

**IMPROVING HIGHWAY AND VEHICLE SAFETY:  
REAUTHORIZATION OF THE NATIONAL  
HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,  
PRODUCT SAFETY, AND INSURANCE

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

—————  
JULY 27, 2011  
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ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

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**WEDNESDAY, JULY 27, 2011**

U.S. SENATE,  
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT  
SAFETY, AND INSURANCE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:32 p.m. in room SR-253, Russell Senate Office Building, Hon. Mark Pryor, Chairman of the Subcommittee, presiding.

**OPENING STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. We are going to call our meeting to order.

I want to thank everyone for being here. We have a full house today. We have some Senators who are coming and going. I know that Senator Rockefeller is working on the FAA bill. He is going to try to come by if he can, but he is trying to get that moved. I know I would rather him be there and work that out. But, anyway, I am glad that everyone is here. I want to welcome everyone to the Subcommittee today.

We are here to discuss the reauthorization of the National Highway Traffic Safety Administration or NHTSA. We will also discuss how to improve safety standards in our vehicles and safety programs on our roadways.

Today, we will hear from witnesses that represent the executive branch, the states, the automotive industry, and automotive safety advocates.

I would like to start by thanking all of them for taking their time to be here today and for preparing their written testimony, and I hope that we're able to find common ground in improving safety on our roads and in our vehicles.

The witnesses will provide us with a better understanding of NHTSA's two core missions; vehicle safety and highway safety. By improving in both areas, we hope to continue to reduce traffic fatalities. I was pleased to hear that the number of traffic fatalities fell 3 percent between 2009 and 2010. But with over 32,000 traffic fatalities last year throughout our country, we need to keep on the right track in improving safety.

Many of us may not think of how important traffic and vehicle safety can be until tragedy strikes. Unfortunately, many Americans

have been touched personally by traffic fatalities. That is why I, along with Senator Rockefeller, have introduced the Motor Vehicle and Highway Safety Improvement Act of 2011 or, Mariah's Law, which aims to reduce the number of lives lost on roadway accidents. This law was named for the family of the high school student, Mariah West, from Rogers, Arkansas, who was killed in 2009. The day before her high school graduation in 2009, Mariah West was killed as a result of texting while driving.

She lost control of her car, clipped a bridge and flipped into oncoming traffic to her death. Mariah's mother, Mary, has since become an advocate against distracted driving.

In part, Mariah's Law will prevent others from a similar tragedy by concentrating resources to prevent distracted driving.

In 2009, more than 5,400 people died, and about half a million were hurt in crashes involving a distracted or inattentive driver.

This bill will also strengthen programs designed to stop dangerous driving behavior and step up vehicle safety so that families are protected by strong safety standards and devices when an accident does occur.

Other provisions in the bill would update and consolidate highway safety programs, address emerging electronics and technologies in vehicles, prioritize transparency and accountability with vehicle investigations, and improve child safety.

I want to thank Chairman Rockefeller for his input on this legislation that he and I have worked on in recent weeks to improve safety. I believe our legislation represents a reasonable, strong, smart, and lasting approach for dealing roadway and automobile safety concerns.

Again, thank you to our witnesses and the visitors for attending today's hearing, and thank Senator Toomey for being here, and I'd like to recognize you for your opening statement.

**STATEMENT OF HON. PATRICK J. TOOMEY,  
U.S. SENATOR FROM PENNSYLVANIA**

Senator TOOMEY. Thank you very much, Mr. Chairman, and thanks for holding this hearing today. I am sure there is not one of us that disputes the vital importance of vehicle safety. I think we also would acknowledge that we have got to make sure that we strive to play our modest role in contributing to that in the most efficient manner possible. And I think that we ought to acknowledge and recognize, as I am sure we all do, that manufacturers have an incentive to provide safe products and consumers will demand safe products as well.

With that in mind, I will have a number of issues that I want to raise with the reauthorization bill in its current form. In its current form, I couldn't support this legislation, but it is certainly my hope that we can work together and get to a place where I can support it. I would like to be able to support this.

And let me just touch on a few of the concerns that I have at this point in the legislation. Some have to do with mandates that are new and in this draft. Others have to do with the level of the total cost. I'm a little concerned about new mandates requiring disclosure regarding early warning data provisions.

I have concerns about unintended consequences that would be associated with those provisions.

I'm concerned about the increased costs that are associated with some of the new mandates on the event data recorders, and concerned about the way that it is/they are being implemented, given the development of this technology.

I'm concerned, Mr. Chairman, about the increases in the civil penalties for defect violations and the impact that that will have on the cost to consumers. And I am concerned, frankly, that one of the things that I think is an important component of vehicle safety is not addressed in this bill, and that's the effect that CAFE standards have. I think there is mounting and very solid evidence that the weight productions that are effectively mandated by these CAFE standards result in increased fatalities, and I think we ought to find a way to address that.

And, then, finally, I'm concerned about the cost of this bill. The chart over my shoulder is a chart that shows the increase in cost of this agency over the course of the last 10 years. And since 2003 through last year, the spending has doubled. Now, I would argue that this is a microcosm of exactly why we are in the spot that we are in right now with very large deficits and a very significant budgetary problem.

It's obviously not a relatively small agency that is causing our big budget problems, but it is the fact that this is not atypical of the Government as a whole. We have doubled the size of the Government since 2000. And when we do that, we find ourselves in very difficult circumstances. So, I would like to see if we can explore ways to do more with less because I think that is something that we are going to need to do.

In any case, I appreciate your holding this hearing, Mr. Chairman, and look forward to working with you. And I want to thank the witnesses for being here today.

Senator PRYOR. Thank you. And our Senators who are in attendance today decided they'd like to submit their opening statements for the record in order to get on to the first panel.

And our panelist today, our witness is the Hon. David L. Strickland. He is the Administrator of the National Highway Traffic Safety Administration, U.S. Department of Transportation.

Mr. Strickland, welcome. I should say welcome back to the Committee. Thank you for being here again today and thank you for your service on this Committee and also where you are today.

Thank you.

**STATEMENT OF HON. DAVID L. STRICKLAND,  
ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY  
ADMINISTRATION**

Mr. STRICKLAND. Thank you, Mr. Chairman and Ranking Member Toomey, Mr. Wicker, Mr. Udall. Thank you so much for the opportunity to be back here in front of the Senate Commerce Committee to discuss the future of the National Highway Traffic Safety Administration. It is very important work, and I know that you guys are all collectively very interested in what we do and collectively for the entire Department as a whole.

According to National Highway Traffic Safety Administration data, the Nation maintained a steady downward trend in traffic-related fatalities last year. While the projected number of 32,788 deaths in 2010 is still too many, it is the lowest number of fatalities since 1949.

Even more encouraging, the Nation's fatality rate is 1.09 deaths per 100 million vehicle miles traveled, continuing its downward trend over the last 25 years. In spite of these encouraging trends, we face many challenges in maintaining and accelerating these improving numbers.

Alcohol-impaired traffic-related fatalities account for 32 percent of the Nation's losses. Approximately half of all occupant fatalities in traffic crashes are unbelted.

Distracted driving is a growing concern, and many areas around the country are facing increased risks to pedestrians.

I commend this Committee's work on reauthorization discussion draft, which includes certain helpful enhancements. While the Administration has not formally commented on this discussion draft, which will limit my remarks, I will be happy to discuss the issues generally and with more specificity where technical assistance was provided to the Committee.

I'd like to begin my policy remarks on the issue of motorcycle safety. Between 2004 and 2009, the number of motorcycle crash fatalities increased by 11 percent to 4,462. Between 2008 and 2009, I'm happy to report that the number of motorcycle fatalities fell 16 percent, the first decrease that we have seen in more than a decade. I firmly believe that we can build upon that progress. The most important step that we can take to reduce the deaths of motorcyclists on our roads and highways is to assure that all riders wear a DOT-compliant helmet.

The agency looks forward to working with the Committee to find an effective and flexible means to increase helmet usage.

As you know, Secretary LaHood and I have been outspoken about the dangers of distracted driving, and, Mr. Chairman, I'd like to thank you and Mr. Rockefeller for your hard work on this issue as well. And we support a robust program to counter this program as presented in the reauthorization draft.

As reflected in the technical assistance provided to the Committee, the agency would provide—ask for two modifications to this particular draft. Regarding the distraction grant criteria, the agency requests the provision of an authority to develop qualifying criteria through notice and comment rulemaking.

Second, to close the safety authority gap regarding portable electronic devices in vehicles, the agency respectfully asks for the authority to develop in-vehicle safety performance standards for these devices pertaining to driver use.

NHTSA also thanks the Committee for the provision of the new authority over used and rental vehicles in this draft. I, in particular, would like to call attention to Sections 411 and 412 dealing with noncompliant or defective conditions in used passenger vehicles and rental vehicles. These two provisions would protect consumers in a significant segment of the motor vehicle population that NHTSA currently cannot reach effectively.

The draft also contains a large number of rulemaking provisions with some relatively short time frames allowed for completion. However, I do appreciate the inclusion of the provision that would permit the agency, when necessary, to lengthen those time frames and explain to the Committee for jurisdiction why it must do so.

NHTSA looks forward to working with the Committee and the Congress to share our thinking on rulemaking priorities and developing a consensus rulemaking agenda that will address risks to the driving public.

One provision of the draft would also impose stricter post-employment restriction on NHTSA employees. I believe that the Obama administration had the highest, the most comprehensive standards regarding ethics of any Administration.

Secretary LaHood holds the staff of the entire Department to the highest ethical standard. If there is any evidence of violation of these rules, swift and appropriate actions will be taken.

The agency looks forward to the opportunity to discuss effective and federally consistent ethics process improvements.

Again, I would like to thank and commend the Committee and its staff for a thoughtful and comprehensive draft. I would like to, however, once again offer our assistance if requested, and I'm happy to take any questions.

[The prepared statement of Mr. Strickland follows:]

PREPARED STATEMENT OF HON. DAVID L. STRICKLAND, ADMINISTRATOR,  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. Chairman, members of the Committee, thank you for the opportunity to return to the Commerce Committee to testify on surface transportation reauthorization. As a staffer on the Commerce Committee, I had the opportunity to work on the last surface transportation reauthorization, SAFETEA-LU. Now I have the distinct honor of representing the Obama Administration in working with this Committee and the Congress to shape NHTSA's future. While my vantage point may be different, rest assured that I am as deeply committed to this reauthorization now as I was during SAFETEA-LU.

According to NHTSA data, the Nation maintained a steady downward trend in traffic related fatalities last year. While the projected number of 32,788 deaths in 2010 is still too many, it is the lowest number of fatalities since 1949. Even more heartening, the Nation's fatality rate is 1.09 deaths per 100 million vehicle miles traveled and has been on a downward trend for 25 years.

At the same time, we continue to face many challenges in ensuring ongoing improvement. Alcohol-impaired driving continues to account for 32 percent of the Nation's traffic-related fatalities. Approximately half of occupant fatalities in traffic crashes are unbelted. Along with these more mature challenges, distracted driving is an increasing concern, and many areas around the country are facing increased risks to pedestrians.

Improving NHTSA's statutory authority would better enable the agency to address these and other highway safety issues. The Committee's reauthorization discussion draft includes certain helpful enhancements. While the Administration has not formally commented on the discussion draft, which will limit my remarks, I will be happy to discuss the issues generally and with more specificity where technical assistance was provided to the Committee.

**Streamlining the Grants Process**

First, I want to compliment the Committee on its proposal for streamlining the grant process for states and promoting performance-based approaches and accountability. I believe that the Committee's provision to establish a single grant application deadline, along with efforts to consolidate reporting and applications, will allow states to spend less time on administrative details, and more time developing and implementing effective safety countermeasures.

### **Motorcycles**

Between 2004 and 2009, the number of motorcycle crash fatalities increased from just over 4,000 to 4,462; an 11 percent increase. The number of motorcycle fatalities fell 16 percent between 2008 and 2009, the first time there has been a decrease in more than a decade. I firmly believe that we can build on that progress. The most important step we can take to reduce the deaths of motorcyclists on our roads and highways is to assure that all riders wear a DOT-compliant helmet.

A grant program emphasizing the use of motorcycle helmets would be effective in reducing fatalities. NHTSA's data show that, between 2005 and 2009, motorcycle helmets saved more than 8,000 lives. NHTSA estimates that the use of motorcycle helmets by motorcyclists reduces the likelihood of a motorcycle crash fatality by 37 percent for operators and 41 percent for passengers. To address these crash fatality numbers, the addition of eligibility criteria to emphasize the use of motorcycle helmets would be an effective and positive step in protecting public health and safety, while recognizing the rights of states to make choices for their citizens. I appreciate the Committee's inclusion of a provision that would clarify the agency's authority to take action with regard to all-noncompliant or defective motorcycle helmets.

### **Distracted Driving Provisions**

As you know, Secretary LaHood and I have been outspoken about the dangers of distracted driving. We support a robust program to reduce distracted driving as presented in the Committee draft.

Today less than 15 states have a primary enforcement law that bans drivers under the age of 18 from driving while using a cell phone. Given the complexity surrounding the eligibility criteria to receive a grant, I suggest that the Committee consider providing NHTSA with the authority to make this determination through notice and comment rulemaking.

### **Improved Authority**

I want to thank the Committee for including several helpful provisions that expand the agency's capabilities. These include:

- Authority to ensure that notification of non-compliant or defective conditions in used passenger vehicles and in rental vehicles is provided to consumers;
- Increased authority to address safety hazards caused by some imported motor vehicle equipment;
- Increases in the total amount of civil penalties NHTSA can seek for a related series of violations; and
- Support for collaborative research in developing and deploying in-vehicle alcohol detection systems.

I would like to call particular attention to section 411 on used passenger motor vehicle consumer protection and section 412 on safety of recalled rental motor vehicles. These two provisions would protect consumers in a significant segment of the motor vehicle population that we currently cannot reach effectively. Our statutory authority does not permit NHTSA to require action by used car dealers or rental companies with regard to recalled vehicles. We do not have any authority to protect consumers at the rental counter or those looking to purchase a used vehicle. These two simple provisions are critical to ensure that consumers are notified of recall issues before they purchase a used vehicle or rent a car.

Together these enhanced authorities would permit NHTSA to ensure motor vehicle and equipment safety on a broader basis than we can today.

However, the technical drafting assistance we provided to the Committee in May included agency policy proposals on several measures that are not in the Committee draft, including:

- Authority over portable electronic devices in vehicles to address the clear and serious distraction hazard they pose;
- Authority over devices external to vehicles that will be essential to ensure the safety, security, and effectiveness of vehicle-to-vehicle communications in order to realize the enormous safety benefits these systems may bring; and
- Direct appellate review of recall orders to ensure that manufacturers have the opportunity to challenge orders while avoiding lengthy district court trials during which no recall is in effect to protect consumers.

