In addition to the single-vehicle crash avoidance systems, vehicle-to-vehicle communications (V2V) holds enormous promise for reducing the number of fatalities by providing drivers with warnings from surrounding vehicles in critical situations. Combined with automated crash avoidance technologies, V2V can address up to 80 percent of non-impaired crash scenarios. Advanced Automatic Crash Notification may also save many lives by helping people get the care they need as efficiently and as quickly as possible once they are in a crash. Secondary priorities could include pursuing technologies to further improve seat belt and motorcycle helmet use.

15. **NHTSA has a rulemaking underway for large truck rollover prevention. The Senate legislation requires a final rule within 18 months. Where does your current rulemaking stand? Do you need legislation to prod NHTSA to issue a standard?**

    Response: NHTSA has found that Electronic Stability Control is the most effective in reducing a vehicle's propensity to roll over or be involved in a loss-of-control crash. Manufacturers of heavy vehicles and suppliers of these systems agree with that conclusion. We expect to publish the proposed rulemaking shortly. NHTSA believes this technology will significantly improve safety and will continue to work towards a final rule without the need for legislation.

16. **Motorcoach Safety**

    a. **Is motorcoach travel safer than automobile travel? Does the motorcoach vehicle safety history warrant all of the new mandates contemplated by the Senate legislation – particularly all at once?**

       Response: Data indicate that motorcoach travel is safer than automobile travel. Motorcoaches transport 750 million passengers over 1.8 billion miles annually. Over the 10 year period of 2001 through 2010, motorcoach crashes resulted in an average of 17 motorcoach occupant fatalities per year. The average occupant fatalities per 100 million passenger miles traveled for the years 2007-2009 is 0.034 for motorcoaches and 0.97 for passenger cars. Therefore, these statistics suggest motorcoach travel is approximately 28 times safer than traveling in a passenger car. However, while the number of passenger car occupant fatalities is declining over the past few years, the average number of motorcoach occupant fatalities in the 10 year period of 2001 to 2010 is nearly twice that in the previous decade of 1991 to 2000.

       NHTSA is evaluating the merits and the implementation of each potential rulemaking action. The schedules for rulemaking action in the new mandates contemplated by the Senate legislation will be very difficult to meet, particularly for those actions that the agency is not currently pursuing.

    b. **Secretary LaHood introduced a motorcoach safety plan in 2009. How does that compare to the different legislative proposals in the House and Senate?**

Response: The Motorcoach Safety Action Plan (MSAP) introduced by Secretary LaHood in 2009 includes most of the actions mandated in the different legislative proposals in the House and Senate. However, the schedules for the rulemaking actions in the legislative proposals are more aggressive than those in the MSAP and are not practical or feasible. Some rulemaking actions specified in the legislative proposals, such as compartmentalization, interior impact protection, tire pressure monitoring system, smoke suppression, and fire extinguishers, are not specified in the MSAP.

c. **Do motorcoach injury statistics indicate more problems with the vehicles or with their operators? Where resources should be directed to be most effective in making motorcoach travel safer?**

Response: Motorcoach crash statistics indicate that problems with operators are a much more common cause of crashes than problems with vehicles. The root causes of motorcoach fatal crashes include driver fatigue (37%), driver medical condition (6%), driver inattention (13%), vehicle condition (13%), road condition (13%), and others (including loss of control) (25%). However, vehicle improvements such as stability control can help address some of the operator failures that cause crashes. Once the crash occurs, the lack of occupant restraints, insufficient structural integrity, and occupant ejection are major causes of occupant fatalities. Resources should be directed to both preventing the crash and preventing fatalities once a crash occurs. Therefore, resources should be directed to addressing issues with the operators as well as the vehicles.

d. **Given the very low rate of average fatalities per year for motorcoach travel, can you accurately estimate the number of lives saved from a proposed vehicle safety standard for motorcoaches?**

Response: Yes. Due to the small number of annual fatalities and year-to-year variability in annual fatality counts, the agency aggregates multiple years of data to determine average annual fatalities in motorcoaches. Over the 10 year period of 2001 through 2010, motorcoach crashes resulted in an average of 17 motorcoach occupant fatalities per year.

e. **What are the structural and design differences between automobiles and motorcoaches that affect their respective vehicle safety standards? Do the same standards that apply to automobiles translate easily to motorcoaches? What tests has NHTSA conducted to evaluate seatbelts or roof crush strength for motorcoaches?**

Response: Motorcoaches are larger and heavier and experience different crash dynamics than passenger cars. Motorcoach rollover characteristics are also different from those of passenger cars. In addition, the high occupancy and internal seating configuration of motorcoaches influence the motion of these occupants and the forces on them and their surroundings. Therefore, care must be taken in assessing the appropriateness of light vehicle standards to motorcoaches. In some cases they may translate easily, and in other cases they may not.

In terms of testing, in 2007 the agency conducted the first-ever motorcoach crash test into a rigid barrier at 30 mph. This was followed by a series of sled tests in 2008 and 2009 simulating motorcoach crashes using dummies representing various occupant sizes in different seating and restraint systems. The results of these tests were used to develop the NPRM for seat belts in motorcoaches that was published on August 18, 2010 (75 FR 50958).

In 2008, NHTSA conducted roof crush/rollover tests on two older motorcoach models to evaluate two existing roof crush/rollover test procedures: one for school buses and the other specified for buses in the European regulations. In 2009, NHTSA tested a newer motorcoach using the European test protocol. The results of these tests were used to determine the feasibility of adopting existing test protocols to motorcoaches and to develop performance requirements.

f. **Are you considering adopting a seat belt rule that allows bus operators to use seat belts that meet the EU seat belt standard? If not, please explain why.**

Response: In 2010, NHTSA published a proposed rule to require lap/shoulder belts on certain buses with a GVWR greater than or equal to 26,000 pounds. These seat belts would be required to meet the strength requirements of Federal motor vehicle safety standard (FMVSS) No. 210 (Seat belt assembly anchorages). The proposed rule detailed the rationale for using FMVSS No. 210, indicating that it was based on an extensive research program of static and dynamic testing. We stated that "[a] seat belt anchorage strength requirement provides the foundation upon which the entire occupant protection system is built. If the anchorage fails, the belted occupant could be propelled beyond the confines of the occupant seat space, and injury or ejection could occur."

The proposed rule also provided a review of the strength requirements in European, Australian, and Japanese standards and why they were not proposed. Nonetheless, the agency requested comment on the proposal and alternatives that should be considered in the final rule. The agency received more than 130 comments in response to the proposed rule. NHTSA plans to publish a final rule in 2012 that will fully address comments on the proposal and the agency's rationale for the selected performance level in the final rule.

17. **Your testimony requests "Direct appellate review of recall orders to ensure that manufacturers have the opportunity to challenge orders while avoiding lengthy district court trials during which time no recall is in effect to protect consumers." Isn't it true that a recall would be in effect during a district court trial unless a judge found some compelling reason to stay the recall? Do NHTSA recall proceedings provide for cross-examination of the agency's experts or others advocating for a recall? How often in the agency's history has a recall order been issued by the Secretary and how often have such orders been challenged in court? When was the last court challenge?**

Response: If a manufacturer resists the order, NHTSA must go to court to seek enforcement of the order in a trial de novo. NHTSA would have the burden of proof to obtain an order

from the court compelling the manufacturer to comply with the agency's order. In the case of a contested recall order, under current section 30121 NHTSA can require the manufacturer to issue a provisional notification that merely notifies the consumer that NHTSA has determined that a defect or noncompliance exists. In that situation the manufacturer must provide a remedy only if the district court upholds NHTSA's determination. NHTSA cannot require the manufacturer to effectuate any remedy until the successful conclusion of the litigation.

So, it is not true that a recall order would be in effect unless a judge found a compelling reason to stay the recall. To the contrary, the manufacturer need only resist the agency's order, forcing NHTSA to bring an enforcement action, to delay providing any remedy to the consumer until the completion of the litigation. Consumers could wait years, including during any appellate review, for any remedy. Instead, we think the much better route is to require any review of the order to occur quickly at the appellate level.

NHTSA's current recall proceedings do not provide for the cross examination of the agency's presenters or others advocating for or against a recall. There is no reason why NHTSA could not amend the relevant procedures to provide for such cross examination if legislation were enacted that would not require the agency to prove its case anew in district court in the event of a challenge to its order.

There have been nine recall orders in the history of the agency. NHTSA litigated seven of those cases involving recall orders, the most recent one in 1998. Even in the cases that NHTSA won, no recall order was in effect until the litigation was completed.

18. In its most recent Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan ("Priority Plan"), NHTSA identifies projects involving rollover risk as a continuing high priority. [combined with Question 19]

19. According to the 2011 Priority Plan, vehicle rollovers account for about 9,000 fatal crashes per year, or about 20 percent of the total number of motor vehicle fatalities in the United States. Is this the most recent estimate available?

Response: The 2011 Priority Plan estimates were based upon 2009 data. The data for 2010 are now available. In 2010 vehicle rollovers accounted for about 8,000 fatal crashes per year, but remained about 20 percent of the total number of motor vehicle fatalities in the United States.

20. The 2011 priority plan also references NHTSA's ongoing study regarding rollover testing. The Priority Plan describes this study as follows:

> ***ROLLOVERS***
> ***Dynamic Rollover Test Research***
> ***Description: The agency is currently undertaking a multi-year project to study the feasibility of a dynamic rollover test to identify occupant injury risk. Issues such as the field-relevance, repeatability and reproducibility and adaptability to***

incorporate vehicle based countermeasures for such a test are being explored. Additional research is underway to determine an appropriate crash dummy that can predict rollover injury mechanisms as well as evaluate occupant restraint performance in rollover crashes such as pretensioners, integrated seat belts, 4-point belts, and air belts. The agency will assess the research data and decide on next steps.
Next Milestone: Agency decision in 2014

a. **What research is being performed to identify the feasibility of a dynamic rollover test regarding occupant injury risk?**

Response: NHTSA's research program includes rollover testing using cadavers, crash dummies, and simulation. The goal of this testing is to define the types of injuries and the types of loads on the human body that produce these injuries during rollover. These injury producing kinematics will be measured using post mortem human subjects, and available advanced crash dummies will be assessed to see if they can reproduce these occupant kinematics and measure the injury producing loads on the human body.

b. **What are the challenges to identifying "field relevance, repeatability, reproducibility and adaptability" of a dynamic rollover test?**

Response: It is critical that the injuries measured in laboratory testing reflect the kind of injuries that NHTSA is observing in real world crashes. It is also important that the distribution of injuries, such as a single severe injury to the head or multiple injuries to the head, chest, and extremities, is similar between laboratory testing and real world crashes. The goal is to have a test procedure that can reasonably replicate and evaluate an occupant's injury risk. Due to the wide variety of rollover crashes that occur, it is highly desirable for a rollover test to be adaptable enough to accommodate a range of crash conditions.

c. **Please explain why repeatability and reproducibility of a dynamic test is important for NHTSA rulemaking purposes.**

Response: NHTSA promulgates the Federal motor vehicle safety standards in order to require minimum safety performance for vehicles and items of motor vehicle equipment sold as new in the United States. If a safety requirement, such as a dynamic test, is not repeatable and reproducible, it will not provide an objective basis for vehicle manufacturers to develop safety countermeasures. It will also make it difficult for NHTSA to successfully identify and pursue noncompliance with the standard. Manufacturers cannot be asked to recall a vehicle for a major structural noncompliance unless the relevant test can be repeated for all similar vehicles and its results reproduced in a subsequent test. This could ultimately result in the standard not achieving the anticipated safety benefits.

d. **What potential dynamic rollover test methods has the agency evaluated in its multi-year study? Please summarize NHTSA's findings of the test methods evaluated.**

Please also explain why those methods have or have not been found to be satisfactory for rulemaking purposes.

Response: In the course of the ongoing research, NHTSA has conducted testing using full vehicle tests, dynamic side sled tests, and the DROTS test device developed at the University of Virginia. NHTSA has done simulation studies evaluating the Federal motor vehicle safety standard No. 208 dolly rollover test as well as CRIS and JRS test methods. Since this research is still ongoing, no final conclusions have been drawn on the merits of the individual test methods. The occupant injury mechanics need to be better understood before we can determine the suitability of any test procedure for recreating these conditions in a controlled environment.

e. **Has the agency evaluated steering-induced dynamic rollover test methods, either in the current study or previously? If so, please summarize those evaluations. Please also explain why those methods have or have not been found to be satisfactory for rulemaking purposes.**

Response: As part of this research, NHTSA conducted steering induced rollover tests and measured the vehicle kinematics throughout the rollover crash. NHTSA has previously conducted a considerable number of steering induced rollover tests as part of our ESC test development procedure. Steering induced rollover testing has been found to be repeatable for evaluating rollover initiation and is currently incorporated into our NCAP and ESC test procedures. NHTSA has not come to any conclusions regarding the suitability of steering induced dynamic rollover tests at this time.

f. **Does NHTSA's plans for additional work on dynamic rollover tests include new or additional evaluations of steering-induced dynamic rollover test methods? If yes, please describe the additional study planned and indicate the timeline for completion.**

Response: Currently, NHTSA's plans do not include new or additional evaluations of steering-induced dynamic rollover test methods.