Without the additional authority such provisions would provide, NHTSA would be hard pressed to adequately address some very serious safety issues. For example, vehicle-to-vehicle communications hold the promise of significant safety advances by enabling inter-vehicle communications to reduce the likelihood of many types of

crashes. Such communications systems are likely to depend on electronic devices external to the vehicles working in concert with in-vehicle devices. NHTSA's issuance of standards concerning those external devices would be very helpful to ensure the reliability and security of those communications. A clarification of the agency's authority to do so is an important element in furthering the development of those systems.

#### **Rulemaking**

The draft bill contains a large number of rulemaking provisions, some with relatively short times allowed for completion. However, I appreciate the inclusion of a provision that would permit the agency, when necessary, to lengthen those time frames and explain to the committees of jurisdiction why it must do so. This will permit the agency to continue to prioritize its regulatory work based on its judgment of the likely safety benefits and its available resources.

While the agency is currently working on some of the safety challenges identified in the Committee draft, 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 vulnerable populations and high occupancy vehicle issues. The agency looks forward to working with this Committee and the Congress to share our thinking on rulemaking priorities, and developing a consensus rule-making agenda that will address risks to the driving public.

#### **Post-Employment Restrictions**

One provision of the draft would impose stricter post-employment restrictions on NHTSA employees. We believe that a provision singling out NHTSA employees for stricter treatment is not the most effective means to achieve the intended goals of the provision, and could cause other unintended consequences that may affect the agency in accomplishing its mission. At the request of this Committee, the DOT Office of Inspector General conducted a full review of NHTSA's ethics procedures and their adequacy to prevent undue influence being exerted on NHTSA's safety defect investigations.

I would like to call attention to a letter to the Committee dated April 4, 2011 from the Inspector General, which found that NHTSA had adequate controls in place to ensure employees' compliance with ethics requirements and found no evidence of undue influence during investigations. The Inspector General made no recommendations for changes in NHTSA's ethics policies, procedures, and practices.

The Obama Administration has set forth some of the most comprehensive ethics rules of any administration. The Secretary holds the staff of the entire Department to the highest ethical standard. The agency looks forward to the opportunity to discuss effective and federally consistent ethics process improvements.

I thank the Committee and its staff for paying such close attention to the important highway safety issues NHTSA confronts and for the hard work that went into preparing the Committee's thoughtful draft. I look forward to continue working with the Committee to address some of the issues discussed here today. Thank you for the opportunity to offer these comments. I am happy to answer any questions you may have.

Senator PRYOR. Thank you. And we will have some questions. Let me go ahead and ask the first one and that would be during the last several years, the U.S. has seen a decline in traffic fatalities. How can we keep that trend going in the right direction in the future?

Mr. STRICKLAND. Well, Mr. Chairman, there is a number of initiatives that I think have been very successful that we have seen from the effects of the last reauthorization in 2005 SAFETEA-LU. In addition, there is some modifications that we believe as lessons learned from our behavioral programs, clearly getting belt usage up. We're currently 85 percent as a Nation. The closer that we get to 100 percent belt compliance is thousands of lives saved per year.

Clearly, reducing the number of impaired fatalities is key. Thirty-two percent of those are still, unfortunately, alcohol-related. And our work not only on the behavioral side supporting law enforcement efforts, but also our outreach campaigns, as we have done

over the years along with the belt campaigns, have proven to be very successful.

Also, as we mentioned, work on distraction, and our other issues that are very important to us, whether it is speed control, aggressive driving, red-light running, and a host of other behavioral issues is important.

On the vehicle safety side, as you know, we are working very hard to work through our priority rulemaking agenda—I can talk about that in more detail—in addition to finalizing work on some significant safety issues, such as the Rearward-visibility rule, which we will finish this year, and others. So, we think the comprehensive programs can be built upon, and I think the Committee strived to give us the ability to do just do that.

Senator PRYOR. Thank you. And I know that in Connecticut and New York, there has been some demonstration projects on distracted driving. Apparently, you know, sort of high visibility, you know efforts to stop the distracted driving there. Have those been a success and what have we learned there, and what else can we do? What other research are you doing to try to curtail distracted driving?

Mr. STRICKLAND. Well, Mr. Chairman, I think you highlighted those two programs, which were astounding successes. Basically, the reductions of both Hartford, Connecticut and in Syracuse, New York showed that our model for seat belt safety and for impaired driving worked, which is high-visibility advertising. We ran an ad campaign in conjunction with those two jurisdictions, phone in my one hand, ticket in another, along with high-visibility enforcement. We had great cooperation with the law—with the enforcement personnel in both of those areas and along with good, strong State laws, which actually had bans on hand-held cell phones, as well as texting bans. And we saw reductions of between 30 and 70 percent in texting and hand-held cell phone use in both of those jurisdictions.

From that demonstration project, the Secretary's hope is to actually expand these programs to a statewide level in particular jurisdictions, and then we will get more lessons learned there, but we think that it's a rousing success.

Senator PRYOR. Let me ask about nomadic vehicles, you know, things like cell phones, even iPads, et cetera. Who should have the authority on the regulation of those, FTC or NHTSA or both?

Mr. STRICKLAND. Mr. Chairman, not to—not to sort of undercut my own efforts as administrator or the agency's efforts here, someone needs to fill that safety donut. Right now, NHTSA has a safety authority for vehicles, but not over nomadic device that can be brought into the vehicle.

The Federal Communications Commission has authority over the nomadic devices, but they don't have safety authority or, specifically, how their products are used especially when they're tethered to motor vehicles. So, our suggestion would be in this particular scenario to provide authority for NHTSA to develop performance standards regarding nomadic devices in vehicles. The bottom line is people will bring iPhones or Droids or anything else into the vehicle. They have applications which are very alluring to people.

Some of them are useful for the motorcycle, for the motor vehicle environment like GPS systems, but on a phone this big, it is not very effective, and it is dangerous for a driver. For telephonic communications and other things, the goal is to try to tether those devices to the vehicle. And the only way that the agency can effectively do that is to be able to perform and have standards so that at least to force the driver to tether the device to the vehicle or to disable it for the driver while it is in motion. So, then, you could use an on-board system for the vehicle. That's the only way that we can really be sure that we have an on-board system that really truly is safe and avoids distractions.

Senator PRYOR. OK. Mr. Toomey?

Senator TOOMEY. Thank you, Mr. Chairman.

Administrator Strickland, it is my understanding that currently the agency has about \$472 million in unobligated funds on hand. And it is also my understanding that NHTSA recommends that \$151 million of that be rescinded, and that that corresponds to an amount for which the states have not expressed any interest in available grants, and so that's appropriately being suggested for rescission.

I guess my first question is, do I have those numbers right, approximately? And, second, does the agency plan to spend the remaining \$321 million that's unobligated at this point by the end of this Fiscal Year, which is only 2 months away?

Mr. STRICKLAND. Well, Mr. Toomey, in terms of how the unobligated funds are actually—are actually optically seen by those reviewing the books and versus reality, that money, the \$472 million that you alluded to, is actual funds that are used by the states to execute the programs that are so important and key for citizen safety on the roads throughout the country whether it is belt enforcement or alcohol-impaired driving enforcement or data improvement. There is a range of other issues. And because of eccentricities in the budgeting process here in Washington, D.C., inefficiencies with other matters, states sometimes have a little harder time executing, and actually obligating, and spending those funds. So, while it looks on the books, they are unobligated, those funds are actually accounted for by all 50 states in terms of how they use our programs.

Senator TOOMEY. Does that include the \$151 million that's been recommended for rescission?

Mr. STRICKLAND. I was just getting back that that, Mr. Chairman—I mean, Mr. Ranking Member, I apologize. The issue, there is as part of the 406 Incentive Program for primary belting, which is a large incentive for states to pass primary belt laws. So, therefore, if a state is not close or hasn't passed primarily belt law, you know, those funds can possibly go unused. It is getting close to the end of the fiscal year, which is the reason why the Department has suggested that some of those funds can be rescinded. However, those funds can be used in much more effective ways, which we have suggested in our technical—our technical comments to reauthorization. But that particular program is a very specific and special one that came from SAFETEA-LU, and I would not say it is typical of the typical programmatic work that NHTSA undertakes in terms of its usual work.

Senator TOOMEY. OK. But getting back to the 321, though, I'm not sure if I understand completely, but am I—would I be correct to understand that these funds are committed? That they are—that grants have been applied for? They've been approved? The funds are earmarked? The money is going to these places? They just haven't been released yet? Is that a fair characterization?

Mr. STRICKLAND. It's a combination of things, Ranking Member. The issue really is that states, because of the budgetary eccentricities, by the time that money is actually released from the Federal Government through the Department to the states, by the time the states have an opportunity to get their programs up and running and then obligated, there is often a lag time. We work very hard through our regional offices to encourage the states to get these obligated funds spent. And sometimes as part of the eccentricities of the budgeting process—and I'm sure that Mr. Betkey at GHSA can sort of talk about this issue as well—that when there is an issue such as, you know, an extension, a lack of an extension for the Highway Reauthorization bill, these funds are often used as carry over by the states. It isn't intended to do so, but states sometimes plan it that way and we encourage them not to do that.

Senator TOOMEY. OK. But let me move on. It is still not entirely clear to me what timeline is here.

Mr. STRICKLAND. We are happy to get back to you for the record. [The information referred to follows:]

*Question.* NHTSA reported a current unobligated balance of \$472,066,720 of Fiscal Year 2011 funds. Please explain what these funds are, and why this late in the fiscal year the Agency has this funding as yet unobligated. Explain how you plan to obligate the funds before the end of the fiscal year.

*Answer.* The unobligated balance of \$472 million is as of June 30, 2011. Of the \$472 million, \$150 million has been identified to the Congressional Appropriations Staff as being available for rescission, leaving a balance of \$322 million. Approximately \$196 million (61 percent) is the NHTSA formula grant program funding for Sections 408, 410, 2010, and 2011 safety grant programs. By regulation, applications for these programs from the State Offices of Highway Safety are due late in the fiscal year—starting June 15 and up to August 1. Consequently, these funds are reported as unobligated until late in the fiscal year. We affirm that, as in past years, NHTSA personnel are on schedule to award the entire amount of available funding by the end of Fiscal Year 2011.

The remaining \$126,000,000 (39 percent) are programmatic and administrative dollars. As has been the case in previous years, we fully expect to obligate the majority of these funds by the end of this fiscal year, with the exception of the 2-year funding (\$30 million). These funds are broken down as follows:

- Approximately \$30 million are for salary, benefits, and general administrative support (such as rent and IT) for the remainder of the fiscal year.
- Approximately \$20 million is 2-year vehicle research and analysis money; these funds will be obligated by the end of Fiscal Year 2012 on ongoing vehicle research projects, including such items as biomechanics and crash avoidance.
- Approximately \$10 million is 2-year behavioral research money, which will be obligated for data collection and analysis.
- The remaining \$66 million funds other ongoing program activities, particularly contracts that we plan to obligate by the end of the current fiscal year.

Senator TOOMEY. I would like to understand this better.

Mr. STRICKLAND. Yes, sir, absolutely.

Senator TOOMEY. A separate question, if I could. Last year, you told the Committee that the information that you get from manufacturers through the early warning reporting process is helpful in

identifying potential defects, and so I assume that is still your position that that is helpful information?

Mr. STRICKLAND. Yes, Ranking Member, it is.

Senator TOOMEY. Now, at the time and subsequently in your report, the priority plan that you published in March, there was no suggestion by yourself, that I am aware of, that this information be made public. And, you know, one of the concerns that is expressed is that some of this could include unverified information, for instance. Some of it could create inappropriate liabilities. Are you at all concerned that this could hamper the flow of information that you have identified as helpful information?

Mr. STRICKLAND. Well, Mr. Toomey, the one thing that the Department as a whole, NHTSA, the Obama administration encourages is, is transparency, and we want to provide the most information that we can to the public. I think it serves, frankly, the Nation's best interest. However, the agency has acted in terms of rule-making, in terms of protecting the proprietary and confidential business information. If there is anything that affects that information coming to the agency, it does impact our operations. Can that process be improved? Could there be a better screen and more transparency? There is always that opportunity. We are happy to discuss that. But, you know, to underscore, we do believe that anything that discourages the manufacturers from providing information to the agency that they consider proprietary or confidential would hamper our operations in terms of making safety evaluations.

Senator TOOMEY. Thank you very much, Mr. Chairman.

Senator PRYOR. Thank you. Senator Udall?

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Senator Pryor, Chairman Pryor, and thank you for holding this hearing.

Mr. Strickland, I know that you and Secretary LaHood have previously stated support for the Research and Development Program which my legislation, the ROADS SAFE Act, would authorize and sustain. Could you explain to the Committee how NHTSA is working with leading automakers to develop new in-vehicle technologies to prevent and potentially eliminate drunk driving?

Mr. STRICKLAND. Mr. Udall, you have highlighted the driver alcohol detection systems for safety work that we have been working on for the past 3 years with the manufacturers. This year is actually the fifth year anniversary of Mothers Against Drunk Drivers campaign to eliminate drunk driving. And this is one of the hallmarks of this work, which is to create an auto grade seamless unintrusive and variably accurate system for a vehicle to see if a person is driving over the legal limit, which is 0.08. And if the car detects that, to interlock the vehicle from actually being driven. We are in the third year of our work in Phase 2 of the research and from—frankly, when I was still working for Mr. Pryor, working on this Committee, I frankly as a staffer did not think that it was a possibility to have an in-vehicle technology which could be seamless to prevent a car from being driven by an impaired driver.

The work that we have seen so far has shown that it is entirely possible. We have a long way to go. We have two more years' worth of work and more resources to expend, along with the manufacturers, but this really is our moon shot. It is an opportunity to make sure that no car with this type of technology can ever be driven by an impaired driver. We think there is huge promise in that, which is the reason why the Secretary and I have supported your legislation.

Senator UDALL. Well, I think that it is very promising what you say. And as we know, every new development and every step we make forward, we save lives, so that is—

Mr. STRICKLAND. Yes, sir.

Senator UDALL.—tremendously important.

I want to talk to you a little bit about these event data recorders. We have had a number of hearings. I think you were here also in the past when we looked at this whole issue of data recorders.

Mr. STRICKLAND. Yes, sir.

Senator UDALL. There is no doubt they provide critical information in the event of a crash. This information can serve to determine whether a vehicle malfunction was to blame. The last Congress, I introduced legislation to require event data recorders in all vehicles, and I am glad to see that they will be required for all light-duty vehicles in the proposed legislation. Is there value in requiring event data recorders in medium and heavy-duty vehicles and what steps need to be taken before EDRs can be effectively deployed in medium and in heavy-duty vehicles?

Mr. STRICKLAND. Well, Mr. Udall, you highlighted the fact that event data recorders or EDRs are essential pieces of equipment for the agency to do analytical work on what happened in the case of a crash, which means rather than caused by a vehicle defect that poses an unreasonable risk. We are still in the research phases in terms of the effectiveness and the variables that may be involved in event data recorders on medium duty and heavy-duty vehicles. I definitely would like to have my staff get back to you specifically on the record in terms of where we are in that process and the things that we're looking that. But because EDR showed such promise in the light-duty fleet, I think anecdotally there should be promise in the medium duty and heavy-duty fleet, but, clearly, there is more complexities, different physics issues that are involved, different technology issues that are involved which may take some work and some time, but we are happy to engage in a conversation with you and the rest of this Committee on that issue.

Senator UDALL. Great. Thank you. And I look forward to your responses there.

The proposed bill includes a provision that would require the Secretary to establish a grant program for states that enact mandatory ignition interlock laws for all drunk-driving offenders.

Mr. STRICKLAND. Uh-huh.

Senator UDALL. In New Mexico, we found that ignition interlocks have been key to reducing drunk driving on our roads. Can you explain why interlocks as opposed to license suspension are the key to addressing these drunk-driving issues?

Mr. STRICKLAND. Mr. Udall, license suspension does not prevent a driver from getting behind the wheel impaired. People will often,

throughout the fact that they are driving without a license, continue to drive anyway. And also recognizes the realities that people after they've been convicted of impaired driving still have, you know, lives to lead, school to go to, jobs to go to. And the first—then a first-offense interlock allows those people that have been convicted to then continue on with those activities safely. So, that is the reason why that we put so much emphasis on the grant program to encourage more states to undertake interlocks because the margin of safety is immeasurable. Just as a work in DADSS' long term, we know ignition interlocks work and we, hopefully, can encourage the Committee to maintain this provision going forward.

Senator UDALL. Well, we know they are very effective in New Mexico and I look forward to answering questions, and hope you answer questions from other states to see that they proliferate.

Thank you, and sorry for going over a little bit, Mr. Chairman. Senator PRYOR. Thank you. Senator Blunt?

**STATEMENT OF HON. ROY BLUNT,  
U.S. SENATOR FROM MISSOURI**

Senator BLUNT. I thank you, Mr. Chairman.

Mr. Chairman, I have a statement for the record, and we will just put that in the record.

[The prepared statement of Senator Blunt follows:]

PREPARED STATEMENT OF HON. ROY BLUNT, U.S. SENATOR FROM MISSOURI

Chairman Pryor and Ranking Member Toomey, I appreciate you holding this important hearing this afternoon and for allowing me to make a few brief comments and observations.

For more than 40 years, the National Highway Traffic Safety Administration has been charged with one very important task, and that is to help make our Nation's highways safer. This is a very important endeavor nationally, and as someone who represents a state with huge tracts of interstate highways and various other Federal highways it is equally important to me.

In 2009, the most recent year for which the Missouri Department of Transportation has records, 577 fatal accidents occurred on Missouri's highways, resulting in over 650 deaths. I'm mindful that there were over 75,000 crashes on our highways that year as well, so I recognize that the cars on the road, and the roads themselves, are much safer, and NHTSA has played a role in facilitating better safety measures. But there is much more that can be done.

I look forward to hearing today about some on-going issues that NHTSA is addressing, notably recall issues and revamping the state grant awarding process to better reflect performance and a streamlined application process. I think these are notable goals, and at a time when the Federal Government is reprioritizing spending, it goes without saying that our grant award processes should reduce redundancies and reward those that make their dollars go the farthest.

We are all here today are looking for the best ways to make our highways safer and to streamline pertinent information about recalls and defects to NHTSA, manufacturers, retailers and consumers.

Everyone from the drivers on the road to the manufacturers assembling our cars are best served when processes are in place to quickly repair cars that need fixing and to remove the ones that cannot from the road.

We have come a long way in terms of automobile safety in the past 30 years in reducing the number of accidents on our Nation's highways and the number of fatalities and injuries that result. There is much left to be done and, again, I look forward hearing today how we can work together to limit these types of tragedies further.

Thank you Mr. Chairman.

Senator BLUNT. Mr. Strickland, thank you for being here. Let me ask a question, a follow-up question on the EDRs. I think this legislation expands the parameter of how long the EDR would report.

Mr. STRICKLAND. Uh-huh.

Senator BLUNT. Can you talk to me about—I think right now I just captured a little time before, during and after the accident. I wonder why that is not enough?

Mr. STRICKLAND. Well, right now, Mr. Blunt, we are actually undergoing a plan for rulemaking for changing certain parameters on event data recorders which we think will be of assistance to the agency. However, there has been no final decisions internally because we are researching what is the right time segment for us to collect information that would be helpful in crash reconstruction and investigations.

While the Committee's draft does have a specific time period, I know that the technical staff at NHTSA is still considering that issue. We'll be happy to come back and discuss with you those particular parameters and where we are and what will be the—

Senator BLUNT. That will be great. Do you know what the correct time period is for EDR?

Mr. STRICKLAND. Actually, sir, I do not. I am not sure. It's 5 seconds, Mr. Blunt.

Senator BLUNT. Five seconds.

Mr. STRICKLAND. Five seconds. Five seconds.

Senator BLUNT. Well, I would like to talk a little more about that as the staff is ready to do that. And on the issue of recall, what are the annual recall completion rates now?

Mr. STRICKLAND. It is about 70 percent for full vehicles, sir, but it is less than that for motor vehicle equipment. It is something that we are working very hard to improve generally. I know that this is an issue that faces, frankly, every consumer protection agency that deals with products whether it is our agency or the Consumer Product Safety Commission, but we hope to work very hard and make some changes in the recall process to increase those completion rates, but it is about 70 percent for cars.

Senator BLUNT. Would it be your opinion that the fleet recall completion rate is higher than the overall rate like a rental company or another fleet rate? Would they more likely pursue the recall or less likely?

Mr. STRICKLAND. Well, comparatively speaking, I don't have those numbers, Mr. Blunt. We will get back to you. I will tell you—

Senator BLUNT. Well, somebody on your team may know back there.

Mr. STRICKLAND.—and, once again, I think—you know, we have stumped our senior associate administrator for vehicle safety on that one. I do not think we have done a complete comparison between fleet rates for rental cars versus the overall population, but I will say, Mr. Blunt, the concern that we have is the timeliness and the completion of rental car companies undertaking recall repairs. We have undertaken an audit query and we've engaged very actively with the rental car companies to improve that asset, because they are putting these cars in the stream of commerce and putting consumers at risk if these cars are not repaired.

Senator BLUNT. But you are trying to determine whether there really is a systemic problem or not with the—like the rental company?

Mr. STRICKLAND. Well, Mr. Blunt, to be honest, we have established it, and there is a systemic problem. That is the reason why.

Senator BLUNT. And the problem is they do not pursue the recall information or they do not tell people that this vehicle is under recall and hasn't been fixed yet?

Mr. STRICKLAND. Both, sir. They haven't—they do not fix them timely and they don't tell consumers.

Senator BLUNT. And that is—you have a report that verifies that?

Mr. STRICKLAND. Yes, sir, we do. Happy to—we will provide it to you post-hearing.

Senator BLUNT. I would like to see it.

Mr. STRICKLAND. Yes, sir.

Senator BLUNT. Chairman, I think that is all. Thank you.

Senator PRYOR. Thank you. And just to follow up on that last question, Senator Blunt. The bill that we are proposing or shopping around does not have a specific time period. It is just shall require data recorders to capture and store data related to motor vehicle safety covering a reasonable time period before, during, and after motor vehicle crash or airbag deployment.

Senator BLUNT. So, Mr. Chairman, do we think that might be 5 seconds for that?

Senator PRYOR. Well, that is what—we are leaving that open right now and we need to talk about that. I just want to let you know just for clarification.

Senator BLUNT. Thank you, Chairman.

Senator PRYOR. Thank you.

And, Mr. Strickland, thank you so much for being before the Committee today, our Subcommittee today. We really appreciate your efforts there. I know that I have some questions I want to submit for the record, and I think a few of my colleagues do as well, so we're going to leave the record open for 2 weeks. We are going to leave the record open for 2 weeks. Is that right? Do you want to go less? We may try to leave the record open just for a week because we may actually try to mark—

[Laughter.]

Mr. STRICKLAND. Well, Mr. Chairman, when I served you, sir, I gave you 2 weeks, but I know what your current staff is doing.

Senator PRYOR. I know; I will tell you.

[Laughter.]

Senator PRYOR. But anyway, whatever, we will talk to you—

Mr. STRICKLAND. Yes, sir.

Senator PRYOR.—and then figure out what that is exactly, but we'd appreciate those rapid responses, as always. Thank you very much for your time and your service.

Mr. STRICKLAND. No. Thank you, Mr. Chairman. I really do appreciate it, Mr. Toomey and Mr. Blunt, thank you for the time.

Senator PRYOR. Right. Well, what we will do now is, as Mr. Strickland excuses himself, we will move on to the next panel. And as we are getting this panel set up, we are going to try to do a

quick change there and I will go ahead and introduce the panel, the five panelists here.

We have Ms. Susan Fleming. She is the Director of Physical Infrastructure, U.S. Government Accountability Office.

We have Ms. Jacqueline Gillan, Vice President, Advocates for Highway and Auto Safety.

We have the Honorable Nicole Nason, which is former National Highway Traffic Safety Administrator.

Mr. Robert Strassburger, Vice President, Vehicle Safety and Harmonization, Alliance of Automobile Manufacturers.

And Mr. Vernon Betkey, he is the Chairman, Governors Highway Safety Association.

So, as soon as we get set up, I will recognize Ms. Fleming for her opening statements and we are going to respectfully ask you all to keep your statements to 5 minutes, if at all possible.

We are expecting a roll call vote sometime within the hour, so I'm going to try to move this along, if possible.

Ms. Fleming, you're recognized.

**STATEMENT OF SUSAN FLEMING, DIRECTOR,  
PHYSICAL INFRASTRUCTURE,  
U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Ms. FLEMING. Chairman Pryor, Ranking Member Toomey, and members of the Subcommittee, thank you for the opportunity to discuss NHTSA's traffic and vehicle safety programs.

During the last several years, U.S. traffic fatalities have declined substantially from about 43,500 in 2005 to approximately 33,000 in 2010, yet far too many people are still killed or injured on our Nation's roadways every year.

In addition, auto manufacturers recalled a record 14.9 million vehicles in 2010 to address a range of safety issues such as malfunctioning airbags and faulty steering columns.

On average, about 70 percent of vehicles subject to a recall are fixed while the remainder may continue to pose risks to vehicle owners, passengers, and pedestrians.

My testimony today has three parts. I will discuss NHTSA's progress in improving oversight and performance management for traffic safety grant programs, NHTSA's oversight of the auto safety defect process, and issues for Congress to consider in reauthorizing funding for traffic and vehicle safety problems.

First, NHTSA has taken several steps to better oversee State's management of safety grants and move toward a more performance-based framework. As we recommended in 2003, NHTSA has implemented a more consistent oversight process and now conducts a management review of each State at least once every 3 years.

In addition, NHTSA developed a tool called the corrective action plan to track States' implementation of management review recommendations and encouraged states to act on the agency's guidance.

To improve performance measurement for traffic safety programs, NHTSA partnered with GHSA to develop and publish two sets of performance measures to help states implement and improve traffic safety programs and data systems. These measures are an important step toward a more performance-based data-driv-

en grant structure and respond wholly or in part to GAO recommendations to improve State accountability for grant funds.

Moving on to my second point, NHTSA's auto safety recall process. Our work identified a number of challenges that affect recall completion rates including notifying vehicle owners of auto safety defects, motivating vehicle owners to comply with notification letters and providing clear information to vehicle owners and the public.

Additionally, NHTSA lacks authority to notify potential used car buyers about outstanding recalls.

Our work also identified several options or changes that could address some of these challenges and improve safety for the motoring public. For example, NHTSA could modify the requirements for manufacturers to present information and safety defect notification letters and publicize information resources like the agency's website so that vehicle owners are better motivated and informed.

NHTSA may also be able to use manufacturers' data to identify what factors make recalls more or less successful than others. Most of these options are within the scope of NHTSA's current authorities and would require minimal investment of staff and other resources.

As Administrator Strickland noted, NHTSA is currently exploring a few of these options.

Finally, reauthorization provides opportunities to further improve NHTSA's traffic and vehicle safety programs. For example, Congress could link traffic safety grant awards to performance to make states more accountable for their use of grant funds.

In addition, Congress could reduce administrative challenges for states by streamlining the application process for incentive grants and allowing more flexibility in the use of grant funds.

Reauthorization also creates an opportunity for Congress to modify NHTSA's recall authority in ways that would make consumers more aware of recalls and better protect consumers from unknowingly purchasing defective vehicles.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or members of the Subcommittee might have.

[The prepared statement of Ms. Fleming follows:]

PREPARED STATEMENT OF SUSAN FLEMING, DIRECTOR, PHYSICAL INFRASTRUCTURE,  
U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Chairman Pryor, Ranking Member Toomey, and members of the Subcommittee,

I appreciate the opportunity to participate in this hearing to discuss the National Highway Traffic Safety Administration's (NHTSA) traffic and vehicle safety programs. NHTSA's traffic safety grant programs are a key part of Federal efforts to reduce traffic fatalities. During the last several years, the United States has seen a remarkable decline in traffic fatalities, from 43,510 in 2005 to an estimated 32,788 in 2010. Fatality rates have also dropped over that time, from 1.46 to 1.09 fatalities per 100 million vehicle miles traveled, the lowest rate since 1949. Despite this encouraging trend, far too many people are still killed or injured on our Nation's roadways every day. In addition, although traffic fatalities have decreased, in 2010 auto manufacturers recalled a record 14.9 million vehicles to address a range of safety issues such as malfunctioning air bags and faulty steering columns. On average, about 70 percent of vehicles subject to a recall are fixed within the 18-month period during which manufacturers provide recall completion data to NHTSA, while the remainder may continue to pose risks to vehicle owners, passengers, and pedestrians. Congress has also expressed concerns about whether NHTSA has the authority it

needs and whether vehicle owners are being effectively motivated to remedy their vehicles. The upcoming reauthorization of Department of Transportation (DOT) programs offers the opportunity to revise Federal programs to better assist states in addressing traffic safety issues and to enhance NHTSA's recall authority.