21. **Please explain NHTSA's plans to evaluate new occupant restraint systems, such as 4-point belts and air belts, for use in motor vehicles. Please also describe NHTSA's views on the feasibility of implementation of these devices in the motor vehicle fleet. Please include a description of public perception challenges regarding these devices, including any empirical research regarding the public reaction, of which the agency is aware.**

Response: NHTSA is currently conducting research on using advanced restraints in front and rear seats. This testing includes a range of available seat belt pre-tensioners, load limiters, locking belt latches, as well as 4-point and inflatable belts. Additionally NHTSA is looking to begin long range research efforts to encourage development of adaptive restraint systems that can sense occupant position, size, or other characteristics and adjust the restraint behavior to enhance safety. This long term research would evaluate the safety performance and cost of these future systems. Public perception would be more of a challenge for new

occupant restraint systems that require action on the part of the occupants than for passive systems.

22. **The priority plan indicates NHTSA may consider possible future enhancements to the New Car Assessment Program in frontal impact, side impact, rear impact and rollover programs. The enhancements under consideration are "updating injury criteria in frontal and side impact programs, adjusting the baseline injury risk in all three programs to ensure that vehicles are measured against a meaningful benchmark, revising testing protocols, and providing improved consumer information." Please describe in more detail NHTSA's plans to expand the program, including what is meant by "a meaningful benchmark," what testing protocol revisions are under consideration, and what types of improved consumer information are being considered.**

Response: In 2010, NHTSA raised the safety bar and implemented major enhancements to its NCAP program by including more stringent crash tests, making it harder for vehicles to achieve the top ratings of 5 stars. Although the program was just revamped two years ago, the agency continues to look for ways to enhance the ratings program to encourage further advancement of vehicle safety.

The revised 5-star safety ratings system that NHTSA developed and implemented in the enhanced NCAP in 2010 was based on a baseline risk of injury of approximately 15 percent for all crash types. The baseline injury risk was based on 2007 and 2008 NCAP test results. In the July 11, 2008 Federal Register notice announcing the NCAP enhancements, the agency indicated that it would periodically review the crash performance of the new model year vehicle fleet, as reflected by NCAP test data, to reassess the baseline injury risk that is currently used to ensure that the respective safety ratings for its NCAP testing programs (i.e., frontal impact, side impact, and rollover resistance) are based on more recent model year vehicle fleet performance. This is what was meant by achieving a "meaningful benchmark."

In addition, the agency is currently reviewing the most current NCAP test data since the implementation of its NCAP program as well as its research data to determine if additional injury criteria could be incorporated into the ratings in the frontal and side impact programs to encourage further safety improvements that will mitigate occupant injuries to other parts of the body that are not currently encompassed by the NCAP program. We are also monitoring research and development of advanced test dummies and crash testing protocols.

As new advanced technologies are emerging in the market, the agency is also actively engaging its research efforts to understand the functionality, capability, reproducibility and repeatability of those technologies and determine their benefits and costs. As these technologies are proven we will actively consider the appropriateness of including them in NCAP.

In the area of improved consumer information, NHTSA plans to conduct comprehensive consumer research of the design and use of the NCAP safety ratings portion of the Monroney label. Through this research, the agency will explore where consumers look for safety information and how consumers use safety and other information located on the Monroney

label when making their purchase decisions. The results of this research will help guide possible changes to the safety ratings section of the Monroney label. Additionally, NHTSA will use this research to identify potential communication approaches to use in a consumer education program.

MITCH BAINWOL
ALLIANCE OF AUTOMOBILE MANUFACTURERS
RESPONSE TO QUESTIONS FOR THE RECORD

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE OF THE U.S. HOUSE OF REPRESENTATIVES

HEARING ON MOTOR VEHICLE SAFETY PROVISIONS IN HOUSE AND SENATE HIGHWAY BILLS
HELD MARCH 8, 2012

By Chairman Mary Bono Mack:

1. ***Do you have estimates of how much the safety mandates of the Senate bill would add to the price of a new car?***

RESPONSE:

It is difficult to estimate the cost of the current mandates without seeing the details of a final regulation because there are a variety of factors that would drive costs, including but not limited to specific technological requirements, phase in schedules and, where applicable, current fleet penetration of the technology. We can say the average price of a car in 2011, according to data compiled by the National Automotive Dealer Association, has now reached in excess of $30,000, more than half the median household income in the United States. Any new technology mandate introduced into a vehicle makes it more costly and more difficult to purchase. Given that the average age of a car is eleven years old, and that newer cars have a wide range of innovations that make them safer, prudent public policy should carefully assess and protect affordability. Moreover, given different patterns of car use (nature of household, geography, etc.), it makes sense, to the extent practical, to let consumers choose which technologies are most beneficial for their own circumstances.

2. ***Does NHTSA ever hire engineers or safety experts directly from auto companies?***

Yes.

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3. ***Over the next few years, the industry will be coping with the enormous regulatory changes. Is there a better way to sort through these mandates and make progress without crushing the industry with too much regulation?***

Yes. Regulations should be based on a clear safety need, backed by objective data. NHTSA is in the best position to bring the necessary resources to bear for identifying safety needs and providing the necessary analytical basis. Their discretion in this regard should not be preempted by regulatory "earmarks" that might otherwise require a regulation that is not based on a clear safety need backed by objective data.

4. ***NHTSA is in the process of considering a rulemaking on brake override. S. 1813 mandates a rulemaking on override. Additionally, it mandates a pedal placement rule.***

   a. ***Do we need a pedal placement rule if we have a brake override rule?***

No. NHTSA's recent report on pedal misapplication estimates there are 15 pedal misapplication crashes per month. Using the data from the Bureau of Transportation Statistics and assuming there are 34.2 billion trips taken per month by Americans; this means there is approximately one instance of pedal misapplication every 4.4 million trips taken. Brake throttle override (BTO) is a more effective means for addressing those rare cases when the accelerator and brake pedals are engaged simultaneously (such as what might occur when improperly placed floor mats or other obstructions interfere with the accelerator pedal's return to its normal idle position). Industry has already largely completed voluntary implementation of this technology across the fleet. In addition, NHTSA recently published its proposal to mandate BTO for light duty cars and trucks beginning in model year 2015. See 77 FR 22638, April 16, 2012

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b. Is regulation of pedal placement a matter that is likely to involve significant re-engineering of vehicles?

Yes. Each vehicle is specifically designed to operate within its vehicle package. Altering pedal placement in a given model to meet a federal standard may require reengineering the entire vehicle to allow for such changes and still be certain of complying with NHTSA's various crash test requirements. A vehicle takes anywhere from five to seven years from concept to production, so even the slightest of changes must be given proper lead time. In 2011 NHTSA identified pedal placement as an area in need of further research following NASA's report on unintended acceleration. The agency should be allowed to finish and evaluate its research before determinations are made as to whether rulemaking is warranted.

5. Many automakers voluntarily installed electronic data recorders. How will the government's involvement – as contemplated in S. 1813 – change the use of these devices? Why do some manufacturers resist installing EDRs?

Event Data Recorders (EDRs) were originally designed to provide automotive engineers a better understanding of how a vehicle and its safety features perform in a crash. Presently they record a limited set of data points and in the event of a crash severe enough to require airbag deployment. The industry and NHTSA spent years developing stringent voluntary standards for OEMs that chose to install EDRs in their vehicles. Some manufacturers chose not to install EDRs in their vehicles, primarily for consumer privacy-related reasons.

MITCH BAINWOL
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S. 1813 would require NHTSA to enter into a new rulemaking to expand the information collected and duration of recordings, two of the issues that NHTSA itself has identified as potentially impacting privacy concerns. The bill also requires NHTSA to consider requiring EDRs to continuously record vehicle data – not only in the event of a crash. Such an expansive rulemaking should not be undertaken until Congress and the public have a better understanding of the potential privacy issues that may be implicated by recording additional data for longer time periods, including when no crash has occurred, and whether additional statutory authority (possibly outside of reauthorization) in needed to ensure privacy is protected.

The Alliance recommends that prior to initiating a second rulemaking expanding EDR capabilities, NHTSA should be directed to conduct a study on the privacy implications of such an expansion and report to Congress. This is a reasonable approach. S. 1813 is a two-year authorization, which would allow NHTSA time to complete a study and report to Congress and allow the Congress time to deliberate and consider any necessary changes.

6. ***You testified that any proposed legislation for safety technologies needs to meet the criteria of expected performance in real-world situations. Are there proposals in the House or Senate legislation you believe that fail to meet that standard?***

Auto engineers develop and test new safety technologies based on their expected performance in real-world situations. Proposed legislation needs to meet the same criteria. We are experiencing a sustained decline in fatalities because of the efforts begun over a decade ago to zero in on the largest areas of concern in traffic safety. At a time when we as a nation are acutely aware of our resource limitations and the economic constraints facing our customers, both industry and government must continue to prioritize our efforts to maximize real-world safety benefits for

consumers. Examples that fail to meet the criteria include a pedal placement rulemaking, the expansion of the early warning reporting system, phase II of EDR rulemaking and an electronic systems performance rulemaking.

By Rep. Jan Schakowsky

In your testimony you state that the Alliance recommends that the provision of requiring rear seatbelt reminders should be deleted, citing the complexity and cost to develop such systems.

1. ***Your recommendation to eliminate the rear seatbelt reminders provision appears to contradict the Alliance position, also stated in your testimony, that proper occupant restraint is essential, pointing out the fact that "over half of vehicle occupants killed in crashes are not restrained by safety belts." Please explain why rear seat belt minder systems should not be a priority for safety when rear seat belt use rates lag behind front seat belt use rates, especially for teenagers and children who are frequently rear seat passengers.***

RESPONSE:

NHTSA's Rulemaking and Research Priority Plan for 2011–2013 includes decision points both for enhanced seat belt reminders (ESBRs) and the agency's Next Generation New Car Assessment Program (NCAP). NHTSA's Plan reflects extensive analysis of traffic safety data and the agency's judgment on the most effective means to continue to accomplish its Congressionally mandated mission to "save lives, prevent injuries and reduce economic costs due to road traffic crashes." As I

testified, the Alliance believes Congress should resist substituting a "rulemaking earmark" like that of Section 31503 of the Senate bill.

Research performed by NHTSA has consistently shown evidence that programs that enforce or encourage belt use save children's as well as adult's lives and would be a better use of resources than mandating rear seat belt minder systems. NHTSA's research indicates that fully 92 percent of the time, when a driver is belted, his or her child passengers are restrained. In contrast, when the driver is unbelted, the children are restrained only 72 percent of the time. See DOT HS 809 555.

Rather than mandate, the installation of rear seat belt reminders systems should remain voluntary and market driven. The Alliance believes the annual "Buying a Safer Car" Brochure should be updated to include rear seat belt minder systems.

2. ***Please explain your claim regarding the complexity and cost of these systems given that there are a number of makes and models that provide such systems in the U.S. market, and the fact that they are standard equipment in many European versions of passenger vehicles available in the US. Specifically address in your explanation how the cost and complexity of rear seat belt reminder systems are factored into several low to mid-cost makes and models sold in Europe (Chevrolet Aveo, approximately $16,500 MSRP; Toyota iQ, approximately $17,400 MSRP; and the VW UP!, approximately $12,800 MSRP), all of which include rear seat belt reminder systems, that are manufactured by companies that are members of Alliance. In addition, a few manufacturers, including at least one member of the Alliance, currently provide heated rear seats as an option. For example the 2011 Hyundai Elantra, with a base price less than $20,000, offers this option. How***

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does the Alliance justify installing technology to make rear seat passengers more comfortable, but not making it a priority to protect those same passengers by reminding them to buckle their seat belts?

With regard to European models, the European New Car Assessment Programme (EuroNCAP) includes rear seat belt reminder systems in its ratings. As noted in the previous answer, the Alliance supports updating NHTSA's "Buying a Safer Car" program to include rear seat belt reminder systems, as well.

Hyundai is not a member of the Alliance.

GlobalAutomakers

May 04, 2012

Honorable Mary Bono Mack
Chairman
Subcommittee on Commerce, Manufacturing and Trade
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Bono Mack:

Thank you for the opportunity to testify at your Subcommittee hearing on March 22, 2012 entitled "Motor Vehicle Safety Provisions in the House and Senate Highway Bills." We trust our statement and testimony provided useful information and perspective to the Subcommittee on this important and timely issue.

We also appreciate the opportunity to respond to the follow-up questions included in your letter of April 19, 2012. Our responses to your questions are enclosed.

Should you or your staff have any questions, please contact me at (202) 650-5550.

Sincerely,

Michael J. Stanton
President and CEO

cc: Legislative Clerk, via e-mail at Kirby.Howard@mail.house.gov

enclosure

Association of Global Automakers, Inc. 1050 K Street, NW, Suite 650 Washington, DC 20001 202.650.5555

GlobalAutomakers

RESPONSES OF THE ASSOCIATION OF GLOBAL AUTOMAKERS
TO QUESTIONS RAISED by CHAIRMAN MARY BONO MACK
ON MOTOR VEHICLE SAFETY

The Honorable Mary Bono Mack

Question 1:

How much do your companies collectively spend on research and development annually? When a new safety technology is developed, why is it generally phased in across different models rather than implemented all at once? Why do you spend so much effort and investment on technology – is it generally because NHTSA requires you to develop these technologies?

Response 1:

Precise R&D spending levels are difficult to determine but based on our research annual R&D spending by all automotive OEM's worldwide totals tens of billions of dollars. R&D is critical to vehicle manufacturers who are constantly seeking new technologies that meet consumer demands and regulatory requirements for increased fuel efficiency and advanced safety features. Manufacturers also look to R&D for 'breakthrough' technologies that create features which differentiate their products from those of their competitors.

Most new technologies are implemented through a phase-in process, whether mandated or not and whether safety-related or otherwise. There are numerous reasons for this. For instance, the phase-in approach allows real-world feedback to vehicle manufacturers that enables year over year system improvements. Phase-in schedules also enable substantial engineering efficiencies as new technologies are incorporated at the time of full vehicle redesigns, rather than retrofitting the new technologies into existing vehicle designs. Full vehicle redesigns typically occur in 4 to 5 year cycles.

Research and development of new and innovative technology is essential for companies to remain competitive in the market. Consumer awareness and demand for safety has increased steadily over recent years, so meeting this demand is a high priority for manufacturers. In recent years, important safety technologies have been developed and made available on new vehicles without the need for government mandates. This is particularly true with regard to electronic crash avoidance systems, which are widely believed to be the next major step forward in vehicle safety.

GlobalAutomakers

The Honorable Mary Bono Mack

Question 2:

How do new Federal regulatory mandates affect your efforts and ability to develop and implement your own safety technologies?

Response 2:

In general, in recent years NHTSA and manufacturers have pursued similar safety priorities, primarily focusing on advanced crash avoidance systems as noted above. In some cases, NHTSA has pursued these matters through consumer information programs and through industry-led voluntary initiatives. These latter approaches, while still affecting manufacturer and agency resources, have generally achieved safety benefits more quickly and with lesser cost than regulatory mandates. Industry-led voluntary initiatives have also created less disruption to ongoing manufacturer efforts to develop and implement new safety technologies. Throughout the rulemaking process, vehicle manufacturers provide input to NHTSA outlining reasonable implementation schedules for mandated new vehicle technologies that are compatible with redesign cycles and reflect adequate production lead-time. This is to avoid unnecessary production disruption and significant cost increases for the consumer.

The Honorable Mary Bono Mack

Question 3:

You testified on the need to focus our resources based on priorities that will maximize safety benefits. You also highlighted the need to continue to address driving under the influence and wearing seat belts as top priorities. While seat belts are a great safety enhancement once a car is in an accident, other technologies such as electronic stability control and anti-lock brakes have saved tens of thousands of lives by preventing or mitigating the effects of accidents. What new technologies are on the horizon to prevent or mitigate accidents? Will manufacturer's ability to implement any of these technologies be affected if Congress requires NHTSA to adopt new standards?

Response 3:

As noted above, most members of the vehicle safety community recognize the next significant phase in vehicle safety improvement will involve advanced electronic crash avoidance technologies. Several of these systems are now being implemented in

production vehicles. For example, electronic stability control systems, which reduce the risk of rollover crashes, are nearing full implementation in the new vehicle fleet. Forward collision warning and lane departure warning systems are also beginning to be phased into the fleet. Perhaps the most promising new technology involves vehicle-to-vehicle and vehicle-to-infrastructure communication systems. These systems allow vehicles to communicate with each other to identify their location, path, and speed, to provide driver warnings and potentially to intervene in controlling critical vehicle systems to avoid crashes. Vehicle-to-infrastructure technology can also alert drivers to potentially dangerous situations on roadways. Vehicle-to-vehicle communication technologies are currently the subject of a large scale pilot test in Michigan. The Department of Transportation (DOT) has been very helpful in facilitating these new communications technologies, which have the potential to achieve truly revolutionary safety gains.

It would be unfortunate if efforts to achieve these major safety benefits were impaired through the diversion of NHTSA and manufacturer resources to prescriptive initiatives that may hinder or delay other initiatives that offer the potential to save many more lives. Throughout the rulemaking process, vehicle manufacturers encourage NHTSA to consider the adoption of carefully developed and well established industry standards when defining requirements for existing or newly mandated vehicle technologies. Congress should carefully consider the potential diversionary impacts of any new regulatory mandates, in the context of the priorities that DOT has already established.

The Honorable Mary Bono Mack

Question 4:

Do you have concerns regarding the increasing cost and affordability of cars and whether that puts the price of safety beyond the means of many Americans?

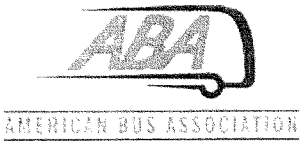
Response 4:

There are well-established relationships among vehicle price, sales levels, industry employment, and manufacturer profitability. There is always a risk that higher vehicle prices will reduce vehicle sales, and cause consumers to retain their current vehicles rather than purchasing new ones that have the latest and most effective safety technologies. The effect of price increases in such cases can be a delay in achieving higher levels of safety.

Passenger cars and light trucks are now subject to stringent new fuel economy and greenhouse gas standards that EPA and NHTSA project will increase vehicle prices by

approximately $3,000 per vehicle by 2025. We urge Congress and the agencies to carefully consider the impact of additional mandates that will increase vehicle prices above the significant increment already anticipated due to the CAFE and greenhouse gas standards.

Consumers more readily accept price increases that are moderate in size and that result from the addition of new features and technology that provide clear, recognizable benefits over existing vehicles in the fleet. To minimize consumer resistance to higher prices resulting from new regulatory mandates, Congress and the agencies should seek to ensure that any new regulatory mandates be data-driven and provide clear safety and environmental benefits that consumers highly value. Without such steps, price increases can delay fleet turnover, thereby delaying the anticipated benefits of the regulations.



The Honorable Mary Bono Mack
Chairman
Subcommittee on Commerce, Trade and Manufacturing
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Re: Answers to Additional Questions for Peter J. Pantuso, President and CEO, American Bus Association with respect to the March 22, 2012 hearing entitled "Motor Vehicle Safety Provisions in House and Senate Highway Bills"

Dear Chairman Bono Mack:

Thank you again for the opportunity to appear before the subcommittee to discuss "Motor Vehicle Safety Provisions in House and Senate Highway Bills." Enclosed you will find ABA's response to the additional questions I received from the subcommittee.

Once again, on behalf of the American Bus Association, I would like to offer my thanks for our chance to testify before the subcommittee on this important legislation. Please feel free to contact me or ABA again whenever you believe we can be helpful.

Sincerely yours,

Peter J. Pantuso

Peter J. Pantuso
President and CEO
American Bus Association
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Question 1: NHTSA Administrator David Strickland noted at the hearing that the agency would have difficulty in accomplishing the rulemakings required by the bus safety provisions in S. 1813, the so-called MAP-21 transportation reauthorization bill. What is ABA's view on the time limits in S. 1813?

Answer 1: ABA has long considered the time frames in what is now S. 1813 inadequate, and they do not account for the complexity of the issues surrounding bus safety. . To cite two examples: in considering the issue of advanced window glazing for motorcoaches, NHTSA will have to consider the issue of whether such window glazing will have any effect on passengers' emergency egress from motorcoaches. In addition, NHTSA will have to consider whether window glazing will affect the strength of the roof of a motorcoach These questions will generally not be amenable to resolution with the time frames of S. 1813. Administrator Strickland clearly identified the timelines in S.1813 as problematic to accomplish a science-driven rule making.

Question 2: S. 1813 would give NHTSA authority to issue an industry-wide retrofit of motorcoaches to provide safety equipment such as seatbelts. What is ABA's view on the necessity and availability of retrofits for motorcoaches?

Answer 2: ABA agrees with NHTSA in its call for seat belts in new motorcoaches (See NPRM NHTSA Docket Number 2010-0112, comments filed October 18, 2010) I But, in our view, NHTSA does not have the authority to issue an industry-wide retrofit of motorcoaches except where the equipment being retrofitted is "readily attachable" to the motorcoach(in NPRM NHTSA Docket Number 2010-0112.) Secondly, the issue of retrofitting is extremely complex. Several important factors must be taken into account prior to any decision on retrofitting. For example, it would have to be determined that the seats would not separate from the floor of the bus, or if the restraint were attached to the seat, that the buckles or belts would not break away from the seat. It would also have to be determined that the seat could withstand the "load" upon crash impact. There is an added difficulty in older buses which may not be able to handle the forces or load (weight of passengers, impact of collision, etc.) that the seat belts would place upon the seat and seat anchorages, and therefore might cause more harm to the occupants because the seats may collapse with passengers belted to them. All of these questions would require answers, and NHTSA performance standards, based on age of the motorcoach, its manufacturer, its' usage over time and the maintenance it has received.

There are also practical problems in requiring retrofits for motorcoaches. Who, or what entity, will certify that any retrofit is done correctly? Moreover, a motorcoach may have a road life of 25 years and there are several motorcoach manufacturers. Thus, performance standards for retrofits will have to encompass a wide variety of makes, models and years. A bus operator cannot certify that a retrofit is done correctly. Indeed, only the bus manufacturer of any particular bus is in any position to certify the retrofit. In fact in our view, a manufacturer will be hesitant to certify any bus not of its manufacture.

This state of affairs leaves bus operators in an unwinnable situation. The law mandating retrofits without providing any way in which a retrofit may be certified as correct leaves the operator with no protection from regulatory sanction or law suits from customers. In addition, there is no way that the law enforcement community can check enforcement of these mandates on the nation's roads. Requirements such as new seat belt regulation that suppose conformance with crash test performance measures are not appropriate for retroactive requirements.

Question 3: The cost of retrofitting motorcoaches with safety features seems to be in dispute. Could you provide us with your view on the cost of such retrofits?

Answer 3: The cost to comply with new vehicle safety mandates in S. 1813 could be in excess of $60,000 per motorcoach (see the appended chart.) With over 30,000 motorcoaches in the domestic fleet the cost of retrofits could amount to nearly two billion dollars. NHTSA stated in its Notice of Proposed Rulemaking (NPRM) regarding seat belts that complying with a potential retrofit requirement would cost up to $40,000 per motorcoach (See 75 Fed. Reg. 50958, 50979). This additional cost would cover seatbelts alone and does not incorporate the other potential retrofit mandates in S. 1813.

Question 4: Testimony was provided which purports to document the number of motorcoach accidents and fatalities over the last two decades. Please provide the Committee with ABA's analysis of motorcoach crashes and fatalities over the same time period.

Answer 4: The chart referred to was submitted by the witness for the Advocates for Highway and Auto Safety (Advocates) and it lists 178 "motorcoach" crashes and 317 deaths over a two decade period. The fact is that the number of motorcoach crashes and fatalities is smaller than that chart documents. The chart includes crashes of vehicles which are not motorcoaches. Motorcoaches or over-the-road buses are defined as a commercial vehicles with an elevated passenger deck over a baggage bay (See Section 3038(a)(3) of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5310, Note). This "motorcoach" is the only type of commercial vehicle (CMV) that will be subject to the bus safety mandates of S. 1813. In addition, the bus safety provisions in S. 1813 also specifically exclude school buses and motorcoaches used in public transportation by or on behalf of a public transportation agency. As one example of the latter, the motorcoaches contracted from private motorcoach companies by Maryland and Virginia to transport commuters to and from the District of Columbia would not be affected by S. 1813. Applying the statutory definition of "motorcoach" to the chart we find that the chart includes accidents and crashes of 15 passenger vans, school buses and cutaways (buses with a bus body attached to a small or medium sized truck chasis attached to the truck's cabin). None of these CMVs would be subject to S. 1813's mandates.

In addition, the chart also lists accidents with no relation to issues of the safety of the vehicle. For example, it lists crashes in which buses were hit while parked and it includes pedestrian injured when struck by a bus. Our analysis of the Advocates chart, corrected for vehicles that will actually be affected by the safety mandates in S. 1813 reveals that of the 317 accidents listed, 67 were "motorcoach" accidents with a total of 262 fatalities among passengers and drivers. However, what the chart does reveal is that the issue of bus safety is an enforcement issue. ABA's analysis of public records shows that

just sixteen motorcoach companies were responsible for 126 of the fatalities on the Advocates' chart (48%) and each one of those carriers was determined to have been either an unsafe or illegal bus carrier. The short answer in all of this is that better enforcement of existing regulations by federal and state authorities would do more for the safety of the travelling public than the mandates in S. 1813.

Question 5: Please provide the Committee with details supporting your testimony that more enforcement of existing regulations for motorcoaches promises significant reductions in the number of motorcoach crashes and fatalities. You state that over half of the deaths in motorcoach accidents since 1999 were due to unsafe or illegal carriers. Where does the enforcement mechanism need to be improved – at the State or Federal level – or both?

Answer 5: Enforcement of present regulations is the key to safe motorcoach transportation. Inconsistent enforcement of existing regulations, the lack of training of bus safety inspectors and the lack of attention paid to this industry have allowed illegal or unsafe carriers to operate.