My testimony today addresses: (1) NHTSA's progress in improving oversight and performance measurement for traffic safety grant programs, (2) NHTSA's oversight of the auto safety defect process, and (3) issues for Congress to consider in reauthorizing funding for traffic and vehicle safety programs. My statement is based primarily on reports we issued since the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)<sup>1</sup> on issues related to traffic safety—including NHTSA's oversight of state traffic safety programs, traffic safety grants, high-visibility enforcement, older driver safety, and teen driver safety—and NHTSA's auto recall process. (See the list of related GAO products at the end of this statement.) For the reviews related to traffic safety, we analyzed traffic fatality data from NHTSA and selected states; examined NHTSA's evaluations (triennial management reviews) of state processes and procedures, including corrective action plans; visited selected states; analyzed the quality of state traffic data systems; and reviewed relevant documents, including legislation, regulations, guidance, and state plans and reports. We also interviewed NHTSA officials, state traffic safety officials, and other traffic safety stakeholders, including representatives from local law enforcement agencies and safety organizations such as the state's AAA club or Safety Council association. For the review of NHTSA's auto recall process, we interviewed NHTSA officials, auto manufacturers, and other auto industry stakeholders about NHTSA's role in the recall process and the benefits and challenges of the recall process for NHTSA and manufacturers. In addition, we compared NHTSA's authority to the authorities of other selected Federal and foreign agencies that oversee vehicle recalls, and conducted focus groups with vehicle owners to better understand their awareness of recalls and willingness to comply with recall notices. We conducted these audits from July 2002 through June 2011 in accordance with generally accepted government auditing standards. More detailed information on the scope and methodology of our previous work can be found with each issued report.

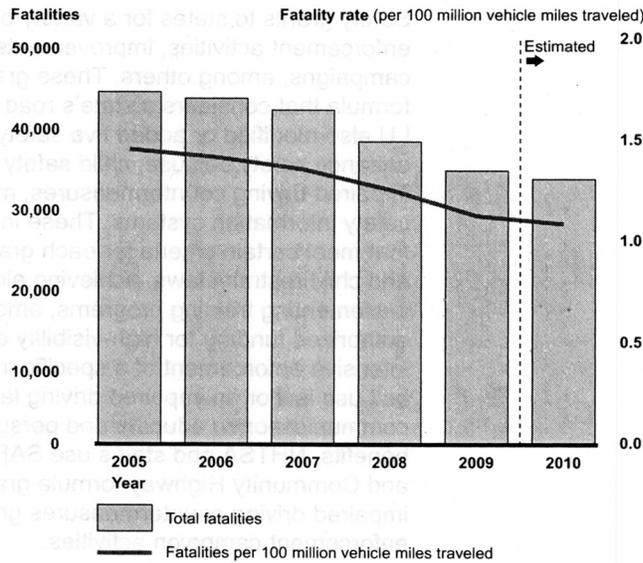
### **Background**

During the past decade, the number of motor vehicle fatalities has substantially decreased, from 43,510 in 2005 to an estimated 32,788 in 2010. Fatality rates have also dropped over that time, from 1.46 to an estimated 1.09 fatalities per 100 million vehicle miles traveled (see fig. 1).

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<sup>1</sup>Pub. L. No. 109–59, 119 Stat. 1144 (2005).

**Figure 1: Trends in Traffic Fatalities and Fatality Rates (2005-2010)**



Source: GAO analysis of NHTSA data.

Most traffic fatalities are related to human behavior, including speeding, alcohol impaired driving, and improper or no use of safety belts or child safety or booster seats. As the use of electronic devices has grown, distracted driving has also increasingly been identified as a cause. Certain populations, including motorcyclists and both elderly and teen drivers, are more likely to be involved in serious accidents. Data on these and other traffic safety areas are critical for NHTSA and states to identify and address key traffic safety issues and trends.

Through SAFETEA-LU, Congress authorized \$2.4 billion for Fiscal Years 2005 through 2009 for programs to provide safety grants to assist states in their efforts to address these issues and reduce traffic fatalities.<sup>2</sup> The largest portion of funds provided by SAFETEA-LU, or about \$1 billion, was allocated for the continuation of State and Community Highway Safety grants to states for a variety of traffic safety issues, including law enforcement activities, improvements to training programs, or media campaigns, among others. These grants are allocated to states through a formula that considers a state's road mileage and population. SAFETEA-LU also modified or added five safety incentive grant programs to enhance safety belt use, child safety and child booster seat use, alcohol impaired driving countermeasures, motorcyclist safety, and state traffic safety information systems. These incentive grants are awarded to states that meet certain criteria for each grant, such as enacting safety belt laws and child restraint laws, achieving alcohol-related fatality benchmarks, or implementing training programs, among others. In addition, SAFETEA-LU authorized funding for high-visibility enforcement campaigns that combine intensive enforcement of a specific traffic safety law—such as a safety belt use law or an impaired driving law—with extensive media communication to educate and persuade the public of the law's safety benefits. NHTSA and states use SAFETEA-LU grants—including State and Community Highway formula grants, safety belt grants, and alcohol impaired driving countermeasures grants—to support high-visibility enforcement campaign activities.

NHTSA is responsible for implementing programs designed to address two of the three types of factors that contribute to crashes—human behavior and vehicle fac-

<sup>2</sup>Additional spending has been authorized since 2009. The most recent extension expires September 30, 2011. Continuing Appropriations Act, 2011, Pub. L. No. 111-242, 124 Stat. 2607 (2010) as amended.

tors.<sup>3</sup> To address behavioral factors, NHTSA oversees state traffic safety grant programs by reviewing states' management of these grants and assessing states' progress in improving safety outcomes. For example, NHTSA monitors states' spending and conducts triennial management reviews designed to ensure that states manage grants effectively, efficiently, and in compliance with laws and regulations. NHTSA also assesses a state's performance against state-established safety goals and national safety outcomes by examining state highway safety plans and annual reports. NHTSA conducts special management reviews of states with consistently high alcohol-related fatality rates or low safety belt use rates and less than half of the national average improvement in these areas over time. A special management review is an in-depth evaluation of a state's impaired driving or safety belt use program that NHTSA uses to recommend program improvements. In addition, at states' request, NHTSA coordinates voluntary technical program assessments conducted by leading independent experts who review state programs in one of seven traffic safety areas and recommend program improvements. In 2003, we reported that NHTSA used management reviews and resulting improvement plans inconsistently across its 10 regional offices.<sup>4</sup> This inconsistency made it difficult to ensure that states used Federal funds in accordance with requirements and that they addressed program weaknesses. As a result, we recommended that NHTSA provide more specific guidance to its regional offices on when to conduct management reviews and use improvement plans, and how to measure state progress toward meeting safety goals. In response, NHTSA developed new policies for its regional offices on when it is appropriate to use management reviews and improvement plans to assist highway safety programs. The new procedures direct NHTSA to conduct management reviews in each state at least once every 3 years. In addition, they direct NHTSA to work collaboratively with states in developing performance enhancement plans (formerly known as improvement plans) when a state fails to meet performance goals, shows substandard performance, or fails to show improvement toward a priority safety goal over a 3-year period.

As part of its mission, NHTSA is also responsible for the oversight of manufacturers' compliance with safety standards and the identification and remedy of vehicle and equipment defects that could pose an unreasonable risk to safety. NHTSA oversees compliance recalls (for instances of noncompliance, such as improper placement of warning labels for airbags), and safety defect recalls (for the potential of a vehicle component to fail and endanger safety—for example, a steering column could break and suddenly cause partial or complete loss of vehicle control), which represent the majority of recalls overseen by the agency. The auto safety defect recall process for motor vehicles is a concerted effort involving a number of stakeholders, including NHTSA, auto manufacturers, franchised dealerships, and vehicle owners.<sup>5</sup> Auto manufacturers are primarily responsible for conducting auto safety defect recalls, while NHTSA oversees the recall process, in part by reviewing the actions manufacturers plan to take to remedy vehicles and monitoring the effectiveness of recall campaigns based on several considerations, including a campaign's completion rate (the number of defective vehicles that are repaired). NHTSA also provides guidance and information to the public on safety defect recalls, chiefly through its website, [www.safercar.gov](http://www.safercar.gov).

### **NHTSA Has Improved Oversight and Performance Measures for Traffic Safety Grants**

NHTSA has taken several steps to better oversee states' management of federally funded safety grants and move toward a more performance-based, data-driven grant structure.

#### *Oversight*

As we recommended in 2003,<sup>6</sup> NHTSA improved the consistency of its traffic safety grant oversight process, including implementing the requirement added by SAFETEA-LU that NHTSA conduct a management review of each state at least once every 3 years.<sup>7</sup> In addition, NHTSA developed a tool—the corrective action

<sup>3</sup>The Federal Highway Administration is responsible for addressing the third type of factor that contributes to crashes—roadway environment.

<sup>4</sup>GAO, *Highway Safety: Better Guidance Could Improve Oversight of State Highway Safety Programs*, GAO-03-474 (Washington, D.C.: Apr. 21, 2003).

<sup>5</sup>Franchised dealerships are businesses that have franchise agreements with an auto manufacturer to sell or lease new vehicles it manufactures.

<sup>6</sup>GAO-03-474.

<sup>7</sup>23 U.S.C. § 412(a).

plan—to track states’ implementation of management review recommendations and encourage states to act on the agency’s guidance.

In 2008, we reported that NHTSA’s initiatives to improve the consistency of its management reviews also had the potential to improve the information available to it for analysis—such as information on common grant management challenges faced by states—and thus could provide an opportunity for NHTSA to further enhance its oversight.<sup>8</sup> However, NHTSA did not have a process for analyzing its management review recommendations on a national level, identifying common challenges faced by states, and directing training and technical assistance resources accordingly. Furthermore, NHTSA was not tracking at a national level the extent to which states had implemented its recommendations—information that we noted could help NHTSA assess the impact of its oversight. We recommended these steps, and, in 2009, NHTSA implemented an electronic tracking system that documents the recommendations NHTSA has made to states during its reviews. NHTSA also analyzed these recommendations and, in collaboration with the Governors Highway Safety Association (GHSA)—an association of state highway safety offices that implement programs to address behavioral highway safety issues—offered training to states on common challenges. Such training addressed planning and administration, equipment and indirect costs, and performance measures. NHTSA also used information on states’ implementation of management review recommendations to develop webinars in conjunction with GHSA to help states address common issues that prevent them from implementing NHTSA’s recommendations.

#### *Performance Measurement*

In collaboration with GHSA, NHTSA has developed a minimum set of performance measures to assist states in developing and implementing traffic safety grant programs. Such performance measures are a key component in tracking states’ progress toward safety goals and to provide information on what areas should be prioritized for improvement. In the past, we have called for a fundamental reexamination of the Nation’s surface transportation programs, including the institution of processes to make grantees more accountable by establishing more performance-based links between funding and program outcomes.<sup>9</sup> More specifically, in 2008, we recommended that NHTSA establish a minimum set of performance measures for states to consistently report high-visibility enforcement activities funded with Federal dollars.<sup>10</sup> While states are required to include performance goals and measures for high-priority program areas in their annual highway safety plans,<sup>11</sup> states have not used such measures consistently in these plans. For example, GHSA reported that the number of measures used by states ranged from 4 to 115. In 2008, NHTSA published a minimum set of 14 performance measures that cover key traffic safety program areas, such as overall fatalities and injuries, fatality and injury rates, seat belt use, impaired driving, speeding, motorcyclist safety, and teen driver safety. States were also encouraged to use additional measures for other priority areas as appropriate. The minimum set of measures includes measures that should fulfill our recommendation related to high-visibility enforcement activities: number of citations issued for failure to use seat belts and for speeding and number of arrests made for impaired driving during grant-funded enforcement activities. According to NHTSA officials, all states have used the minimum set of performance measures in developing their highway safety plans for Fiscal Years 2010 and 2011.

NHTSA and GHSA also developed a set of model performance measures to help states monitor and improve the quality of the data in their six core traffic record systems: crash, vehicle, driver, roadway, citation/adjudication, and emergency medical system/injury surveillance. States use these systems to collect and analyze data to help identify priorities for traffic safety programs. Improvements to these systems are funded, in part, by NHTSA’s state Traffic Safety Information Systems Improvement grant. Last year, we reported that states were making progress in improving the quality of the six core systems, but that system quality—as measured by the performance attributes of timeliness, accuracy, completeness, consistency, integration, and accessibility—varied considerably by system and attribute.<sup>12</sup> For example,

<sup>8</sup> GAO, *Traffic Safety: NHTSA’s Improved Oversight Could Identify Opportunities to Strengthen Management and Safety in Some States*, GAO-08-788 (Washington, D.C.: July 14, 2008).

<sup>9</sup> GAO, *Surface Transportation: Restructured Federal Approach Needed for More Focused, Performance-Based, and Sustainable Programs*, GAO-08-400 (Washington, D.C.: Mar. 6, 2008).

<sup>10</sup> GAO, *Traffic Safety: Improved Reporting and Performance Measures Would Enhance Evaluation of High-Visibility Campaigns*, GAO-08-477 (Washington, D.C.: Apr. 25, 2008).

<sup>11</sup> 23 CFR 1200.10(a)(1).

<sup>12</sup> GAO, *Traffic Safety Data: State Data System Quality Varies and Limited Resources and Coordination Can Inhibit Further Progress*, GAO-10-454 (Washington, D.C.: Apr. 15, 2010).

across all data systems, we found that states met NHTSA's performance criteria for the attribute of consistency 72 percent of the time but met the criteria for the attribute of integration 13 percent of the time. We recommended that NHTSA take steps to ensure that traffic records assessments—which help states identify and prioritize improvements to traffic safety data systems—provide an in-depth evaluation that is complete and consistent in addressing all performance attributes across all state traffic safety data systems.<sup>13</sup> In 2011, NHTSA published a model set of 61 performance measures that address the six performance attributes for the six core data systems. For example, the model includes two performance measures recommended for assessing the timeliness of a state's crash database—the mean number of days taken to enter crash data into the database and the percentage of crash reports entered into the database within a certain number of days after the crash. According to NHTSA, states' use of these measures is voluntary, and states are encouraged to develop additional measures if needed. Establishing these measures was a step in NHTSA's overall plan for addressing our recommendation to ensure that traffic records assessments are complete and consistent.<sup>14</sup> These measures are now available to help Federal, state, and local officials monitor the quality of the data in state traffic records systems. The measures are currently being used to evaluate applications for Traffic Safety Information Systems Improvement grants and will also be incorporated into the associated assessments of data systems starting in Fiscal Year 2013.

#### **NHTSA Has Options to Improve the Safety Defect Recall Process**

As we previously reported, a number of challenges affect recall completion rates, including identifying and motivating affected vehicle owners and providing better information to the public about recalls.<sup>15</sup> Through our interviews with industry stakeholders, focus group participants, and NHTSA officials, we also identified several changes that NHTSA could implement to address these challenges, most of which would require limited resources.