For example, there is a wide disparity between bus and truck inspections nationwide. Presently for every one inspection of a motorcoach there are twenty-four freight CMV inspections. Second, only a handful of States have a suitable bus inspection program. Many States require only that bus operators self-certify their buses, leaving the unlawful or illegal operator to provide service to the public at the operator's whim or greed. In addition, the inconsistent state enforcement efforts have left some states as safe havens for marginal or unsafe carriers.

ABA does applaud some of FMCSA's latest enforcement actions, including "safety sweeps" by combined federal, state and local task forces, which has led to an increase in bus inspections and the removal of noncompliant buses and drivers from the roads. But there is more to do. ABA's data indicates that 54% of all motorcoach fatalities in the last ten years (1999-2009) were accidents caused by either unsafe or illegal carriers. In stark terms, more than 50% of all fatalities in that time have been the result of bus operators or drivers who should never have been allowed to run under current federal regulations. It is certain that increased enforcement is the way to reduce motorcoach accidents and fatalities.

Question 6: Testimony at the hearing noted that one large scheduled service motorcoach operator supported the provisions in S. 1813. Are there significant differences in the abilities of motorcoach operators to comply with the mandates in S. 1813?

Answer 6: The motorcoach industry is largely comprised of small family-owned companies.. The average ABA member owns or leases eight motorcoaches The industry is further divided into two broad categories, scheduled service operators and charter and tour operators. The motorcoach company in favor of S. 1813, Greyhound Lines (an ABA member) is the largest scheduled service bus operator in the United States with 1775 motorcoaches. Greyhound is the only nationwide scheduled service operator, headquartered in Dallas, Texas and owned by First Group America, an Ohio corporation, which is in turn owned by First Group, a Scottish corporation.

The financial infrastructure, resources and manpower available to a company with almost 2000 motorcoaches, a large network of facilities and access to the international financial markets is simply

many times greater than that available to the average ABA member, not to mention the one and two bus operators who transport many students and senior citizens daily. Greyhound's ability to use economies of scale and the resources of a multi-billion dollar corporation are simply disproportionate to 90 percent of the motorcoach industry.

Question 7: You testify that the ABA supports H.R. 7, which is stronger than S. 1813, in your opinion, because it requires full fleet implementation of the standards by date certain, whereas the Senate bill only applies to new motorcoaches. Is it reasonable to conclude the Senate language could incentivize operators to delay buying a new motorcoach without a date certain fleet compliance requirement and thus delay safety?

Answer 7: It is reasonable to assume that the Senate language could lead to delays in purchasing new motorcoaches and perhaps delaying safety. A date certain for full implementation, taking into account the size of the carriers, their operations and their financial condition would seem to be the better part of safety.

Question 8: Witness testimony given to the Committee suggests the timeframes for the standards and fleet phase-in are excessive because "(a)ll that is needed are the performance requirements from the agency and some time to design and install the changes." If some of the technology mandated in the standards proposed by the Senate legislation already exists, or is already required by NHTSA in passenger cars, why does the motorcoach industry need additional time?

Answer 8: To begin, there is, as Administrator Strickland stated in his testimony a big difference between the engineering of a passenger car and a motorcoach. Just because NHTSA has mandated certain equipment on the former does not ensure that similar equipment may be mandated for motorcoaches. It is clear that manufacturing a motorcoach is many times more complex than building a passenger car. . For example, as noted above developing performance standards for motorcoaches requires the Agency to develop standards for vehicles of up to 25 years in age and for vehicles made by at least five major motorcoach manufacturers (only one, MCI, is a domestic corporation). .

ABA believes that the times in the bill are a problem in another area. The time allowed the industry to implement any new safety mandate must be sufficient to allow the new mandates to be integrated into the motorcoach manufacturing. Even assuming that the mandated technology exists, the issue of the time for implementation cannot be wished away. Just as seat belts were phased –in in passenger vehicles over several years, so must new safety requirements be phased-in in the bus industry. Allowing a sufficient time for industry to equip its vehicles with any new safety gear, provides a sure and even-handed implementation. Allow too brief a time, and the implementation of the new equipment is captive to those carriers who have the financial or network resources to buy the equipment without regard to where the equipment may be needed most or prevent smaller carriers from receiving the equipment when required.

Question 9: If a number of the same safety features subject to proposed NHTSA rulemakings are being offered by manufacturers and implemented by your operators, why do you think more time is needed for NHTSA – as provided for in H.R. 7?

Answer 9: As I noted above the issue of developing performance standards by NHTSA cannot be wished away. NHTSA will have to develop standards for motorcoaches that can be up to 25 years old and built by several different manufacturers. Each separate motorcoach model (as well as specialty models such as entertainment coaches) will demand its own testing regimen and all of this will take time.

Question 10: Is there any data on seat belt usage rates by passengers in motorcoaches that are equipped with belts?

Answer 10: ABA is not aware of any studies on the issue of seat belt usage in motorcoaches.

PER-BUS ESTIMATED COSTS FOR A NEW BUS OF VEHICLE MANDATES IN MESA

TOTAL ESTIMATED PER-BUS MANDATE COST

$60,000 – $70,000

TOTAL ESTIMATED MANDATE COST FOR A 30 BUS FLEET

$1,800,000 -- $2,100,000

ITEMIZED COSTS OF MESA VEHICLE MANDATES:

1. Three point seatbelts at every seat, Section 3(a)

$15,000.00 (including enhanced compartmentalization; retrofit would be more than double because new seats, strengthened floors required)

2. Advanced window glazing in each window, Section 3(b)(2)

$7,000.00 (Tempered multi-layer)

3. Installation of improved firefighting equipment, Sections 4(a)(1), 4(a)(2), 5(a)(1)

$6,000.00 (Kiddie fire detection and suppression system)

4. Improved compartmentalization (including enhanced seat designs), Sections 5(a)(3), 5(b)

Included in cost estimate for 3 point belt. Seat back raised 4 inches and foam added

5. Enhanced stability technology, including electronic stability control, roll stability control, and torque vectoring, Section 3(b)(3)

$3,000 (retrofit cost would be triple)

6. Improved roof strength and crush resistance that substantially improves resistance to deformation and intrusion, Section 3(b)(1)

$8,000-$10,000 (structural reinforcements to roof bows and vertical supports)

7. Enhanced fire hardening or fire resistance of motorcoach exteriors to prevent fire and smoke inhalation injuries to passengers, Sections 4(a)(1),

$ 13,000

This includes flame hardening of exterior body panels, both composition and geometry; hazardous location electrical fixture and connection hardening; hardening and relocating exhaust outlets from engine and supplemental heater to mitigate flame propagation

8. Improved emergency evacuation designs -- emergency exit window, door and roof hatch, Sections 4(a)(5)(A), 4(a)(5) (B),

9. Enhanced motorcoach interiors to improve resistance of interiors and components to burning, inhalation of toxic smoke and permit sufficient time for the safe evacuation of passengers, Sections 4(a)(2),

$11,000

The main cost here is to go over and above FMVSS 302 standards to a "Flame Block" material as the covering which is 3X the cost of the seat material. Incremental costs to do all seats would be $4,000.00. To "Flame Retard" the balance of the interior would be another $7,000.00, for a total of $11,000.00.

10. Enhanced interior impact protections, Sections 5(a)(3), 5(b)

$3,000 (sidewall paneling only; seat costs covered in #1 above)

What it takes to drive your business.

May 3, 2012

Honorable Mary Bono Mack
Chairman
Subcommittee on Commerce, Manufacturing
And Trade
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Mack:

Thank you for the opportunity to appear before the Subcommittee on Commerce, Manufacturing and Trade and testify at the hearing entitled "Motor Vehicle Safety Provisions in House and Senate Highway Bills." Hopefully, my testimony effectively presented the compelling differences of the bus and motorcoach safety provisions included in the American Energy and Infrastructure Jobs Act of 2012 (HR 7) as reported from the House Transportation and Infrastructure Committee and those of S. 1813, the Moving Ahead for Progress in the 21st Century (MAP-21).

As per your request, attached are our responses to the follow up questions from the testimony we submitted prior to the March 22, 2012 hearing. Please feel free to contact me should you have any questions about the answers we provided, or should you have any additional questions you may wish us to answer.

Again, we appreciated the opportunity to present testimony on these important matters. Please do not hesitate to contact us again should you want our views on other matters you and/or your committee consider in the future.

Sincerely,

Victor S. Parra
President and Chief Executive Officer

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The Honrable Mary Bono Mack, Chairman, Subcommittee on Commerce, Manufacturing and Trade

1. **NHTSA is currently reviewing motorcoach safety standards. How does the scope of their review differ from the scope of the Senate mandates?**

In 2007, the National Highway Traffic Safety Administration (NHTSA) completed a broad review of motorcoach safety issues in the United States and developed an approach that most expediently addresses those issues. The agency decided to prioritize four areas: seat belts to reduce passenger ejection, roof strength, fire safety, and emergency evacuation. The National Transportation Safety Board identifies the condition of the motorcoach as a root cause in 13 percent of the accidents they investigated.

S. 1813 is likely unprecedented in its number of industry mandates; particularly considering the consistent safety record of the motorcoach industry. We find thirty-one (31) mandates (see below) for the motorcoach industry in S. 1813 of which 11 may be considered consistent with NHTSA's review of motorcoach standards. However, the most glaring difference is that NHTSA's approach is science based with considerable testing and analysis that reaches optimum conclusions rather than anecdotal prescriptive "solutions" and untenable and harmful timelines contained in S. 1813.

- Written proficiency exam – 18 months
- Pre-authorization safety audit – 1 year
- 12 month safety review – 1 year
- Financial responsibility – 6 months report, 6 months after report initiate rulemaking, 1 year final
- Electronic On-Board Recorders – 1 year
- National Registry of Medical Examiners – 1 year
- Minimum Standards for Driver Notification Systems – 1 year
- Minimum Entry Level Driver Training - 6 months
- Driver Safety Fitness Ratings – no deadline
- Safety Belts for New Motorcoaches – 1 year
- Roof Strength and Crush Resistance – 2 years
- Anti-ejection Safety Countermeasures – 2 years
- Rollover Crash Avoidance – 2 years
- Tire Pressure Monitoring Systems – 3 years
- Retrofit for safety belts – after assessment (w/in 1 year) – 1 year
- Retrofit for other anti-ejection countermeasures – after assessment (w/in 1 year) - 2 years
- Flammability Standard for Exterior Components – 18 months
- Smoke Suppression – 18 months
- Prevention of and Resistance to Wheel Well Fires – 18 months

- Automatic Fire Suppression – 18 months
- Passenger Evacuation – 18 months
- Causation and Prevention of Motorcoach Fires – 18 months
- Tire Performance Standard – 3 years
- Improved Fire Extinguishers – research & testing (w/in 2 years) – 2 years after for rule
- Interior Impact Protection – research & testing (w/in 2 years) – 2 years after for rule
- Compartmentalization Safety Countermeasures – research & testing (w/in 2 yrs) – 2 years after for rule
- Collision Avoidance Systems – research & testing (w/in 2 years) – 2 years after for rule
- Process for Monitoring Ongoing Safety Performance – no deadline
- Event Data Recorders – after evaluation (within 1 year) – 2 years after for rule
- Safety Inspection Program – Requiring States to Conduct Annual Inspections – 3 years
- Distracted Driving – 1 year

Additionally, S. 1813 contains seven (7) mandates for reports affecting the motorcoach industry:

- National Driver Record Notification System – recommendations, plan and report - 2 years
- CDL program – Guidance to States – 6 months
- National Clearinghouse for Records Relating to Alcohol and Drug Testing – 2 years
- CVISION – plan for resumption – strategic workforce plan
- Certification of training programs - rpt
- Driver License Requirements for 9-15 Passenger Vans - rpt
- Waivers, Exemptions and Pilot Programs Impact on Safety - rpt

NHTSA Administrator Strickland in his comments to the Committee stated, "While the agency is currently working on some of the safety challenges identified in the Senate bill, some provisions include subjects not currently on our agenda. We develop our research and rulemaking priorities by focusing on the most significant safety risks, particularly risks associated with vulnerable populations and high occupancy vehicles."

S. 1813 would also subject motorcoaches traveling on our Nation's highways to unscheduled roadside inspections interrupting passenger schedules and subjecting them to unsafe highway hazards. A typical roadside motorcoach inspection lasts 45-60 minutes; often after having waited in line with long-haul trucks for extended periods. This practice is currently prohibited by Federal law except under situations where there are obvious defects or the motorcoach is being operated in an unsafe manner.

The mandate in S. 1813 for automatic fire suppression systems would require technology that currently does not exist. During the NTSB Wilmer, TX motorcoach fire hearings, expert witness testimony was heard regarding the inherent problems associated with developing technology sufficient to extinguish or suppress wheel well fires. Despite years of research and development, no technology exists today to extinguish or suppress wheel well fires. It was further noted, "The Safety Board concludes that because tire fires are difficult to extinguish, early detection of potentially hazardous conditions in a wheel well area is critical, as demonstrated by the sequence of events in this accident, to eliminating the fire hazard." Tire pressure monitoring systems detect temperature and the associated rise in tire pressure and remain the best in-transit method of detecting potential wheel well component fires. Current trends indicate a significant reduction in motorcoach fires through improved maintenance and enhanced inspection techniques by regulatory inspection officials.

While UMA supports many of the mandates contained in S. 1813, the association's opposition remains rooted in the bill's volume of mandates and pre-determined outcomes while ignoring the hallmarks of sound science, research, cost benefit analysis and obtainable timelines. One example is revealed in NHTSA's recent crash test summary that determines lap belts are more harmful to the wearer than wearing no seatbelt. Sound science is often the difference between what we "think," and what we "know." In summary, the strategies and directions set forth in HR 7 truly enable NHTSA to develop "real world" safety solutions; not policy-mandated outcomes that may not enhance the safety of the traveling public."

2. **In your testimony, you stated the projected number of lives saved due to the installation of seatbelts would be 8 annually. Is that based in installation in new buses? If yes, do you know what the estimate is of lives saved if seatbelts are also retrofitted, a feat that could cost over $1 billion according to your estimate?**

NHTSA estimates that installing lap/shoulder seat belts on new motorcoaches would save 1-8 lives annually and prevent 144-794 injuries, depending upon the usage of lap/shoulder belts in motorcoaches. These annual benefits would accrue when all motorcoaches in the Nation's fleet have lap/shoulder belts. As many passengers are accustomed to the passive protection of compartmentalization in motorcoaches, initial reports find seatbelt usage in motorcoaches very low; even when directed through pre-trip announcements and signage. NHTSA estimates 24% usage as the cost-versus-savings break-even point. Similar to private passenger automobiles, seatbelt usage in motorcoaches will require a culture transformation.

NHTSA estimates the cost of retrofitting lap/shoulder belts in the Nation's fleet of motorcoaches to be $1,173,000,000. These costs do not include increased remaining lifetime fuel price increases incurred by adding weight to the motorcoach. There are many variables which must be taken into consideration with retrofits, including: 1) the make and model of the

bus; 2) age of the bus; 3) accumulated mileage; and 4) environmental impacts on the condition of the bus.

One of the world's leading manufacturers of motorcoaches and a leading supplier of high-quality motorcoaches in North America advised NHTSA that the cost of retrofitting one of their motorcoaches to the proposed seatbelt standard would approximate $85,000. To comply with the requirements proposed in the NHTSA Notice of Proposed Rulemaking would involve costs to such an extent that may result in not only making retrofitting prohibitive, but premature obsolescence of otherwise productive motorcoaches. The necessary work to retrofit existing buses includes:

- removing existing seats;
- removing the flooring;
- removal of the engine in order to gain access to the bus structure at the rear;
- welding new frame structure to accommodate FMVSS 210 seat belt requirements;
- reinstall engine;
- reinstallation of removed parts;
- installation of seats;
- verification of compliance critical elements to meet the FMVSS standards.

The House bill contains an important provision regarding retrofit requirements by stating that retrofit standards are technically feasible only if the equipment can be certified by the original equipment manufacturer as meeting requisite performance requirements, and is readily attachable subsequent to initial manufacture by the operator and enforced through readily visible inspection requiring no disassembly.

It is especially noteworthy that all motorcoaches traveling on the Nation's highways meet the occupant protection specifications at the time of manufacture. A motorcoach without seatbelts is not a motorcoach without occupant protection. For decades NHTSA has favored compartmentalization over other forms of restraint systems as it is passive and was a favored and balanced approach to offering the broadest possible protection as widespread seatbelt usage was not yet realized. Unlike airlines, motorcoaches share a precarious environment with an assortment of vehicles on our Nation's highways; which yields over 30,000 fatalities annually. The motorcoach accounts for less that nineteen (19) of those fatalities. Compartmentalization passively contributes significantly to this low fatality rate, as well as the devotion of motorcoach operators to safe operations.

3. **You testified that the cost to retrofit buses with seatbelts alone could cost nearly $1.2 billion. The cost of all the Senate mandates are estimated anywhere from $60,000 per new motorcoach to $70,000 per new motorcoach per new motorcoach. Do you have any**

estimates of how this will translate into increased cost to consumers – both if new standards are permitted to be phased in and if new standards are required to be retrofitted?

NHTSA estimates the size of the Nation's motorcoach fleet at 29,325. Using $70,000 per motorcoach would result in a cost in excess of $2 billion. Inasmuch as the retained life of each existing motorcoach is unknown, it is likely impossible to approximate the cost to charter service groups and individual passengers in scheduled route service. However, we pose further considerations.

It is estimated that 79% of the Nation's motorcoach operating companies meet the definition of "small business" as defined by the Small Business Administration. The vast preponderance of these companies are not scheduled route carriers but rather charter service operators. With an average fleet-size of three (3) units, many, if not most, of these carriers are family owned and operated. They serve their communities effectively, economically and safely. The diversity of community and operating companies results in varied business plans; often with a mix of "used" and "new" motorcoaches. Today, one new motorcoach routinely exceed $500,000 and approaches $600,000 when the operating company is meeting their mandated Americans with Disabilities Act obligations. Recovering costs from unfunded mandates is difficult at best, given the competitive nature of the motorcoach marketplace and the diverse methods of price development. Charter service rates vary widely from day-of-week, time-of-year, utilization rates and fuel costs. Fiercely competitive, studies show that approximately two-thirds of the population served by the motorcoach industry consists of student or senior groups. For varying reasons associated with these two groups, economy is a routine consideration. The recent rise in fuel costs and poor economy has led to a reduction in discretionary travel.

It is important to note the construction of a motorcoach is very different than other buses such as a typical school, transit or shuttle bus. Motorcoaches are built with a semi-monocoque construction design in which the body is integral with the chassis. Typically, safety related components are engineered in, not added on.

Considering the small business complexion of the industry (79%) and average fleet size (3); a cost of $70,000 per coach in mandates would have several undesired affects. Where would the money for higher priced motorcoaches come from? Traditional lending in the motorcoach industry is associated with the direct financing of new or pre-owned motorcoaches. Loans associated with "adding" something to a motorcoach are for the most part unheard of. Loans for small businesses are routinely challenging and the Nation's current economy has further exasperated conditions. More than likely motorcoach companies will be faced with:

- Simply going out of business.

- Reducing their fleet size (prematurely retiring otherwise working motorcoaches).
- Purchasing new motorcoaches out of sequence or delaying purchase.
- Increased cost through new acquisition and/or loans increasing cost and increasing business failure risk.
- Cost cutting measures including staff reductions.

Where are the good choices? Business cessation, fleet size and staff reductions lead to unemployment. Increased costs and fleet size reductions could result in groups selecting less safe modes of travel (a fact NHTSA is compelled to consider). Shifting fatalities to other modes of travel should not be an option. How are communities served when there are fewer or no motorcoaches, or motorcoaches they cannot afford to utilize? How are communities served when they are compelled to choose between less safe modes of travel or no travel due to the reduction of the Nation's fleet and increased cost?

4. **Do you support a seat belt standard? What is preventing the industry from adopting them without a standard? You stated a preference that such a standard be issued sooner than later. Please explain.**

Commercial for hire transportation has a history of government standards and regulations that assure passengers may routinely access the Nation's transportation network in a convenient, economical and uniformly safe manner. Federal standards assure a minimum level of quality and compatibility with other operations, equipment and modes. Often, standards improve the likelihood of innovation and options and play a pivotal role in assisting governments, regulators and the courts.

The United Motorcoach Association (UMA) supports a seatbelt standard and affirmed that position in NHTSA's Notice of Public Rulemaking request for comments. UMA supports adoption of Federal Motor Vehicle Safety Standard (FMVSS) 210; considered to be NHTSA's highest standard for seatbelt anchorage. Additionally, UMA recommended a broader inclusion of buses than proposed by NHTSA including all motorcoaches utilized in transit applications and buses over 10,000 lbs. or more, instead of the proposed 26,000 lbs. or over.

With the exception of some motorcoaches ultimately completed in the United States to meet "Buy America" requirements for public transit, all motorcoaches are foreign manufactured to meet the standards of their intended markets. Currently, NHTSA's standards favor that of compartmentalization. Some manufacturers are building motorcoaches to anticipated seatbelt standards while others are installing seatbelts in motorcoaches to lesser standards that may or may not meet the anticipated protection of passengers involved in a crash. Considering the aforementioned cost of today's motorcoach, a motorcoach that meets Federal standards is not only integral to protecting passengers; but, also the significant investment. Additionally, the

absence of Federal standards complicates and increases the likelihood of product liability litigation.

5. **You testified that manufacturers are already offering seatbelts, electronic stability control and tire pressure monitor systems. These presumably add to the cost of new motorcoaches. Are operators buying motorcoaches with these features? What then is the opposition to the Senate provisions?**

Recent observations indicate motorcoaches are being purchased with seatbelts with varying standards; however, the purchase of new motorcoaches has been significantly reduced due to the poor economy and the industry awaiting final seatbelt standards from NHTSA. Electronic stability control and tire pressure monitoring systems are increasingly being purchased as prices decrease and the technology improves. The inclusion of the motorcoach safety components at the time of manufacture offers the least expensive way to obtain these features and allows the cost to be amortized over the life of the product.

S. 1813 mandates electronic onboard recorders (EOBSs) for motorcoaches; however, neither Federal Motor Carrier Safety Administration (FMCSA) nor NHTSA have issued final standards for EOBRs. FMCSA has attempted to impose EOBR requirements for certain motor carriers with a history of hours-of-service violations. The U.S. Court of Appeals for the Seventh Circuit vacated the electronic on-board recorder regulation. Judge Diane P. Wood wrote the decision for the Seventh Circuit that vacated the EOBR regulation because the agency failed to address driver harassment by the devices in the rulemaking process. The opinion states that if an agency "fails to consider a factor mandated by its organic statute, this omission is alone 'sufficient to establish an arbitrary-and-capricious decision requiring vacatur of the rule.'" FMCSA was directed by Congress back in the late 1980s to "ensure that the devices are not used to harass vehicle operators."

While there appears to be efficiency and monetary incentives for some carriers to adopt the use of EOBRs, there is no clear safety correlation associated with EOBRs versus the current use of paper logbooks that UMA is aware. UMA concludes further research is required to determine the safety performance and correlations in reducing fatigued commercial vehicle driving. Additionally, FMCSA should issue standards in compliance with Congressional mandates and allow market adoption of EOBRs.

As previously stated, UMA supports many of the mandates contained in S. 1813 with our opposition rooted in the bill's volume of mandates and prescriptive nature; ignoring the principles of sound science, research, cost benefit analysis and unobtainable timelines. The House of Representatives has chosen a more deliberate, logical course to improving motorcoach safety.

In testimony to this Committee, NHTSA Administrator Strickland stated, "The Senate bill includes numerous rulemaking provisions, some with very short deadlines. However, I appreciate the inclusion of a provision that would allow an extension of a timeframe, when necessary, with an explanation to the committees of jurisdiction. This will permit the agency to continue to prioritize its regulatory work based on its available resources and its judgment of the likely safety benefits and costs."

We conclude that time is an essential component to developing science based standards. Time also allows the adjudication of appropriate cost benefit analysis and permits the community to absorb the associated costs in an effective and reasonable manner with the minimum disruption to passenger travel; all the while improving motorcoach safety.

The United Motorcoach Association remains steadfastly supportive of the motorcoach safety provisions of H.R. 1390: The Bus Uniform Standards and Enhanced Safety (BUSES) Act of 2011 and included as modified in H.R. 7: The American Energy and Infrastructure Jobs Act of 2012.

Joan Claybrook Responses to Questions from the House Subcommittee on Commerce, Manufacturing, and Trade

Questions from The Honorable Mary Bono Mack—

Question 1: As a former Administrator of NHTSA, did you prepare priority plans? Do you think the Federal agency that employs subject matter experts should have the discretion to prioritize safety priorities?

Response:
Each year, as the NHTSA Administrator, I did prepare priority plans for the agency for public comment. While the agency should have discretion to establish safety priorities, all too often agency priority plans either exclude major safety issues or consign those issues to continual research and study even though appropriate safety countermeasures are readily available. In other cases, agency priority plans are abandoned without being implemented. This occurs for a variety of reasons including shifting of priorities, emerging new issues and changes in agency leadership. Despite the great importance of certain safety problems, such as vehicle rollover and roof crush for example, the agency failed to squarely address those safety issues for decades until a statutory provision spurred agency action. It took an Act of Congress to ensure that the life-saving technology of air bags was required in every light vehicle including light trucks and vans. In addition, it is often the case that during a change in administration, or when the NHTSA Administrator departs, the agency stops pursuing its priority plan while awaiting new leadership and possibly a new set of priorities. This wastes time and taxpayer money and frequently results in critical safety priorities being needlessly abandoned. Statutory mandates that require the agency to remain on task on basic safety priorities permit agency staff to continue their work and maintain focus during changes in leadership.