##### *Modifying Safety Defect Notification Letters*

Focus group participants we interviewed reported that the safety defect notification letters they reviewed did not always convey a clear description of the defect or the severity of the defect. Such confusion could affect owners' willingness to take their vehicles in for service and, ultimately, reduce the completion rates for certain recall campaigns. Though some information is already required by law and regulations, NHTSA has the ability to add requirements.<sup>16</sup> In particular, focus group participants indicated that they might be more likely to respond to a notification letter that specifically indicated the defect affecting their vehicle and conveyed the urgency of the safety recall. NHTSA officials told us that although they are working toward increasing recall completion rates, they believe that adding content to the notification letters could be distracting and that the fundamental information needed to convey the defect, the actions the owner should take, and the remedy program is covered by the current requirements. As we previously reported, while we agree that adding lengthy and complex information to the notification letters is unnecessary, our focus groups have shown that describing the defect more clearly and adding content such as the owner's vehicle identification number (VIN) may encourage vehicle owners to comply with defect notifications.

##### *Publicizing Existing Resources and Making VINs Available to Vehicle Owners and the Public*

Our focus groups with vehicle owners also indicated that the public may not be aware of NHTSA's website, the primary method NHTSA uses to communicate information on recalls to consumers. In addition, a few industry associations told us that

<sup>13</sup>NHTSA technical teams or contractors conduct these assessments for states at least once every 5 years.

<sup>14</sup>In addition to establishing the performance measures, NHTSA recently finished a study that examined completed traffic records assessments and identified State concerns with the assessments and deficiencies in the technical aspects of the states traffic records assessment process. NHTSA has begun to update the Traffic Records Assessment procedures to incorporate recommendations from the study of assessments and address all performance measures across all State traffic safety data systems.

<sup>15</sup>GAO, *Auto Safety: NHTSA Has Options to Improve the Safety Defect Recall Process*, GAO-11-603 (Washington, D.C.: June 15, 2011).

<sup>16</sup>NHTSA requires defect notification letters to have: (1) a notation on the envelope that include the words "SAFETY," "RECALL," and "NOTICE" in all capital letters and in a font different from the address information; (2) a clear description of the defect; (3) an evaluation of the risk to vehicle safety related to the defect; and (4) a statement of measures to be taken to remedy the defect. 49 C.F.R. §577.5.

it would be useful to provide vehicle owners with the ability to search more easily for recall information using their VINs. As such, NHTSA has an opportunity to make vehicle owners and the public more aware of its website and to include more useful information. To do so, NHTSA could develop public service announcements and additional press releases or collaborate with auto manufacturers to develop methods of informing vehicle owners about available resources. NHTSA officials we spoke with agreed that additional efforts could be made to improve the public's awareness of *www.safercar.gov* and told us that the agency is currently redesigning its website to consolidate information so that consumers can more easily find information on vehicle 5-Star Safety Ratings and auto safety recall information.<sup>17</sup>

In addition, NHTSA officials told us they are interested in finding additional ways to improve vehicle owners' access to specific information about recalls, and to that end, they are in the process of purchasing software to facilitate a VIN-based search engine on NHTSA's website. However, the officials noted that developing a centralized VIN database would require significant additional resources to fully implement. In addition, the officials told us that VIN searches can present problems because vehicle owners may not enter VIN information correctly into a web search. NHTSA officials are currently exploring ways to address this issue.

#### *Using Data More Effectively*

Although NHTSA uses data it collects from manufacturers to track the average annual recall completion rate for all vehicle recall campaigns, NHTSA does not currently use its data to conduct aggregate analyses of completion rates across factors such as the manufacturer, component (such as steering), and vehicle type (such as car or pick-up truck). NHTSA also does not analyze completion rates based on the characteristics of defect notification letters, such as the format of the letter mailed to vehicle owners. Conducting these types of trend analyses could help NHTSA identify risk factors that might be associated with lower recall completion rates. In June 2011, we reported that our analysis of NHTSA's completion rate data for passenger vehicle recalls from 2000 through 2008 has shown that completion rates vary considerably across manufacturers and components and, to some extent, vehicle types.<sup>18</sup> Additionally, NHTSA officials told us that other factors may also affect completion rates, including the owner's perception of the severity of the defect and the age of a vehicle at the time of the recall.

NHTSA has the opportunity to analyze its data in ways that capture the underlying complexities and variation in the risk factors associated with lower completion rates. With that information, NHTSA could target new recall campaigns that include such risk factors and take additional steps to monitor those campaigns. NHTSA officials told us they are interested in improving the completion rates of their recalls. For example, NHTSA officials explained that they contacted a child safety seat manufacturer that had experienced higher rates of recall completion than other child safety seat manufacturers, in order to learn how that manufacturer was achieving a relatively higher completion rate. While this method—isolating outliers in the data, then following up with a particular manufacturer to investigate—is not a routine monitoring activity for NHTSA, it could use such an approach more systematically when it notices differences in recall rates in other areas identified in the data. NHTSA officials told us they were currently re-evaluating how they used their data and would consider ways that additional data analysis could help increase recall completion rates.

#### **Reauthorization Offers Opportunities to Improve Accountability and State Administration of Traffic Safety Grants and Enhance NHTSA's Recall Authority**

In reauthorizing traffic safety grant programs, Congress has opportunities to improve accountability by linking state performance with traffic safety grant awards and to reduce administrative challenges for states by streamlining the application process for incentive grants and allowing more flexibility in the use of grant funds. Additionally, in reauthorizing vehicle safety programs, Congress has an opportunity to increase consumers' awareness of recalls and protect consumers from unknowingly purchasing defective vehicles by modifying NHTSA's vehicle recall authority to help ensure that purchasers of used cars are aware of any defects that have not been remedied following a recall.

<sup>17</sup>NHTSA's 5-Star Safety Ratings measure the crashworthiness and rollover safety of vehicles. Five stars indicate the highest rating, one star indicates the lowest.

<sup>18</sup>See GAO-11-603 for additional information on our methodology.

*Accountability Mechanisms for Traffic Safety Grants*

The comprehensive set of traffic safety performance measures published by NHTSA and GHSA in 2008 is an important step in moving toward a more performance-based, data-driven grant structure. We have reported that linking grant funding with states' progress in achieving goals—as tracked through performance measures—could help improve accountability for Federal funds. However, while states are required to establish goals and related performance measures for high-priority program areas in annual safety plans, states' receipt of State and Community Highway traffic safety grant funds is not currently linked to progress toward those goals. In addition, criteria for continuing to receive traffic safety incentive grants are generally not tied to states' demonstrating safety improvements from the prior year. For example, while the Traffic Safety Information Systems Improvement grant requires that a state demonstrate progress in improving at least one system as a condition of continuing to receive the grant, the other incentive grants either include additional criteria that a state can meet to receive the grant or do not include any performance-based eligibility criteria at all. We have also noted that, given the scope of changes needed to transform Federal transportation programs—including moving toward a performance-based, data-driven approach for the programs—such transformation might need to be achieved on an incremental basis.<sup>19</sup> In reauthorizing traffic safety grant programs, Congress will be faced with deciding whether to move further toward a performance-based, data-driven grant structure by linking a state's receipt of grant funds to its achieving progress toward safety goals.

*State Challenges in Administering Traffic Safety Incentive Grants*

When we reviewed traffic safety incentive grants in 2008, state officials noted that NHTSA's traffic safety incentive grants are helping to improve traffic safety. However, these officials also identified challenges in applying for and using the grant funds. As we reported in 2008, each safety incentive grant has a separate application process, which has proved challenging for some states to administer, especially those with small safety offices.<sup>20</sup> The five applications are each due within a 1½ month period between June 15 and August 1. According to state highway safety officials, each application requires extensive amounts of staff time and resources. Although the application process is similar for each grant, having to complete it several times within a short time-frame presents administrative challenges for states. Several states, including those with larger safety programs and more staff and resources than those with smaller safety programs, expressed concerns about the demands the application process placed on their staff. According to NHTSA, the application requirements reflect statutory requirements; therefore, changing the application requirements would require Congressional action.

Officials in some states also said they would prefer more flexibility in using safety incentive grant funds. For example, officials in one state said they would like to use Motorcyclist Safety grant funds, which can be used only for training and increasing other motorists' awareness of motorcyclists, to build new training sites or expand the size of current sites. However, the grant does not allow them to do so, although it does allow states to lease or purchase new sites. Officials in another state also noted that the Child Safety and Booster Seat grant they received for one year was much larger than expected; they would have preferred to use the additional funding for other areas, such as the state's traffic safety information systems. Again, because of limitations on the uses of funds established in SAFETEA-LU, such flexibility would require Congressional action. However, allowing such flexibility could complicate NHTSA's ability to oversee states' use of grant funds and hold them accountable for using the Federal funds to achieve high-priority safety goals. One way to address this complication would be to allow states to use excess funds from a grant for another traffic safety issue only if the state can demonstrate sufficient progress toward achieving goals in the grant area.

*Auto Recall Process*

As we reported in June 2011, NHTSA cannot require used-car dealerships—which sold 11 million cars in 2009—to notify potential buyers of an outstanding safety defect, or require that the defect be remedied prior to sale. We recommended that the Secretary of Transportation direct the Administrator of NHTSA seek legislative au-

<sup>19</sup> GAO-08-400

<sup>20</sup> GAO, *Traffic Safety: Grants Generally Address Key Safety Issues, Despite State Eligibility and Management Difficulties*, GAO-08-398 (Washington D.C.: Mar. 14, 2008).

thority to ensure that potential buyers of used cars are notified of any outstanding recalls prior to sale.<sup>21,22</sup> NHTSA agreed to consider this recommendation.

The upcoming reauthorization of NHTSA programs provides an opportunity to explore options to increase consumer awareness of recalls and protect consumers from unknowingly purchasing defective vehicles. Requiring dealerships to notify potential buyers of a defect could result in increased awareness of recalls, particularly among the group of vehicle owners that, according to manufacturers and third-party vendors, are the hardest to identify through postal mail—namely second and third owners of a vehicle. However, an industry association and the used-car dealerships we spoke with noted that it is challenging to identify vehicles with outstanding recalls because there is no requirement for used-car dealerships to be notified of a safety defect through the use of first-class mail and there is no single source of information on safety recalls—such as a centralized VIN database—that can be accessed to determine if a car in a dealership’s possession has an outstanding recall. Although additional resources may be necessary for NHTSA to implement such a database, working with manufacturers, many of whom have already developed VIN search functions, could reduce NHTSA’s burden. NHTSA officials agreed that notifying used-car dealerships of recalls is a challenge, and although the agency has not sought this authority, it is in the process of purchasing software to facilitate a VIN-based search engine on its website. In addition, NHTSA officials indicated that in May 2011, the agency had identified several policy proposals to Congress on vehicle safety issues. One of these proposals would, with certain exceptions, prohibit used-car dealerships and rental companies from selling or leasing a vehicle subject to a recall before the repair has been made.

Chairman Pryor, Ranking Member Toomey, and members of the Subcommittee, this concludes my prepared statement. I would be happy to respond to any questions that you might have.

Senator PRYOR. Thank you, Ms. Fleming, and I want the rest of the panel to recognize that she set a very good example here by actually ending one minute early.

[Laughter.]

Senator PRYOR. Thank you very much for your statements.

Ms. Gillan?

**STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT,  
ADVOCATES FOR HIGHWAY AND AUTO SAFETY (ADVOCATES)**

Ms. GILLAN. Good afternoon, Chairman Pryor, Ranking Member Toomey, and members of the Subcommittee. I welcome this opportunity to appear today before you to strongly endorse on behalf of Advocates for Highway and Auto Safety, the Committee’s NHTSA authorization bill. The bill contains many needed provisions that will result in safer cars and safer drivers.

The Senate Commerce Science and Transportation Committee, under the leadership of Democrats and Republicans, has been responsible for some of the most significant advances in highway and auto safety, including airbags as standard equipment, and safety standards addressing tire performance, child restraints, rollover prevention, and the list goes on. These laws have literally saved thousands of lives, prevented millions of injuries, and saved billions of dollars in health care and societal costs.

Now, as we have heard today, traffic fatalities have decreased these past few years, and some would say that we have done enough. However, we must continue to build on these safety gains and move forward on the unfinished safety agenda.

<sup>21</sup>Franchised dealerships may sell or lease a new motor vehicle only if the defect has been remedied before delivery of the motor vehicle under the sale or lease. 49 U.S.C. § 30120.

<sup>22</sup>GAO–11–603.

Let me briefly highlight some important features of the bill and recommend the addition of others. Motor vehicle crashes are the cause of 95 percent of all transportation-related fatalities and 99 percent of all injuries, yet NHTSA's budget represents only 1 percent of the overall DOT budget. Only 1 percent.

A comprehensive reauthorization bill must include sufficient funding to allow NHTSA to fulfill its mission and pursue a cost effective safety agenda that will lead to many more lives being saved.

We commend the Committee for directing NHTSA to upgrade motor vehicle safety standards to address issues posed by the transition in the 21st century from a mechanical to an electronic vehicle fleet. In particular, the bill recognizes the need to have a minimum standard to ensure the reliability and performance of electronic systems that operate and control vital vehicle safety systems.

Additionally, enactment of other provisions in the bill will ensure that consumers have better access to agency information about safety-related data recalls and defects.

To promote public safety protection, we encourage the Committee to require rental car companies to repair known safety defects, as required in legislation soon to be introduced by Senator Schumer and Senator Boxer, rather than just notifying consumers about those defects. Used car dealers should also be included.

Other provisions addressing whistleblower protection, potential conflicts of interest by former NHTSA employees, and increased responsibility and accountability for corporate misbehavior are needed to ensure that Government safety investigations proceed without impediments.

In the last 20 years, improving safety by encouraging adoption of State traffic safety laws has been a hallmark of every single surface transportation bill. The Committee's bill continues this tradition.

Distracted driving and impaired driving needlessly kill tens of thousands of motorists every year. Advocates strongly endorse measures that encourage state adoption of laws banning texting while driving, and requiring the use of alcohol ignition interlock devices for all offenders.

We also support the ROADS SAFE Act directing NHTSA to carry out research on the feasibility of in-vehicle technologies to prevent alcohol-impaired driving.

For teens, as you mentioned in your opening remarks, motor vehicle crashes are the leading cause of death in every State, and every year more than 5,000 people die in crashes involving teen drivers. Those are the drivers, their passengers and those of us sharing the road with them.

Fortunately, there is an effective vaccine, but not all states are using it. Comprehensive graduated drivers license laws or GDL laws are incredibly effective in reducing teen crashes.

We strongly urge the Committee to include the incentive grant program contained in the STANDUP Act sponsored by Senator Gillibrand, Senator Klobuchar and others on this Committee.

Finally, the Committee continues to act on its concerns about child safety by directing agency actions with deadlines in developing a 10-year-old crash test dummy, providing child protection in

side-impact crashes, improving child restraint anchorage systems, and increasing seat belt usage with rear seat belt reminders.

And just yesterday, NHTSA held a meeting to discuss and address the risk of horrific death for young children inadvertently left behind in hot vehicles, and I commend this Committee for including the provision that will look at that issue and find a solution.

There is no question that all of these measures are needed and will significantly advance the safety of our children.