Question 2: We are in a remarkable period of auto safety. We have both the lowest absolute numbers of fatalities in 6 decades and the lowest rate of fatalities (per 100 million miles traveled) in the history of the automobile. This leads me to believe both the manufacturers and NHTSA are doing something right.

a. **One of your criticisms of H.R. 7 is that it "fails to list or suggest areas of concern or focus." Do you believe NHTSA is not properly focused?**

Response:
One of the greatest public health achievements in our nation's history is the progress we have made in reducing motor vehicle deaths and injuries. Despite these safety gains resulting from federal vehicle safety standards, strong state traffic safety laws, innovative technological developments in the auto industry, persistent consumer demand and dedicated activism by victims and survivors like Mothers Against Drunk Driving (MADD) and KidsAndCars.org, motor vehicle crashes are still the leading cause of death for all Americans ages 4 to 34. There is still an "unfinished" safety agenda that needs to be addressed so that we can continue to reduce the mortality and morbidity toll of motor vehicle crashes nearly equaling 33,000 fatalities in 2010 and more than 2.24 million injuries. Although, for the most part, NHTSA is properly focused at the present time, large gaps in the agency's safety priorities remain. For example, until recently, the agency did not place any emphasis on occupant protection in motorcoaches despite the increasing number of crashes and fatalities in intercity motorcoach operations and the

dramatic growth in the popularity of motorcoaches by the public as an affordable means of intercity transportation. Furthermore, for decades the National Transportation Safety Board (NTSB) has made numerous recommendations for occupant and operational safety improvements that have been ignored. It was only after bi-partisan legislation was introduced in Congress to enhance motorcoach safety that the agency took notice of this important safety issue. Thanks to Secretary of Transportation Ray LaHood's leadership the Department of Transportation developed a motorcoach safety action plan but, to date, few items of the action plan have actually been implemented by DOT, and only one aspect of occupant protection – seat belts – has been proposed by NHTSA but no final rule has yet been issued.

In addition, the agency's handling of defects and defect investigations has suffered from a lack of focus over the years. For example, in the late 1990s the agency did not give serious attention to the problem of tread separation of Firestone/Bridgestone tires on Ford Explorers and other vehicles until more than a hundred fatalities had occurred and worldwide problems were exposed as a result of media attention. In response, Congress with bi-partisan support, including the leadership of Sen. John McCain (R-AZ) and Rep. Fred Upton (R-MI), current Energy and Commerce Committee Chair, passed the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act in 2000. The legislation directed NHTSA to issue several overdue and needed tire safety standards as well as improvements in some aspects of vehicle defect investigations by the agency. Nevertheless, within 10 years, NHTSA was again failing to heed consumer reports about sudden unintended acceleration in Toyotas until media stories about the phenomenon emerged. This indicates that there is a systemic problem about how the agency identifies and addresses defect issues and reports from consumers as well as the transparency of these investigations. There needs to be more focus on these issues within the agency.

Advocates continues to support the efforts of the NHTSA to improve safety on our nation's roads. The criticism of H.R. 7 was not so much a critique of NHTSA as it was of the failure of the legislation to include provisions that would achieve safety gains in specific areas where agency action is needed. The bi-partisan Senate legislation, S. 1813, included concrete directives and reasonable timelines for agency actions on several motor vehicle, motor carrier, motorcoach and traffic safety countermeasures that will significantly advance safety. Congressional directives are necessary to ensure that safety advancements will not fall by the wayside.

Since 1991, when Congress enacted the multi-year, multi-modal surface transportation authorization bill ISTEA (the Intermodal Surface Transportation Equity Act), provisions have been enacted directing agency action on numerous lifesaving vehicle safety standards. In 2005, Rep. Mary Bono Mack (R-CA), the current Chair of the Subcommittee on Commerce, Manufacturing and Trade, was a champion and leader in support of adopting provisions in SAFETEA-LU (the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users) which directed NHTSA actions on several vehicle safety standards to prevent vehicle rollover, upgrade roof crush prevention, and mitigate ejection. NHTSA completed all of these rulemakings as required by law and within the time parameters provided by Congress. Including public safety priorities in transportation legislation assures the public that agency action will take place without determining the specific performance requirements or details of each regulation. This has been a highly successful strategy that enables Congress to ensure that safety agencies effectively carry out their important mission. Every surface transportation bill passed by Congress in the past 20 years has included a strong and comprehensive safety title and this year's bill should be no different. We look forward to working with the Committee to achieve the same

safety results in the surface transportation authorization bill being considered by the House and Senate in the 112th Congress.

Question 3: Every new regulation adds cost to a vehicle and at some point, particularly when the average cost of a new car is now $30,000, safety becomes a luxury that only those who can afford luxury cars will see. Are you concerned that these new mandates will price lower and moderate income Americans out of safe cars, particularly in this economy?

Response:
The goal of regulation of safety features is to ensure that all vehicles are providing at least the same minimum level of safety and necessary safety devices to all vehicle owners regardless of their financial ability to purchase a luxury or family vehicle. Regulation of safety devices for vehicles actually ensures that Americans of moderate means will be able to get the same level of safety and protection in vehicles that cost $30,000 or less, as is provided for those who can afford to purchase expensive, high-end models. The fact is that, due to economies of scale and improvements in technology, the manufacturing of safety equipment and devices becomes more cost-effective and cheaper when mass produced for all vehicles.

Without regulation, safety devices are voluntarily produced in limited quantities and are marketed as luxury items that are provided only as expensive options in high-end models. Safety devices that are not uniformly required in all vehicles are generally introduced on only a few expensive model lines and the performance of the safety devices are not subject to minimum federal performance requirements. For example, prior to the air bag standard which was initially issued by DOT Secretary Elizabeth Dole in the Reagan Administration and the subsequent mandate in the Intermodal Surface Transportation Equity Act of 1991 (ISTEA), some manufacturers asserted that equipping vehicles with airbags cost over $1,000 apiece. The cost of air bags in production models dropped to about $30-$50 after mass production of air bags became a reality.

Finally, in recent years, the cost of vehicles has increased as a result of non-safety accessories that are sold as options including expensive, unregulated communications and entertainment systems that cost thousands of dollars. In general, the actual cost of mass-produced safety devices pales in comparison to the retail costs being charged for optional stereo sound systems, DVD players, electronic voice-activated telephone and internet connections, moon roofs, seat warmers and chrome wheels, among others.

Questions from The Honorable G.K. Butterfield—

Question 1: In testimony before the Subcommittee, you stated that your organization's analysis placed the cost of the Senate bill's (S. 1813) improvements to motorcoach safety at just 10 cents per passenger per ride. Please explain how you arrived at that figure.

Response:
The cost estimates for the equipment necessary to meet the proposed motorcoach safety requirements in S. 1813 were provided by suppliers and derived from estimates available in regulatory proceedings and other public sources. The high end of the cost range, using the most conservative estimates and without the benefits that come from mass production, indicate a

maximum cost of no more than $40,000 per vehicle. Industry data indicates that at most, 1,800 new motorcoaches are placed in service each year. Thus, for the entire new fleet of motorocoaches, the outside figure for the cost of these safety enhancements is estimated at no more than $72 million.

To determine the revenue needed to cover this cost we relied on a recent industry report that indicated that the average number of motorcoach passenger trips per year was approximately 742.5 million in 2008 and 2009. A surcharge of just 10 cents per passenger trip would raise $74.25 million each year, an amount sufficient to cover the $72 million estimate which is for the high end of the cost range.

Question 2: Do the motorcoach safety provisions included in S. 1813 differ from those in the Motorcoach Enhanced Safety Act of 2011 (H.R. 873 and S. 453)? What changes were made to accommodate the concerns of the motorcoach industry?

Response:
Yes, the motorcoach safety provisions in S. 1813 represent changes agreed to by House and Senate sponsors of the bi-partisan Motorcoach Enhanced Safety Act (MESA), H.R. 873 and S. 453 as well as representatives of Greyhound Bus lines, families of motorcoach crash victims and safety groups. This so-called "Greyhound Compromise" was reached in July 2011. As the result of negotiations, safety and consumer organizations and the families who have experienced tragic losses in motorcoach crashes agreed to significant changes in some key priorities in the bill that Greyhound Bus Lines found to be objectionable. These included dropping regulatory mandates for, among others, firefighting equipment, passenger evacuation, tire performance and interior impact protection, extending agency deadlines for certain regulations and limiting the potential for retrofit requirements. As result of the agreement, the Greyhound Compromise was substituted for the previous bills and received the direct and express endorsement of Greyhound Lines C.E.O., David Lynch, who specifically committed to support the Greyhound Compromise in a press conference held on Capitol Hill on July 14, 2011 involving Senate Commerce Committee Chair Rockefeller (D-WV), Ranking Member Hutchison (R-TX), Subcommittee Chair Lautenberg (D-NJ) and MESA co-sponsor Sen. Brown (D-OH) as well as safety groups and families of motorcoach crash victims. This compromise is also endorsed by the labor union representing professional motorcoach drivers, the American Transit Union (ATU). Attached is a copy of the press release commending Greyhound Bus Lines for agreeing to this compromise.

Question 3: The Subcommittee heard testimony about the need to repair recalled vehicles owned by rental car companies that have safety defects. Please explain what this problem is and why it is important to consumer safety.

Response:
Rental car companies are the largest purchasers of new vehicles in the U.S. But as purchasers of the vehicles they are not required under current law to repair factory defects in those vehicles. This allows companies to rent cars that are subject to a manufacturer motor vehicle safety recall without getting the vehicle repaired by the manufacturer. Rental car safety became an issue of public concern after Raechel and Jacqueline Houck were killed in a crash involving a rental car that was subject to a safety recall but had not been repaired despite having been rented on three separate occasions after the rental car company received the manufacturer recall notice and before the fatal Houck crash. Rental car companies should not be permitted to rent or sell

vehicles that are subject to a safety recall until the vehicle has been repaired, just as new car dealers cannot under current law sell a new vehicle with an outstanding recall. The fact that recalled vehicles can be legally rented to consumers is a serious and life threatening loophole in the recall safety provisions that should be closed to protect the public. A rental car company would not have to pay for the repair of a vehicle recalled for a safety defect but should be required to take the vehicle to the dealership for repair before allowing consumers to rent the vehicle. We urge the Committee to include this essential provision in the surface transportation authorization bill.

Question 4: In his testimony, Mr. Bainwol, of the Alliance of Automobile Manufacturers, made the following statement:

> **"Nearly all of the modern safety features on motor vehicles in the U.S. - antilock brakes, stability control, side airbags for head and chest protection, side curtains, pre-crash occupant positioning, collision avoidance including forward collision warning, lane departure warning, and more – were developed and implemented voluntarily by manufacturers, in advance of any regulatory mandates."**
>
> **a. Based on your experience as Administrator of NHTSA, President of Public Citizen and Co-Chair of Advocates, what is your opinion of this statement?**

Response:
While auto manufacturers often develop new safety technologies or use safety technologies developed by suppliers, because they employ the engineers and designers who work on these issues full time, the companies often keep these developments secret as proprietary information so they can sell their specific version of the technology as an option in selected makes and models and frequently in only high-end luxury models. This delays the dissemination of safety equipment through the new vehicle fleet. The result is "trickle-down" safety benefits in which people who purchase moderate or low priced new vehicles do not get the same safety protections of those who can afford more expensive models until many years after the safety technology was first developed and installed in a few production models. When safety technologies such as air bags, electronic stability control, tire pressure monitoring systems, brake override, rear visibility cameras and others demonstrate dramatic improvements in safety and effectiveness in preventing serious and costly injuries it is necessary to ensure that every occupant in every motor vehicle is afforded protection from death and injury. Strong, uniform safety standards and requirements in the airline industry are largely responsible for our nation's exemplary safety record and zero tolerance for airline crashes. Withholding lifesaving, available and affordable safety technologies in motor vehicles is as unacceptable as withholding a lifesaving, available and affordable vaccine for any other public health epidemic that kills nearly 33,000 people and injures over 2 million at a cost exceeding $230 billion annually. According to NHTSA every 15 minutes someone is killed in the United States in a car crash.

Even though I have applauded the auto companies for their engineering, technical knowledge and creativity and have publicly praised industry ingenuity, many of these companies have resisted and opposed government regulations that have made safety technologies available and affordable for all consumers. That is why it is necessary to ensure that effective, lifesaving safety technologies that have the capability to save many lives are not doled out as "optional" or voluntary, but are required as standard equipment that work at proven levels of safety

performance. Uniform standards and regulations guarantee that all vehicles and occupants will receive the benefits of the safety technology that have been developed and result in dramatic cost reductions for the safety systems. According to NHTSA, since 1975, airbags and seatbelts have saved nearly 313,000 lives with the most significant year to year increases in lives saved occurring following issuance of safety rules.

b. Do you support voluntary standards? If not, why not?

Response:
I do not support the use of voluntary industry standards where motor vehicle safety is concerned. First, voluntary standards are optional and companies can choose to depart from the standard or ignore it altogether since it is only voluntary. That means they can install safety devices or equipment in some models but not in others. Second, there is no way for consumers to know when purchasing a vehicle whether or not a vehicle is built to a voluntary "industry" standard or not. There is no enforcement of the standard by industry or government. The NHTSA will not even know if a specific company is abiding by a voluntary standard. Third, voluntary standards mean that the auto manufacturers decide how much safety to put into a particular vehicle model line based on the price-point it can charge for that level of protection as an option. The result is that less expensive vehicle models get less safety protection because there is no enforceable minimum performance requirement.

c. Has directing NHTSA to issue vehicle safety standards within reasonable deadlines in surface transportation legislation been successful in moving the safety agenda forward? Can you please provide us with examples of this success or lack thereof?

Response:
Yes, it absolutely has been an effective and successful approach in moving the safety agenda forward. Congressional safety mandates on important safety issues have ensured that NHTSA will not falter in addressing important safety priorities despite bureaucratic problems and changes in administration. For example, the air bag requirement was contained in the 1991 Intermodal Surface Transportation Equity Act (ISTEA) legislation that was enacted during the George H.W. Bush administration. The ISTEA air bag provision ensured that NHTSA would stay on task and issue the air bag regulations in a timely fashion despite the subsequent change in government. Without that legislation, air bags may have taken many more years to require and many more thousands of vehicle occupants would have needlessly died as a result.

Another example is the requirement for electronic stability control (ESC) technology that was mandated in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU). Because rollover propensity of vehicles had been a controversial issue for many years, NHTSA did not issue a substantive regulation to improve rollover protection until required to do so by Congress. The SAFETEA-LU legislation took a safety technology that had been originally developed by industry as a voluntary addition but was only slowly gaining market penetration and directed NHTSA to require it on all light vehicles. As a result, instead of having to wait for years or decades, ESC is now required on all new light vehicles sold in the United States. Similarly, the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act of 2000 directed NHTSA to require an existing safety technology, direct tire pressure monitoring systems (TPMS), be required on all vehicles so that drivers can accurately monitor the tire pressure in each vehicle tire.

d. Does your organization support S. 1813, the Moving Ahead for Progress in the 21st Century Act, and, specifically, the safety title? What other provisions do you support, including those that may already be in the legislation?

Response:
Yes. Advocates strongly supports the numerous provisions in the bi-partisan S. 1813 Safety Title including most of the provisions included in the Motor Vehicle and Highway Safety Improvement Act of 2012, Division C, Title I of MAP-21. Attached is a more specific listing of the provisions in S. 1813 which are supported by Advocates for Highway and Auto Safety along with many other safety and consumer organizations. This bill does not include all of the vehicle and traffic safety priorities that we believe, if enacted into law, would significantly reduce highway deaths and injuries. However, the bill does represent a compromise reflecting concerns and priorities of all of the stakeholders affected by the legislation including consumer, health and safety groups, motor vehicle crash survivors and victims, and industry interests including motor vehicle and motorcoach companies. During Senate floor debate on S. 1813 there was not a single amendment or objection offered by *any* Senator or supported by *any* auto manufacturer or motorcoach company to *any* provision included in the Motor Vehicle and Highway Safety Improvement Act of 2012. Attached is a list of the provisions in S. 1813 that we support.

In addition, it is vitally important that the gap in consumer safety protection resulting from the failure of rental car companies to repair rental vehicles that are currently subject to a safety recall, an issue addressed in my response to question #3 above, be included among the provisions in the safety title of the surface transportation reauthorization legislation.

FOR IMMEDIATE RELEASE
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ADVOCATES FOR HIGHWAY AND AUTO SAFETY COMMENDS GREYHOUND FOR SUPPORT OF BUS SAFETY BILL

Industry Support Could be 'Game Changer' for Legislation

WASHINGTON, D.C. *(July 14, 2011)* – Bipartisan bus safety legislation today received a major boost when industry giant Greyhound endorsed the *Motorcoach Enhanced Safety Act of 2011* (MESA), which would create basic safety standards for motorcoaches following several high-profile, fatal bus crashes. Breaking ranks with the major bus trade association, the CEO of Greyhound Lines, Inc., David Leach, stood together today in front of the U.S Capitol with Advocates for Highway and Auto Safety (Advocates), Senators Kay Bailey Hutchison (R-TX), Sherrod Brown (D-OH), Jay Rockefeller (D-WV) and Frank Lautenberg (D-NJ), as well as families of victims of motorcoach bus crashes, to urge passage of the MESA legislation.

The bipartisan legislation, S. 453, would require the U.S. Department of Transportation to issue basic safety standards for motorcoaches and has been supported by recommendations of the National Transportation Safety Board (NTSB) for more than four decades. These essential safety features and systems, readily available as standard equipment in passenger vehicles and many newly-manufactured motorcoaches, include seat belts, roof crush protection, tire pressure monitoring systems, and anti-ejection window glazing designed to prevent occupant ejection. Also, the legislation will keep unsafe companies and unqualified drivers off our roads and highways with stronger government oversight and enforcement.

"We welcome and applaud the support from Greyhound on this important public safety issue," said Jackie Gillan, Vice President of Advocates. "This critical endorsement from an industry leader could well be the game changer in our fight to advance motorcoach safety reforms and prevent needless deaths and injuries. Motorcoach crashes across the country are pointing out serious safety gaps that this legislation will correct."

"Research shows that the average cost of the safety improvements contained in the motorcoach bill amounts to a mere 10 cents per ride. Who wouldn't pay a dime for essential, lifesaving protection in a serious motorcoach crash?" said Joan Claybrook, Advocates' Consumer Co-Chair and former Administrator of the National Highway Traffic Safety Administration. "Surely, those who travel our nation by motorcoach deserve the same federal safety protections and industry oversight as those who travel by airplane or train."

Also speaking at the press conference were representatives from families who lost loved ones in two motorcoach crashes investigated by the NTSB:

Yen-Chi Le from Houston, Texas, said, "My mother, Catherine Tuong Lam, was killed with 16 others in a motorcoach crash in Sherman, Texas on August 8, 2008 that also seriously injured 38 people. There are incredible personal costs associated with allowing the motorcoach industry to treat safety as an option. The vehicle and operational safety improvements required in MESA will go a long way toward reforming industry practices and preventing similar tragedies from occurring in the future."

John and Joy Betts from Bryan, Ohio, lost their son, David, a sophomore at Bluffton University, when he was killed with six others, including four other students, when their motorcoach carrying the university baseball team plunged off a highway ramp on I-75 in Atlanta, GA, on March 2, 2007. After the crash the Betts family and others whose children were killed and injured took on the issue of inadequate occupant protection in motorcoaches, specifically the lack of seat belts, roof crush protection and anti-ejection window glazing. "This bill – and industry support for it - is long overdue," said John Betts. "We see enactment of MESA as a lasting tribute to David and his teammates. Their tragic, premature deaths would never have happened if the bus had been equipped with seat belts and other safety systems."

Formed in 1989, Advocates is a national coalition of leading consumer, health, safety and medical groups working with insurance companies and trade associations lobbying together for improved public policies governing auto, traffic and roadway safety. For more information, please visit www.saferoads.org.

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KEY SAFETY PROVISIONS IN S. 1813
MOVING AHEAD FOR PROGRESS IN THE 21st CENTURY ACT (MAP-21)

SAFETY AND CONSUMER PROTECTION PROVISIONS INCLUDE:

The Motor Vehicle and Highway Safety Improvement Act of 2012
(*Mariah's Act*)

- All sections are under consideration of the House T&I Committee conferees, unless otherwise indicated below with a (*)

Standards that Make Vehicles Safer by Ensuring–

- Brake systems operate properly and override runaway throttles (§ 31402),
- Accelerator and brake pedal controls are not too close together (§ 31403),
- Electronic systems meet quality assurance standards to protect against interference (§ 31404),
- Uniform operation of pushbutton on/off switch in keyless ignition systems (§ 31405),
- Event data recorders provide crash data to improve vehicle crashworthiness (§ 31406),
- Visual electronic screens that display movies, videos games and other similar moving visual images cannot be viewed by drivers while operating motor vehicles (§ 31407),
- Allows use of advanced safety belt reminder systems to increase belt use rates (§ 31202),
- Prohibits importation of defective vehicles and equipment (§ 31208),
- Large trucks are equipped with stability enhancing technology to prevent rollover (§ 31408).

Safety Improvements that Protect Children–

- Testing child safety seats in frontal and side impact crashes (§ 31501),
- Upgrading the Lower Anchorages and Tethers for Children, or LATCH, systems to make sure they properly secure children in the event of a crash (§ 31502),
- Providing for rear seat belt reminder systems to get rear seat passengers, especially teenagers and young children, to buckle up (§ 31503).

Grant Programs to Encourage State Adoption of Critical Safety Laws—

- Comprehensive Graduated Driver Licensing (GDL) laws to protect young teen drivers as they learn to drive and gain experience (§ 31112),
- Primary enforcement of seat belt and child booster seat laws (§ 31105),
- Requiring Alcohol-Ignition Interlocks (IID) for all convicted drunk drivers (§ 31107), and high visibility enforcement programs to deter drunk driving (§ 31109),
- Distracted driving laws that prohibit text-messaging while driving (§ 31108).

Research to Improve the Safety of Future Vehicles—

- Cooperative research program to develop driver alcohol detection system (§ 31111), **Science, Space, and Technology Committee (Hall, Cravaack, and Bernice Johnson)*
- Study of the development and performance of unattended passenger reminder systems to alert drivers when a child has been left in the rear seat (§ 31504),**Science, Space, and Technology Committee (Hall, Cravaack, and Bernice Johnson)*
- Study of the safety of rental trucks used by the public (§ 31205),
- Report on the quality of data collected by the National Automotive Sampling System (NASS) including the Special Crash Investigation (SCI) program (§ 31310).

Provide More Public Information and Better Access to Vehicle Safety Databases by—

- Making safety and recall databases and information readily searchable online (§ 31301),
- Establishing a vehicle safety hotline for vehicle industry employees (§ 31302),
- Providing public access to dealer communications and software updates (§ 31303),
- Requiring presumption that early warning information be supplied by vehicle and equipment manufacturers to the government should be made available to the public (§31304),
- Inserting information on how to report vehicle defects in the glove compartment of new vehicles (§ 31307).

Transparency, Accountability and Responsibility for Safety Defect Investigations—

- Whistleblower protection for industry employees who report safety defects (§ 31308),
- 2-year cooling-off period before former government safety officials can lobby safety agency on vehicle safety defects (§ 31310),
- Update and expand owner notification to improve efficacy of safety recalls (§§ 31311 & 31312),
- Require corporate officials to attest to truth of documents submitted for safety defect investigations (§31305),
- Increase civil fines for knowing, willful concealment of vehicle safety defect (§ 31203).

The Commercial Motor Vehicle Safety Enhancement Act of 2012

Improves Motorcoach Safety—

- Sets reasonable deadlines for comprehensive motorcoach safety standards to improve occupant protection features (including seat belts, roof strength, anti-ejection window glazing, rollover crash avoidance systems and event data recorders) as well as oversight and enforcement requirements (including new entrant screening, Commercial Driver's License medical certificate and physical fitness oversight, prevention of reincarnated carries, annual vehicle inspections and increased penalties for noncompliance) (§§ 32701-32713) **§§ 32701-32705, 32710, and 32713 are considered by Energy and Commerce Committee (Upton, Whitfield, and Waxman)*

Strengthens Registration Requirements of Motor Carriers—

- Requires disclosure of any relationships involving common ownership or management within the past five years (§ 32101(a)),
- Requires the Secretary to establish a written proficiency examination for applicant motor carriers that tests knowledge of safety standards (§ 32101(b)),
- Allows Secretary to withhold registration and issuance of US DOT number if the employer or person is (or was) related through common ownership or common familial relationship to any other person or applicant for registration who was unfit, unwilling, or unable to comply with the registration requirements (§ 32105),
- Requires the Secretary to initiate a rulemaking within six months that revises the minimum financial responsibility requirements (§ 32104).

Enhances Safety Fitness of New Operators—

- Requires each owner and operator granted new registration to undergo a safety review within one year of beginning operations (§ 32102(a)),
- Providers of motorcoach services must undergo a pre-authorization safety audit and have their safety performance monitored for 12 months. Only after this period can a motorcoach service provider's registration become permanent (§ 32102(b)).

Improves Commercial Motor Vehicle Safety—

- Requires comprehensive analysis on the need for crash-worthiness standards for Commercial Motor Vehicles (CMVs) within 18 months and report to Congress (§ 32203).

Contains Stronger Enforcement and Penalties—

- Limits reincarnated carriers by providing that the Secretary may suspend, amend, or revoke any part of the registration of a motor carrier or broker following determination that the motor carrier or broker failed to disclose familial relationships (§ 32103),
- Increases the penalties for operating without registration (§ 32108),
- Requires the Secretary to revoke the registration of a motor carrier if the Secretary finds that the carrier is or was conducting unsafe operations that were an imminent hazard to public health (§ 32109),
- Allows for fleet-wide out-of-service order (rather than for just a single vehicle) for operating without required registration (§ 32111),
- Increases penalties for evasion of regulations (§ 32507).

Enhances Driver Safety—

- Requires regulations within one year of enactment for electronic on-board recorders (EOBRs) (§ 32301),
- Requires minimum entry-level training requirements for individuals operating a CMV within 6 months of enactment and calls for CDL uniform standards (§ 32305),
- Requires the Secretary to incorporate new safety fitness rating methodology (§ 32302),
- Requires the establishment of a national registry of medical examiners (§ 32303),
- Provides authority to disqualify foreign commercial drivers for safety violations and revoke foreign motor carrier operating authority for failure to pay civil penalties (§§ 32206 & 32207),
- Establishes national clearinghouse for controlled substance and alcohol test results of CMV drivers to reduce hiring of drivers who decline or fail testing (§ 32402).