In conclusion, Advocates commends the Subcommittee Chair and all of its members for proposing a NHTSA authorization bill that will continue the legacy of saving lives, reducing injuries, and will be strongly embraced by the public.

Again, thank you for the opportunity to testify, and I'm happy to answer your questions.

[The prepared statement of Ms. Gillan follows:]

PREPARED STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT,  
ADVOCATES FOR HIGHWAY AND AUTO SAFETY (ADVOCATES)

**Introduction**

Good afternoon Chairman Pryor, Ranking Member Toomey, and members of the Senate Subcommittee on Consumer Protection, Product Safety, and Insurance. I am Jacqueline Gillan, Vice President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, and insurers and insurance agents that promotes highway safety through the adoption of safety policies and regulations, and the enactment of state and Federal traffic safety laws. Advocates is a unique coalition dedicated to improving traffic safety by addressing motor vehicle crashes as a public health issue.

The Senate Commerce, Science, and Transportation Committee, under the leadership of Democrats and Republicans, has been responsible for some of the most significant advances in highway and auto safety beginning with the drafting and passage of legislation in the early 1970s leading to the creation of the National Highway Traffic Safety Administration (NHTSA). In the past 20 years this Committee has passed other bills requiring airbags as standard equipment in the front seat of all passenger vehicles as well as directing agency action on numerous vehicle safety standards on tire safety, child restraints, rollover protection, anti-ejection prevention, roof crush strength, and side impact protection. Furthermore, this Committee has worked tirelessly to ensure the agency's decisions and deliberations on safety issues are transparent and that consumers have access to critical and essential information about vehicle safety and defects.

I welcome this opportunity to appear before you today to strongly endorse the Committee's draft reauthorization bill of NHTSA. The bill contains many needed safety provisions to continue improvement of highway safety and reduction of traffic fatalities. I discuss many of these provisions in my testimony. I also raise several important provisions that are not included in the bill but that are part of the unfinished safety agenda and are worthy of your time and leadership including: an incentive grant program to encourage state adoption of teen driver safety, or graduated driver license (GDL) laws; requiring an upgrade of the safety standard for seat back strength; and, stronger efforts to encourage adoption of all-rider motorcycle helmet laws in states.

**Lives Saved by Safety Systems and Programs**

Laws issued by Congress, including those that came out of this Committee, and rules issued by NHTSA requiring safety standards and technologies have saved thousands of lives. NHTSA studies show that since 1960 motor vehicle safety technologies have saved more than 328,500 lives.<sup>1</sup> For example, frontal air bags, a safety technology that this Committee championed in 1991,<sup>2</sup> saved 2,381 lives in 2009

<sup>1</sup>*Lives Saved by the Federal Motor Vehicle Safety Standards and Other Vehicle Safety Technologies, 1960-2002*, DOT HS 809 833, National Highway Traffic Safety Administration (NHTSA) (Oct. 2004).

<sup>2</sup>Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Title II, Part B, § 2508, Pub. L. 102-240 (Dec. 18, 1991).

and have saved more than 30,000 people since 1991.<sup>3</sup> Seat belts saved the lives of an estimated 12,713 people over the age of four in 2009, and more than 72,000 lives in the years from 2005 through 2009.<sup>4</sup> Child restraints saved the lives of 309 children age four and under in 2009 and more than 9,300 young children since 1975.<sup>5</sup> These safety measures have the potential to save many additional lives and prevent costly injuries if they are used to protect everyone at risk who needs them. For example, in 2009 if all passenger vehicle occupants age four and over had worn seat belts, an additional 3,688 lives could have been saved, and a 100 percent motorcycle helmet use rate would have saved an additional 732 lives in motorcycle crashes.<sup>6</sup> In addition to laws requiring safety technologies, laws such as the 21-year-old-minimum-drinking-age law saved 623 lives in 2009, and 3,940 lives from 2005–2009.<sup>7</sup>

A comprehensive NHTSA reauthorization bill with adequate funding and requiring additional, reasonable safety standards will allow NHTSA to pursue a robust regulatory safety agenda that will lead to many more lives being saved.

### **Sufficient Funding for NHTSA is Essential**

NHTSA's funding and staffing levels have suffered over the years to the point where the agency, which is responsible for 95 percent of transportation-related fatalities and 99 percent of transportation injuries, receives only 1 percent of the overall U.S. Department of Transportation (DOT) budget. NHTSA is responsible for the safety of 300 million Americans who drive or ride in or around some of the nearly 250 million registered motor vehicles that use our Nation's highways.<sup>8</sup> Even with the recent downturn in motor vehicle traffic fatalities, 33,808 people were killed and more than 2.2 million injured in 2009 on our highways at an annual cost of more than \$230 billion.<sup>9</sup> Motor vehicle crashes are the leading cause of death for all Americans ages 5 to 34.<sup>10</sup> In order to maintain safety gains and to improve on the agency's efforts in detecting and investigating safety threats, a justified and necessary increase in funding is essential.

The current agency budget for motor vehicle safety activities and research is a small portion of NHTSA's overall budget. It is totally inadequate in the face of the agency's mission and safety responsibilities. Current funding for the vehicle safety program budget is only about \$140 million for Fiscal Year 2011.<sup>11</sup> While the current Administration has increased agency and staffing in the past 2 years, NHTSA remains woefully under-resourced. The agency ability to keep up with technology and crash and injury trends is imperiled by lack of sufficient resources.

The agency budget for vehicle safety should reflect the important life-saving mission of the agency. In order to provide a solid foundation for NHTSA to address the safety of current and future vehicles, I urge the Committee to assure this small agency is given the funds needed to do its job. Laws and programs administered by NHTSA are responsible for saving an estimated 350,000 lives since 1975.<sup>12</sup> NHTSA authorization for the motor vehicle safety program should be increased to \$240M in FY2012, and \$280M in FY2013, in line with what the Committee proposed in last year's Motor Vehicle Safety Act of 2010.<sup>13</sup>

#### *Recommendation:*

- *Increase NHTSA's funding level for the vehicle safety program to \$240M in FY2012, and \$280M in FY2013.*

<sup>3</sup>*Traffic Safety Facts 2009*, Lives Saved in 2009 by Restraint Use and Minimum-Drinking-Age Laws, Back Cover, DOT HS 811 383, National Highway Traffic Safety Administration (NHTSA) (Sept. 2010).

<sup>4</sup>*Traffic Safety Facts 2009*, *op cit.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>State Motor Vehicle Registrations, 2009, Federal Highway Administration (FHWA) available at <http://www.fhwa.dot.gov/policyinformation/statistics/2009/pdf/mv1.pdf>, last accessed on July 25, 2011.

<sup>9</sup>*The Economic Impact of Motor Vehicle Crashes 2000*, DOT HS 809 446, NHTSA (May 2002).

<sup>10</sup>"Injury Prevention and Control: Motor Vehicle Safety," Centers for Disease Control and Prevention, May 2011, available at <http://www.cdc.gov/motorvehiclesafety/index.html>.

<sup>11</sup>Comparative Statement of New Budget Authority, National Highway Traffic Safety Administration, FY 2012 Budget Request, Exhibit II-1, available at <http://www.dot.gov/budget/2012/budgetestimates/nhtsa.pdf>.

<sup>12</sup>*Traffic Safety Facts 2009*, *op cit.*

<sup>13</sup>S. 3302, 111th Cong., 2nd Sess.

## Highway Safety

### *Traffic Safety and Incentive Grant Programs*

Over the past 15 years, through three separate authorization laws,<sup>14</sup> the Nation has spent billions of dollars on traffic safety programs comprised of the Highway Safety Programs (Section 402)<sup>15</sup> and various issue-specific incentive grant programs.<sup>16</sup> The dollar amounts are huge: more than \$3.5 billion has been authorized for highway safety and various incentive grant programs in the past 10 years. The highway safety and incentive grant programs have supported many worthwhile efforts, especially state and local enforcement campaigns that have been the cornerstone of local safety initiatives. Also, several states have adopted optimal safety laws in response to the incentive grant programs. In part, as a result of these efforts, NHTSA estimates that many lives have been saved through seat belt and child restraint use.<sup>17</sup> Yet, no discernable major progress was made in bringing down the total number of traffic deaths until 2008 when the Nation's economy began to falter. While these programs are the foundation of Federal and state traffic safety efforts, there is a need for establishing performance measures and better oversight.

### *Lack of Performance Measures and Effective Oversight*

The Section 402 highway safety grant program has been the traditional means of providing the states with Federal funding to support state and local safety initiatives, education and enforcement efforts. Over time, however, states' insistence on providing greater program flexibility, both in terms of funding and performance, has complicated program accountability and oversight. By 1998, NHTSA had "adopted a performance-based approach to oversight, under which the states set their own highway safety goals and targets. . . ."<sup>18</sup> Even with each state developing an annual safety plan, weaknesses in state plans were revised through subsequent "improvement plans" but agency regional offices made limited and inconsistent use of the revised plans.<sup>19</sup> In fact, Congress had to require that NHTSA review each state highway safety program at least once every 3 years and perform other standard oversight procedures.<sup>20</sup>

For this reason, Advocates supports the need for NHTSA to be accountable for the oversight of the grant program and we support the provision in the bill that would ensure regular reviews of the expenditure of program funds. (Sec. 112).

### *Recommendation:*

- *Require NHTSA to conduct reviews of state highway safety grant programs on a regular schedule and at least once every 3 years.*

<sup>14</sup>The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (Aug. 10, 2005); the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178 (June 9, 1998); and, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 (Dec. 18, 1991).

<sup>15</sup>23 U.S.C. § 402.

<sup>16</sup>SAFETEA-LU included incentive grant programs for occupant protection, safety belt performance, traffic safety information systems, alcohol-impaired driving countermeasures, motorcyclist safety, and child safety and child booster seat safety.

<sup>17</sup>*Traffic Safety Facts 2009, op cit.*

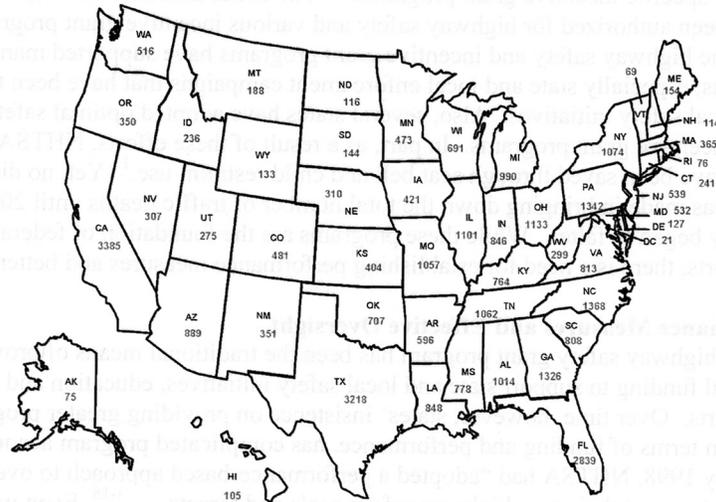
<sup>18</sup>*Highway Safety: Better Guidance Could Improve Oversight of State Highway Safety Programs*, p. 1, GAO-03-474, Government Accountability Office (GAO) (Apr. 2003).

<sup>19</sup>*Id.*, p. 4.

<sup>20</sup>23 U.S.C. § 412; enacted as Title II, § 2008(a), SAFETEA-LU, Pub. L. 109-59 (Aug. 10, 2005).

### Teen Driver Safety Incentive Grant Program

#### OVER 36,000 FATALITIES IN MOTOR VEHICLE CRASHES INVOLVING TEEN DRIVERS 2005-2009



Sources: Advocates for Highway and Auto Safety;  
National Highway Traffic Safety Administration

March 2011

Motor vehicle crashes remain the leading cause of death for teenagers between 15 and 20 years of age, killing more young people than homicide, suicide, cancer, and birth defects combined.<sup>21</sup> A total of 5,623 people were killed in the fatal crashes involving young drivers in 2009, including young drivers themselves, their passengers, pedestrians and the drivers and occupants of other vehicles.<sup>22</sup> Since 1999, more than 90,000 fatalities have occurred nationwide in motor vehicle crashes involving teen drivers.<sup>23</sup> Additionally, teen driving crashes have been estimated to cost society more than \$34 billion annually.<sup>24</sup>

Fortunately, there is a proven method for reducing teen driving crashes. Graduated driver license (GDL) laws phase in driving privileges over time, using restrictions on nighttime driving, teen passengers, and use of cell phones. Research has shown the effectiveness of strong state GDL programs in reducing teen driver crashes, saving lives, and lowering societal costs.

Despite the proven success of GDL laws, state laws vary widely in strength. As a result, millions of novice teen drivers lack some of the most basic protections that could prevent teen crashes and save lives. It is time for Congress to intercede in this public health crisis to encourage state adoption of strong, comprehensive GDL laws.

Legislation that takes this action has already been introduced in Congress. The Safe Teen and Novice Driver Uniform Protection (STANDUP) Act, S. 528, requires state GDL laws to meet proven minimum standards. The bill also provides for \$25 million per year for 3 years, funded through the Highway Trust Fund, as incentive grants to accelerate state action to adopt these lifesaving laws.

<sup>21</sup> *10 Leading Causes of Death, United States, 2007, All Races, Both Sexes, Age Groups 15–19*, retrieved from Centers for Disease Control and Prevention, Injury Prevention and Control: Data and Statistics (WISQARS) Leading Causes of Death Reports, 1999–2007, <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.

<sup>22</sup> *Traffic Safety Facts 2009, Young Drivers*, DOT HS 811 400, National Highway Traffic Safety Administration (NHTSA).

<sup>23</sup> *Id.*; *Traffic Safety Facts 2008, Young Drivers*, DOT HS 811 169, National Highway Traffic Safety Administration (NHTSA); *Traffic Safety Facts Research Note, Fatal Crashes Involving Young Drivers*, DOT HS 811 218, National Highway Traffic Safety Administration (NHTSA).

<sup>24</sup> *The 2006 Societal Cost of Crashes Involving Drivers 15–17 Years Old*, Pacific Institute for Research and Evaluation, Dec. 2007.

These proposed incentives are a tiny fraction of the overall Highway Trust Fund resources: the \$25 million annual cost of incentives is less than one tenth of 1 percent (0.07 percent) of the Average Annual Total Receipts (\$33.41 billion) coming into the Highway Trust Fund Highway Account throughout the past 10 years. Furthermore, the \$25 million annual cost of the proposed incentives is less than one tenth of 1 percent (0.07 percent) of the costs associated with crashes involving teen drivers ages 16 and 17 (\$34.4 billion in 2006).

We strongly urge the Committee to include teen driving incentive grants in the NHTSA authorization legislation.