Addresses Truck Size and Weight—

- Requires comprehensive truck size and weight study to provide data on crash frequency and the impact of large trucks on safety and infrastructure (§ 32801),
- Directs the compilation and listing of existing state size and weight limits that exceed federal Interstate limits including highway routes (§ 32802).

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH 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 19, 2012

Ms. Ami V. Gadhia
Senior Policy Council
Consumers Union
1101 17th Street, N.W., Suite 500
Washington, D.C. 20036

Dear Ms. Gadhia,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Thursday, March 22, 2012, to testify at the hearing entitled "Motor Vehicle Safety Provisions in House and Senate Highway Bills."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, 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 then (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, May 4, 2012. Your responses should be e-mailed to the Legislative Clerk, in Word or PDF format, at Kirby.Howard@mail.house.gov.

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

Sincerely,

Mary Bono Mack
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: G.K. Butterfield, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Questions for the Record from U.S. Representative Mary Bono Mack

Subcommittee on Commerce, Manufacturing, and Trade Hearing:
"Motor Vehicle Safety Provisions in House and Senate Highway Bills"

April 2012

Responses by **Ioana Rusu, Consumers Union**

1. **You endorsed the Senate's electronic systems performance standard. The genesis of this proposal arose out of the Toyota accidents of 2010. Since then, investigations by NASA and by the National Academy have rejected the notion that electronic systems had anything to do with the unintended acceleration incidents. If there is no evidence that electronic systems malfunctioned on a widespread basis, and NHTSA has authority to promulgate standards when it deems necessary, why should we usurp that discretion and displace resources the agency has devoted to other safety issues it deems of more concern?**

While it is true that NASA and National Academy investigations have rejected the notion that electronic systems had anything to do with the 2010 unintended acceleration incidents, we still believe that electronic systems in cars should meet minimum safety and reliability standards. Many vehicles today are largely controlled by complex electronic systems. In addition, more and more electric vehicles are arriving on the market every year. Right now, there is no standard in place to ensure that these systems function the way they are supposed to. As a result, we support the language in S. 1813 that establishes a Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies, and that requires NHTSA to set a performance standard for electronic systems in cars.

2. **One of your priorities is the labeling of the gear shift.**

   a. **Aren't transmission configurations already covered under an existing standard?**

Transmission shifter designs and locations are not covered under an existing standard -- only the P, R, N, D nomenclature sequence is defined. This lack of standards does give room for innovation, but also a lot of leeway in deciding where to position gear shifts and how to design them. Some of the models we have seen are rotary knobs, push-buttons, or small indicator-like levers on the steering column, and also some unintuitive shifters that require drivers to push forward in order to go backwards, and to push backwards in order to go forward.

These many different gear shift systems are not always intuitive to use, and can cause confusion among drivers. This problem is magnified with the introduction of keyless ignitions. In an emergency situation, such as a car that is accelerating out of control or rolling away, an individual diving into the car to put the car in Neutral may not be able to figure out how to do so quickly and may also not be able to find or use the push button ignition switch to turn the vehicle

off. Having to search for these features may cause an even more dangerous situation. For example, the Buick Verano has an ignition button located right above the radio, which, at first glance, looks like any other switch on the console.

We believe that NHTSA should set some guidelines or mandate simple and clearly labeled transmission shifters in all new cars. Such a standard could allow for variation in gear shift design, but should be very intuitive so that a driver can quickly identify the safe control position.

b. Considering the vast majority of cars on the road use the currently mandated configuration, and the vast majority of drivers either learned to drive with that configuration or are used to that configuration, do you think there could be more consumer confusion to change that configuration now?

As stated above, we believe that the currently mandated configuration allows for too much leeway in gear shift positioning and design. Many of the cars on the market at the moment do not have a set configuration for the gear shift. Many different gear shift designs are being released by vehicle manufacturers that are push-button, rotary knobs, various steering column mounted levers, and electronic shifters that all work differently. In light of the many different gear shift designs and locations in the marketplace today, we believe that consumer confusion would be minimized by establishing a guideline or standard configuration for the gear shift through a mandatory standard. Such a standard could allow for variation in gear shift design, but should be very intuitive and easy to use, so that a driver can quickly identify the safe control position.

3. NHTSA has the authority to prioritize and pursue safety issues and rulemakings as it deems appropriate. Why should we not defer to its prioritization?

We have great respect for NHTSA and its critical role as the federal government agency responsible for helping to foster auto safety. We also believe that the agency benefits greatly from input from other sources with valuable expertise and different perspectives.

4. Consumers Union has been active on privacy matters. For instance, CU came out with a fairly strongly worded statement regarding Google's recently announced privacy policy changes. Yet, CU also supports mandatory installation of electronic data recorders with increased recording and potentially tracking capability. Many privacy advocates oppose these super EDRs. How does CU reconcile its position on privacy with its support for mandatory, enhanced EDRs?

Consumers Union has repeatedly supported the use of electronic data recorders (EDRs). EDRs are devices in cars that record data such as vehicle speed, throttle position, air-bag deployment, brake application, and safety belt usage in the event of a car crash. These data can help police and accident investigators reconstruct what happened in a crash. For example, we believe that if authorities could have quickly and easily downloaded EDR data from the cars involved in the Toyota unintended acceleration incidents in 2010, they could have quickly understood what caused the crashes, which may have alleviated a great deal of public nervousness about driving a Toyota. The cars in questions were equipped with EDRs, but the devices could not be easily read, and the information could only be accessed by Toyota

employees. EDRs also have the added potential of providing trauma center doctors key information regarding the pre-crash velocity and severity of impacts that can be crucial in determining the best treatment for certain injuries of trauma patients.

EDRs do not have extensive "recording and tracking capabilities," and CU does not support mandating the use of EDRs equipped with such features. The current EDR rule and the proposed upgrade in S. 1813 do not require recording of more than a few seconds of data, and the data is recorded only when a crash occurs. In addition, EDR functions do not include any form of tracking device. Tracking can be done by GPS, but GPS is not part of the standard on-board computer. GPS is usually sold as a separate option or purchased as part of an interactive system, such as On-Star, that has nothing to do with EDRs. We believe that the EDR provisions currently included in S. 1813 include appropriate privacy controls and disclosures.

a. If EDR data is owned by the car owner or lessee, why should the Federal government – not a law enforcement agency but a regulatory agency – ever have a right to access data that is owned by an American citizen without that citizen's consent?

Consumers Union believes that law enforcement, NHTSA, and owners of the car should have access to data recorded by EDRs. Even though NHTSA is a regulatory agency, it should have access to this data because it represents a public safety concern. Access to this data would guide and inform NHTSA's rulemaking and would allow the agency to address those areas that have most potential to save lives. None of the data obtained from EDRs is personal data about the vehicle owner and occupants, but only provides information about the status of vehicle safety and operating systems at the time of the crash. NHTSA has experience maintaining this type of information without ever having a problem with disclosure of personal information, e.g., FARS and VOQ database.

Questions for the Record from U.S. Representative G.K. Butterfield

Subcommittee on Commerce, Manufacturing, and Trade Hearing:
"Motor Vehicle Safety Provisions in House and Senate Highway Bills"

April 2012

Responses by **Ioana Rusu, Consumers Union**

1. **Please describe Consumers Union's position on NHTSA's February 2012 rulemakings on child safety seats, and its position on NHTSA's current child safety seat standards.**

Consumers Union supports the NHTSA February 2012 rulemaking on child safety seats, which amended the Federal motor vehicle safety standard for child restraint systems to expand its applicability to child restraints sold for children weighing up to 80 pounds. This final rule also amended the standard to incorporate use of a Hybrid III 10-year-old child test dummy, weighing 78 lb, in compliance tests of child restraints newly subject to the standard. By requiring the use of larger test dummies and by covering seats with higher weight limits, this rulemaking fills a key gap in child restraint system safety.

At the same time, we are concerned that the changes made to the labeling for lower LATCH weight limits may not provide the consistency needed regarding lower LATCH limits. Consumers receive many different and confusing messages from CRS and vehicle manufacturers on LATCH usage. In past comments, we urged NHTSA to provide consumers with a clear message regarding CRS weight limits.

The agency's proposed rule does not do enough to alleviate consumer confusion. Under the new rule, the 65 lb child weight limit includes the combined weight of the child plus the weight of the CRS. As a result, each CRS will still feature a different maximum recommended child weight limit, based on the difference between the seat's weight and the 65 lb limit of the lower LATCH anchors. It is these varying weights that confuse parents and caregivers. Though the proposal makes the weight limits more visible by displaying them on the child restraint labels, the weight limits still vary from product to product. And consumers will still need to refer to the vehicle specifications for top tether limits when using LATCH. The rulemaking still does not address top tether weight limits, and does not assess top tethers' potential for reducing forward motion and injury (particularly head injury). The rulemaking refers to the lower anchors as separate from the top tethers, rather than addressing them both as components of a system.

We are also concerned that heavier seats may actually have a reduced range of LATCH use under the new rules, because a heavy seat would allow a lower maximum child weight limit (in order to comply with the 65 lb combined limit). This means that heavier children in heavy seats would be secured with seat belts instead of the LATCH system. We think that the LATCH system provides an easier to achieve and more secure installation and results in less forward movement in a crash when compared to seatbelts. *Consumer Reports*® fit-to-vehicle

and sled testing data leads us to believe that LATCH should be considered as the preferred method of installation when parents are presented with a choice. Not only has LATCH installation been simplified, but this restraint system eliminates many incompatibilities still experienced with belts. Under the new rule, more parents would be required to use seatbelts instead of the LATCH system if they are using a heavy CRS, and we do not believe this is the right direction to take. To further address this point, we would also encourage an increase in lower LATCH limits under FMVSS 225.

Finally, the rulemaking should set out a defined timeframe within which to modify the design of the current Hybrid III 10-year old dummies to better represent the biofidelic accuracy of children's neck and torso. Though head excursion will provide some information relative to the potential for head injury, the head injury criteria (HIC) measurement remains a key piece of information and should not be excluded from compliance testing for an extended period of time.

2. Please respond to manufacturer claims about the effect of mandatory safety standards on car pricing.

Requiring vehicles to meet increased mandatory safety standards may increase vehicle prices somewhat. However, it is important to note that such mandatory safety standards raise costs for all manufacturers across the board. Manufacturers do not lose their competitive edge by implementing safety standards. On the contrary, having mandatory safety standards in place prevents manufacturers from using the lack of safety features for competitive pricing – a practice Consumers Union has long opposed. We have pushed for many years to make crucial safety features, such as electronic stability control, standard in every vehicle, and we commend NHTSA for doing it for the 2012 model year. However Consumer Reports first tested a vehicle with ESC in 1998 and said then that it should be fitted to all vehicles.

In addition, mass production of safety devices reduces the cost dramatically. Also, most costs associated with safety improvements are minimal compared to costs for optional entertainment, communications, and non-safety accessories.

Finally, requiring vehicles to meet mandatory safety standards reduces the societal costs created by car crashes. Nearly 33,000 people were killed and more than 2.2 million were injured on our nation's highways in 2010, at an annual cost to society exceeding $230 billion. Mandating safer vehicles will address this staggering societal cost in part.

3. Please describe what concerns Consumers Union would have if the final House version of a surface transportation bill does not include strong vehicle safety provisions.

If the final House version of a surface transportation bill not include strong vehicle safety provisions, Consumers Union is concerned that critical vehicle-related hazards will not be addressed. Including vehicle safety provisions in the House surface transportation bill will provide NHTSA with critical new authorities to help reduce injuries and fatalities on our roadways, and to help make cars safer. Without such provisions, NHTSA would not be required to issue rules regarding vehicle stopping distance, brake override, pedal placement, and electronic systems. It would also not be required to prioritize the setting of new safety standards

for car seats for children, as well as prioritize performing new research into emerging child safety concerns.

NHTSA also needs additional authority to require manufacturers to issue more recall notices if the first one is insufficient can help improve recall repair rates. Permitting NHTSA to order the manufacturer to take additional steps to locate and notify each individual registered as the owner or lessee or the most recent purchaser or lessee, and to order the manufacturer to emphasize the magnitude of the safety risk posed, in such an additional notification, can also help improve recall completion rates, thereby helping to make our roads safer.

We also urge the House to include in its surface transportation legislation language requiring rental car companies to make any recall-related repairs before they rent cars to consumers. Rental companies are not currently required to ground a vehicle subject to a recall – sometimes with deadly consequences. Consumers are at the mercy of the rental car company when picking up a car, and rely on the company to provide a safe, up-to-date vehicle. Consumers are not able to research the recall history of a rental vehicle the same way they would a vehicle they wish to purchase, since the rental vehicle is often selected for them by the rental car company right before pickup. By way of contrast, new car dealers are required by law to conduct recall-related repairs prior to selling a vehicle. We therefore urge the House to close this loophole and require rental car companies to follow the same rules currently followed by new car dealers

As the House moves forward with consideration of its own surface transportation bill, Consumers Union urges House members to include vehicle safety provisions in its own legislation in order to make create a safer driving experience and save lives.

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