*Recommendation:*

- *Include the teen driver safety incentive grant program from S. 528.*

*Impaired Driving Countermeasures—Grants and Research*

Drinking and driving continues to be a national scourge on our Nation's highways. While a number of measures have successfully reduced the historically high levels of carnage caused by drunk driving back in the 1980s, nearly a third of traffic deaths occur in alcohol-involved crashes.<sup>25</sup> Although the total number of alcohol-related crash deaths declined in 2009 to 10,839 people, 7 percent less than in 2008, alcohol involved crashes still accounted for 32 percent of all traffic fatalities.<sup>26</sup> Except for the recent 2008–2009 dip in fatalities during the recession, the annual level of alcohol-involved crash fatalities did not decline significantly in the prior 10 years.<sup>27</sup> Previous decreases in fatalities were in large measure due to a wave of enactment of state anti-impaired driving laws, serious enforcement of those laws and educational efforts by MADD and others to raise awareness of the problem. In order to continue to reduce the number of needless alcohol related crash deaths suffered on our highways each year, and to maintain the fatality reductions of recent years, more must be done to keep impaired drivers off our streets and roads. We think technology can help solve this problem.

Advocates strongly supports requiring the use of ignition interlocks for all drunk driving offenders in every state to prevent them from starting their vehicle when they are impaired. An alcohol ignition interlock device (IID) is similar to a breathalyzer used by police to determine if a driver has an illegally high blood alcohol concentration (BAC) level. The IID is linked to the vehicle ignition system and requires a driver who has been previously convicted of an impaired driving offense, and required by a court to install an IID, to breathe into the device. If the analyzed result exceeds the programmed BAC legal limit for the driver, the vehicle will not start. A majority of Americans support the use of IIDs to keep impaired drivers off the road. In 2009, a survey conducted by the Insurance Institute for Highway Safety (IIHS) found that 84 percent of respondents said that IIDs for convicted drunk drivers is a good idea.<sup>28</sup> Advocates also strongly supports legislation introduced by Senator Lautenberg (D–NJ), the Drunk Driving Repeat Offender Prevention Act of 2011, S. 273, that encourages state adoption of IID technology and includes potential sanctions for states that do not act in a timely manner. Advocates commends the Committee for including incentive grants for states that adopt and implement alcohol ignition interlock laws in its NHTSA reauthorization bill.

In addition, Advocates supports legislation introduced by Senator Udall (D–NM), the Research of Alcohol Detection Systems for Stopping Alcohol-related Fatalities Everywhere (ROADS SAFE) Act, S. 510, and the Committee's inclusion of that bill's language in the NHTSA reauthorization legislation. This will direct NHTSA to carry out a research effort to explore the benefits and challenges of in-vehicle technology to prevent alcohol-impaired driving. (Sec. 111). Future technology can be built into vehicles to detect alcohol and prevent drivers with illegal levels of alcohol in their blood stream from operating a motor vehicle. This type of technology could work without invasive testing or intrusive detection methods, and would not engage unless the driver's BAC level is above the legal limit. This project holds realistic hope that thousands of annual deaths can be prevented and we should support research to make this technology a reality.

*Recommendation:*

- *Congress should adopt reauthorization legislation that funds:*

<sup>25</sup> *Alcohol-Impaired Driving*, Traffic Safety Fact Sheets 2009, at 1, DOT HS 811 385, NHTSA (2010).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> 2011 Roadmap to State Highway Safety Laws, p. 30, Advocates for Highway and Auto Safety (Jan. 2011).

- Incentive grant program to encourage state adoption of ignition interlock devices for all offenders; and,
- Research to develop an automatic, non-invasive in-vehicle driver alcohol detection system to prevent persons who are legally intoxicated from driving motor vehicles.

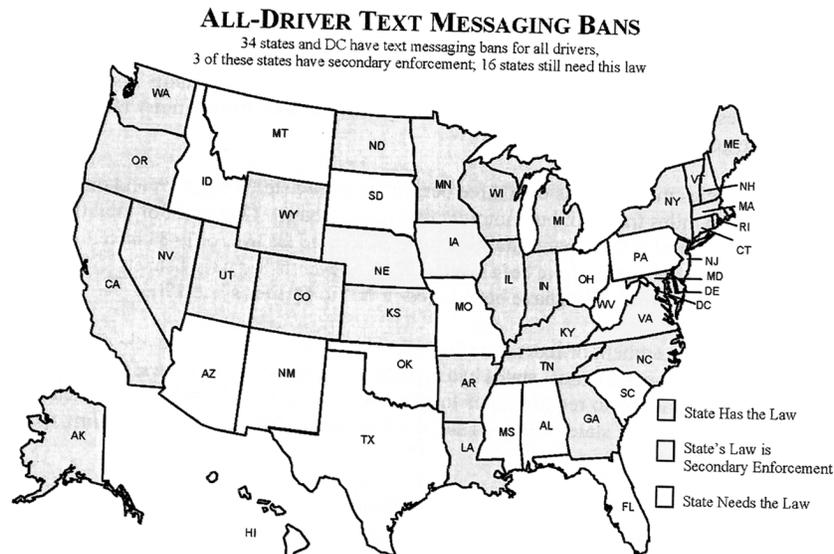
#### Distracted Driving Grants

Although various kinds of distractions have been a part of driving since the automobile was invented, the emergence of personal electronic communications devices that can readily be used while operating a vehicle has presented a whole new category of driver distraction and danger. The growing use of built-in and after-market or nomadic devices by drivers began with cell phone use but has proliferated through a myriad of personal electronics that allow drivers to access the Internet, perform office work and to send and receive text messages while driving. As a result, in 2009, there were an estimated 5,474 fatalities and 448,000 injuries in crashes where driver distraction was a factor.<sup>29</sup>

Text messaging while driving poses the most extreme and evident crash risk danger. Diversion of attention from the driving task to input or read a text message clearly interferes with drivers' ability to safely operate a motor vehicle. A 2009 study found that text messaging while driving increases the risk of a safety-critical event by more than 23 times compared to drivers who are focused on the driving task.<sup>30</sup>

A mounting number of research studies and data show that the use of a mobile telephone while driving, whether hand-held or hands-free, is equivalent to driving under the influence of alcohol at the threshold of the legal limit of .08 percent blood alcohol concentration (BAC). Hand-held mobile phone use and dialing while driving require drivers to divert attention from the road and from the driving task, yet hands-free phone use has also been shown to involve cognitive distraction that is no less dangerous in terms of diverting attention from the driving task and the potential risk of crash involvement.

To date, 34 states and the District of Columbia have enacted all-driver text messaging bans, although 3 of these states have secondary enforcement, but 16 states have no such law.<sup>31</sup>



<sup>29</sup> *An Examination of Driver Distraction as Recorded in NHTSA Databases*, Traffic Safety Facts Research Note, at 1, DOT HS 811 216, NHTSA (Sept. 2009).

<sup>30</sup> Olson, *et al.*, *Driver Distraction in Commercial Motor Vehicle Operations*, Virginia Tech Transportation Institute (2009).

<sup>31</sup> "Cellphone and Texting Laws," Insurance Institute for Highway Safety (Jul. 2011), available at <http://www.iihs.org/laws/cellphonelaws.aspx>.

The Administration has taken some good first steps to reverse the rising tide of crashes that involve distracted driving as a factor. The Secretary of Transportation has made distracted driving a number one priority and convened two national conferences on distracted driving<sup>32</sup> in an effort to keep the focus on this safety problem at the national level. Just after the first such conference, President Obama issued a proclamation banning text messaging by Federal employees,<sup>33</sup> and the DOT took measures to curb distracted driving in commercial vehicles.<sup>34</sup> However, the problem of distracted driving in commercial vehicles is not limited only to text messaging. For that reason, Advocates filed a petition for rulemaking with the Federal Motor Carrier Safety Administration (FMCSA), which regulates commercial vehicle operations, seeking a review of all types of electronic devices used in commercial vehicles, not just those that support text messaging.<sup>35</sup>

Advocates welcomes the proposed Distracted Driver Grant program (Sec. 108) to encourage states to adopt primary enforcement laws to prohibit drivers from sending and receiving text messages while operating a motor vehicle, and put prohibitions on cellular telephone use by drivers who are under 18 years of age. These are reasonable safety measures that should be the law in every state and we support the need to encourage adoption of these laws.

*Recommendation:*

- *Include an incentive grant program to encourage enactment of state laws that prohibit distracted driving.*

*All Rider Motorcycle Helmet Laws*

NHTSA estimates that 80 percent of motorcycle crashes injure or kill a rider.<sup>36</sup> 2008 was the 11th straight year in which motorcycle crash fatalities increased, rising to 5,290 motorcyclists killed and 96,000 injured.<sup>37</sup> This is more than double the motorcycle fatalities in 1998 and a level not seen since 1981.<sup>38</sup> While motorcycle fatalities finally decreased to 4,462 in 2009, that figure still represents fatality numbers that are more than double what the death toll was in 1997, the last year in which motorcycle fatalities experienced a decline.<sup>39</sup> While fatality and injury rates for other types of vehicles have dropped over the years, the fatality and injury rates for motorcycles have generally been on the rise.<sup>40</sup>

At present, motorcycles make up less than 3 percent of all registered vehicles and only 0.4 percent of all vehicle miles traveled, but motorcyclists accounted for 13 percent of total traffic fatalities and 19 percent of all occupant fatalities.<sup>41</sup> Helmets saved the lives of 1,483 motorcyclists in 2009 and 732 more in all states could have been saved if all motorcyclists had worn helmets.<sup>42</sup> NHTSA estimates that 148,000 motorcyclists have been killed in traffic crashes since 1966.<sup>43</sup>

In the years following enactment of Federal traffic safety statutes, annual motorcycle rider deaths were much lower in part because most states had all-rider motorcycle helmet laws. Congress used the power of the sanction to require states to

<sup>32</sup> Distracted Driving Summit, September 30–October 1, 2009 (Washington, D.C.) and Distracted Driving Summit, September 21, 2010 (Washington, D.C.), information last accessed on Sept. 20, 2010 and available at <http://www.distraction.gov/2010summit/>.

<sup>33</sup> *Federal Leadership on Reducing Text Messaging While Driving*, Executive Order No. 13513 (Oct. 1, 2009), 74 FR 51225 (Oct. 6, 2009).

<sup>34</sup> See *Limiting the Use of Wireless Communications Devices*, Final Rule, 75 FR 59118 (Sept. 27, 2010); *Regulatory Guidance Concerning the Applicability of the Federal Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle Drivers*, Notice of Regulatory Guidance, 75 FR 4305 (Jan. 27, 2010).

<sup>35</sup> *Distracted Driving Petition for Rulemaking: Requesting Issuance of a Rule to Consider Prohibiting or Restricting the Use of Electronic Devices During the Operation of Commercial Motor Vehicles*, dated September 24, 2009, filed by Advocates for Highway and Auto Safety with the FMCSA Administrator.

<sup>36</sup> Motorcycle Safety, National Highway and Traffic Safety Administration, DOT HS 807 709 (Oct. 1999), available at [http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle/moto\\_safety.html](http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle/moto_safety.html).

<sup>37</sup> *Motorcycles*, Traffic Safety Facts 2008, DOT HS 811 159, at 1, NHTSA (2009).

<sup>38</sup> *A Highway Safety Countermeasures Guide for State Highway Safety Offices*, DOT HS 810 891, p. 5–4, NHTSA (3d ed., Jan. 2008) (NHTSA Safety Countermeasures Guide).

<sup>39</sup> *Traffic Safety Facts 2008*, Table 10, p. 28.

<sup>40</sup> *Motorcycles*, Traffic Safety Facts 2008, at 1.

<sup>41</sup> *Highlights of 2009 Motor Vehicle Crashes*, pp. 1 & 3.

<sup>42</sup> 2011 Roadmap to State Highway Safety Laws, Advocates for Highway and Auto Safety, Jan. 2011, p. 17.

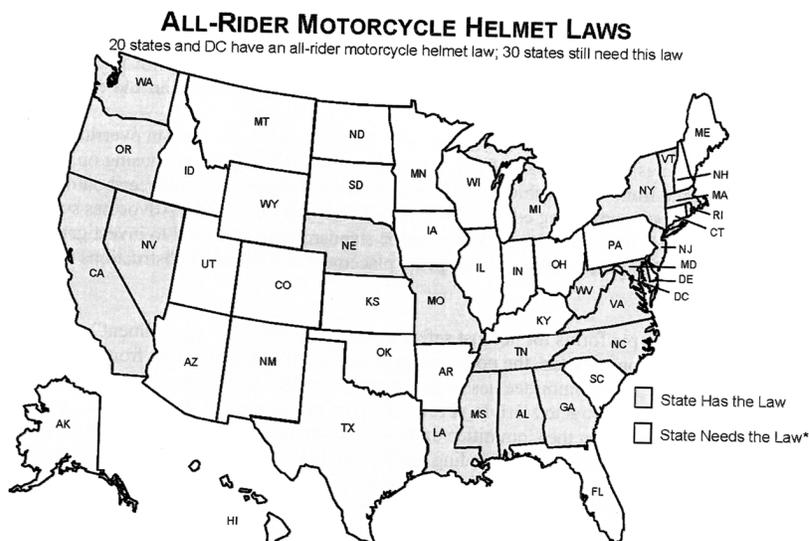
<sup>43</sup> *Motorcycles*, Traffic Safety Facts 2008, at 3.

enact helmet use laws.<sup>44</sup> When the sanction was repealed by Congress, the states followed suit with more than half the states repealing their helmet laws.<sup>45</sup>

Today, only 20 states and the District of Columbia require helmet use by all motorcycle riders. The map below indicates the status of the law in each state. In 2007, the NTSB recommended that all states without an all-rider helmet law should adopt one.<sup>46</sup> Research conclusively and convincingly shows that all-rider helmet laws save lives and reduce medical costs. While helmets will not prevent crashes from occurring, they have a significant and positive effect on preventing head and brain injuries during crashes. These are the most life-threatening and long-term injuries as well as the most costly. In 1992, California's all-rider helmet law took effect resulting in a 40 percent drop in its Medicaid costs and total hospital charges for medical treatment of motorcycle riders.<sup>47</sup>

*Recommendation:*

- Include a provision that requires states to adopt all-rider motorcycle helmet laws.



## Motor Vehicle Safety Standards

### *Motor Vehicle Safety Standards for the 21st Century*

I now turn to the need for NHTSA, in the second decade of the twenty-first century, to upgrade its motor vehicle safety standards to address issues posed by the transition from a mechanical to an electronic vehicle fleet. Nearly every aspect of modern motor vehicles depends on electronics and computerized systems but there are no minimum standards to ensure that safety systems reliant on electronics will not malfunction or degrade prematurely. In the last session of Congress, this Committee marked up the Motor Vehicle Safety Act of 2010<sup>48</sup> which included many provisions aimed at protecting electronic-based safety systems. The concerns raised during a series of hearings held by this Committee,<sup>49</sup> and by the House Energy and

<sup>44</sup>The National Motor Vehicle and Traffic Safety Act of 1966, Pub. L. 89-563 (Sept. 9, 1966).

<sup>45</sup>See e.g., *Evaluation of the Reinstatement of the Helmet Law in Louisiana*, DOT HS 810 956, NHTSA (May 2008), available at [http://www.nhtsa.gov/portal/nhtsa\\_static\\_file\\_down\\_loader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/810956.pdf](http://www.nhtsa.gov/portal/nhtsa_static_file_down_loader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/810956.pdf).

<sup>46</sup>NTSB Recommendations H-07-38, available at [http://www.ntsb.gov/Recs/letters/2007/H07\\_38.pdf](http://www.ntsb.gov/Recs/letters/2007/H07_38.pdf), and H-07-39, available at [http://www.ntsb.gov/Recs/letters/2007/H07\\_39.pdf](http://www.ntsb.gov/Recs/letters/2007/H07_39.pdf).

<sup>47</sup>*Id.*

<sup>48</sup>Motor Vehicle Safety Act of 2010, Report No. S. 111-381 (Dec. 21, 2010).

<sup>49</sup>"S. 3302, *The Motor Vehicle Safety Act of 2010*," Hearing before the Senate Committee on Commerce, Science, and Transportation, May 19, 2010; "Hearing to Review the Department of Transportation Fiscal Year 2010 Budget," Hearing before the Senate Committee on Commerce,

Commerce Committee,<sup>50</sup> led to a number of conclusions and recommendations regarding what additional standards are needed to improve the safety performance of motor vehicles and what procedural changes are necessary to improve the performance of NHTSA.

With respect to vehicle safety, it is evident that electronic systems are relied on for nearly every vehicle function from power windows to airbag deployment to brake and throttle controls. For this reason, a minimum standard is needed to ensure that the electronic systems that operate and control vehicle safety systems are shielded to protect against electromagnetic or other forms of interference and from damage and deterioration during routine use, wear and tear. For this reason, Advocates supports both a minimum safety standard to govern the electronics that are built into motor vehicles (Sec. 504), as well as establishment of a center by NHTSA for electronics knowledge and expertise (Sec. 501) that can leverage the agency's access to information and engineers trained in vehicle-based electronics, software and related disciplines. The importance of these areas of expert knowledge will only become more critical as vehicle safety functions and performance become more dependent on computerization and electronics.

The Committee's hearings also pointed to the need for a fail-safe brake system override that can cause motor vehicles to come to a full stop regardless of whether the inputs causing unintended acceleration come from faulty vehicle controls or the driver. Brake performance should always take precedence over conflicting commands to accelerate. For this reason, Advocates supports the direction to NHTSA to require a brake override standard (Sec. 502) and to investigate the need for additional requirements to govern pedal placement and potential obstructions (Sec. 503).

As vehicles become platforms for not just safety systems but also for "infotainment" and work-related communications devices, the potential for diversion of driver attention from the driving task has increased. This Committee has been a leader in trying to eliminate driver distractions, having marked up the Distracted Driving Prevention Act of 2009, S. 1938, in the 111th Congress and including provisions in the Committee draft NHTSA authorization bill. The Committee again is promoting safe driving by including a provision to prevent drivers from viewing video monitors and screens for entertainment purposes while driving. (Sec. 507). It is a fundamental premise of driving safety that the driver should be paying attention to the road and traffic while driving, not engaging in other activities or distractions. The availability of viewing screens needlessly adds another diverting temptation that should not be permitted when operating a motor vehicle. For this reason, the Federal Motor Carrier Safety Regulations (FMCSR) have long prohibited commercial motor vehicle drivers from having a television screen or "other means of visually receiving a television broadcast" in the front seat of the vehicle.<sup>51</sup> We support this measure as a reasonable and commonsense limitation on the driver while operating a motor vehicle.

Advocates also strongly supports the Committee's commitment to future safety research by including a requirement to upgrade the current Federal regulation on Event Data Recorders (EDRs). (Sec. 506). EDRs will provide an immense wealth of objective vehicle information in the event of a crash that can be used to help in crash reconstruction and in aiding research to develop more effective crash avoidance and crashworthiness countermeasures in the future.

*Recommendations:*

- *Congress should adopt reauthorization legislation that:*
  - *Establishes safety standards for vehicle stopping distance, brake override and electronic systems performance;*
  - *Prohibits electronic screens from displaying visual entertainment programs that are visible to the driver;*

Science, and Transportation, March 4, 2010; "Toyota's Recalls and the Government's Response," Hearing before the Senate Committee on Commerce, Science, and Transportation, March 2, 2010.

<sup>50</sup> "Update on Toyota and NHTSA's Response to the Problem of Sudden Unintended Acceleration," Hearing before the Subcommittee on Oversight and Investigations, House Energy and Commerce Committee, May 20, 2010; "Legislative Hearing on H.R. 5381, the Motor Vehicle Safety Act," hearing before the Subcommittee on Commerce, Trade, and Consumer Protection, House Energy and Commerce Committee, May 6, 2010; "NHTSA Oversight: The Road Ahead," before the Subcommittee on Commerce, Trade, and Consumer Protection, House Energy and Commerce Committee, March 11, 2010; and, "Response by Toyota and NHTSA to Incidents of Sudden Unintended Acceleration," before the Subcommittee on Oversight and Investigations, House Energy and Commerce Committee, Feb. 23, 2010.

<sup>51</sup> 49 C.F.R. § 393.88.

- *Considers the need to adopt safety standards for pedal placement and push-button ignition systems;*
- *Requires event data recorders on all new passenger vehicles and revises the requirements of the current event data recorder regulations; and,*
- *Creates at NHTSA a center for electronics, software and engineering expertise.*

*NHTSA's Authority to Address Safety and Consumer Issues Should Be Expanded*

Mr. Chairman, NHTSA is over 40 years old<sup>52</sup> and should be given authority and powers commensurate with the agency's experience and mandate. This responsibility should be coupled with powers that permit the agency to fully perform its duties and allow the agency to exercise its enforcement authority to increase compliance. For this reason Advocates supports amending several Federal laws to provide NHTSA with enhanced authority to address existing safety problems with 21st century approaches that will allow the agency to leverage its resources to protect the American public.

For this reason we support amending Federal law to permit NHTSA to fully participate in traffic and vehicle safety legislative discussions that take place in state capitols.<sup>53</sup> (Sec. 409). The expertise garnered through Federal safety programs and activities, and knowledge derived from national data collection, should be directly shared by NHTSA with state and local officials considering relevant legislation. In a modern age of instant communications and information search engines, it is implausible that any Federal official providing data and statistical results on a safety issue could overcome the will and access to information of state and local officials or, by so doing, interfere with the legislative process on the state and local levels.

Likewise, we believe that after more than 30 years it is time to rescind some or all of the restriction that prohibits NHTSA from allowing seat belt reminders that continue to sound after the first 8 seconds of vehicle operation, or that prohibits manufacturers from voluntarily introducing front and rear seat belt reminder systems into their vehicles.<sup>54</sup> (Sec. 302). The belt reminder "buzzer" restriction has held back technology and innovation that has been used to save lives in Europe and around the world. The result has been that belt use rates in this country are lower than they could or should be. Manufacturers are even graded on the sophistication of their seat belt reminder systems under the European vehicle safety consumer rating system called EURO NCAP.<sup>55</sup> Although the New Car Assessment Program (NCAP) consumer ratings system was invented in the U.S., by NHTSA, the agency does not include seat belt reminder systems in its U.S. ratings.

We also concur that NHTSA needs additional authority regarding odometer fraud and the importation of vehicles and vehicle equipment. (Sections 305–307). As we note elsewhere, the use of electronic systems has changed most aspects of modern motor vehicles including odometers and the methods used to commit odometer fraud by rolling back vehicle odometers. The wording of the governing statutory provision,<sup>56</sup> as well as how the information is disclosed and the penalties for odometer fraud<sup>57</sup> all need to be updated.

*Recommendations:*

- *Congress should adopt reauthorization legislation that:*
  - *Permits NHTSA to share its expertise with state and local legislatures;*
  - *Allows NHTSA to require and vehicle manufacturers to provide advanced seat belt use reminder systems for all designated seating positions in passenger vehicles; and*
  - *Extends NHTSA's authority to combat odometer fraud.*

*Greater Transparency and Accountability is Needed to Protect Consumers*

During hearings held by this Committee regarding the adoption of the Motor Vehicle Safety Act of 2010, numerous problems that impede and hinder the public's right to know about vehicle defects, unfortunately, came to light. Among the issues that were discovered as part of the investigation of how the agency handled the con-

<sup>52</sup>NHTSA was formally established by the Highway Safety Act of 1970.

<sup>53</sup>49 U.S.C. § 30105.

<sup>54</sup>49 U.S.C. §§ 30122(d) and 30124.

<sup>55</sup>The European New Car Assessment Program (NCAP) includes ratings for seat belt reminder systems as part of the Safety Assist category. Last accessed on July 22, 2011 from <http://www.euroncap.com/Content-Web-Page/7b5a942e-a578-4108-8c55-2e2dc1d1bceb/safety-assist.aspx>.

<sup>56</sup>49 U.S.C. § 32705.

<sup>57</sup>*Id.*, § 32709.

sumer complaints regarding sudden unintended acceleration, were issues related to the agency's performance of its investigatory functions, its handling of recalls and defect information, as well as the disclosure of critical safety data and information to the public and public access to agency safety data bases and information. Many of these issues were addressed in last year's Motor Vehicle Safety Act<sup>58</sup> and should be included in the agency reauthorization bill because they will achieve valuable and necessary improvements in NHTSA's policies and procedures.

For example, NHTSA information and interaction with the public over vehicle safety recalls will be vastly improved if more information about recalls and defects is available. Many consumers have difficulty understanding whether their vehicle, or a used vehicle they wish to purchase, has been the subject of a safety recall. Providing that information in an easy-to-access and user friendly database that consumers can search by the vehicle identification number (VIN) of their vehicle is a commonsense solution to an all too common problem. (Sec. 401) Likewise, providing consumers with ready Internet access to reports and communications regarding vehicle safety and recalls (Sec. 403) that are required to be provided to the Secretary of Transportation will go a long way toward making safety information about motor vehicles available to the people who own and lease them.

At the same time, providing the public with greater disclosure of the Early Warning Data, (Sec. 404) that was originally required to be provided under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act,<sup>59</sup> will allow the public to assist the agency with information and analysis of the volumes of data sent to the agency by manufacturers. In addition, promoting the reporting of defect complaints and information by requiring an in-vehicle consumer notice (Sec. 407) and by establishing a hotline for employees of manufacturers, dealerships and mechanics to report information regarding safety defects or problems (Sec. 402), will assist the agency in identifying and substantiating safety problems that have not previously come to light.

Equally important, we must ensure that people within the industry who are willing to disclose information about safety problems and defects are protected from retaliation. (Sec. 408). So-called "whistle blower" protection is available in a number of industries to ensure that when an employee with inside knowledge of a defect or safety problem comes forward in the public interest, that person will not have to suffer retribution for their act of civic responsibility. At the same time, government officials who have worked for NHTSA should have some restrictions placed on their capacity to use their knowledge and expertise for manufacturers that interact with NHTSA regarding safety recall issues. (Sec. 410 Revolving Door). Advocates agrees that reasonable limits should be adopted to deter former NHTSA employees from influencing the progress or outcome of vehicle safety matters by communicating with or appearing before agency personnel on behalf of vehicle manufacturers. These are appropriate and necessary measures to ensure public confidence in the agency's safety activities.

Advocates also supports the need for corporate officers of vehicle and equipment manufacturers to take personal responsibility for the documents that are requested or required to be provided to the Secretary and NHTSA (Sec. 405) during the conduct of a safety defect investigation. Unfortunately, experience shows that unless senior company officials understand that they will be personally accountable for the accuracy of the information that is submitted, the company may not make the full disclosure needed by the agency to conduct a thorough investigation. Along with this change it is also necessary to substantially increase the maximum penalties for violation of the key vehicle safety act disclosure requirements to a maximum of \$250,000,000 (Sec. 303). The failure to provide honest and full disclosure and cooperation of potential safety defects could result in deaths and injuries and those that choose to place their interests above the safety of consumers should pay a high price for such behavior.

Advocates supports the need to ensure that disclosures of defects and noncompliance with safety requirements are made known to persons who rent or lease motor vehicles (Sec. 411). An owner of a business that rents motor vehicles to the public, and knows that the rental vehicles are subject to a safety recall or failure of compliance should make their customers aware of the information before renting the vehicle. The disclosure should be clear and conspicuous so that the person renting the vehicle is adequately informed of the safety problem and gives informed consent before renting the vehicle. Likewise, the same consumer disclosure should be made applicable to owners of used car businesses who resell vehicles that are subject to a safety recall or noncompliance. In both instances the business that owns the vehicle

<sup>58</sup>S. 3302, the Motor Vehicle Safety Act of 2010.

<sup>59</sup>Pub. L. 106-414 (Nov. 1, 2000).

is in a much better position to know or determine whether the vehicle has been the subject of a safety recall or noncompliance notice.

We also favor requiring NHTSA to conduct a study of its crash data collected through the National Automotive Sampling System (NASS). (Sec. 412). The NASS is the cornerstone of motor vehicle crash data providing information to NHTSA in order to estimate highway deaths and injuries and crash trends. NASS was designed by a panel of experts in data collection and statistical analysis to collect data on crashes from multiple sources to provide a detailed and comprehensive assessment of the crash event and resulting injuries. The plan envisioned 75 teams of two to four investigators assigned to a geographical area with a total of 200 trained investigators examining two statistically sampled crashes per week, for a total of nearly 19,000 crashes each year. Currently, NASS collects far fewer cases, less than 5,000 each year, which is barely sufficient to provide a representative sample and threatens the agency's ability to conduct analysis on emerging crash and injury trends because the database will be too small to identify injury patterns.

*Recommendations:*

- *Congress should adopt reauthorization legislation that:*
  - *Requires NHTSA to update and improve its vehicle safety data bases and ensures that manufacturer notices of software upgrades are available to consumers;*
  - *Makes more early warning data publicly available;*
  - *Provides consumers with information on how to report vehicle defects inside new vehicles;*
  - *Establishes a hotline for reporting vehicle defects, noncompliance and safety problems by mechanics and employees of manufacturers and dealerships;*
  - *Affords employment protection to whistle blowers;*
  - *Prevents senior NHTSA officials who leave the agency from communicating or appearing before agency officials on vehicle safety matters for 2 years;*
  - *Requires senior officials of motor vehicle manufacturers to take personal responsibility when filing reports with NHTSA;*
  - *Increases the penalties for violations of safety regulations;*
  - *Requires that owners of car rental and used car businesses must disclose vehicle safety recall or noncompliance information to prospective renters or purchasers; and,*
  - *Requires NHTSA to review the NASS data collection program and report to Congress with recommendations for improving the program.*

**Child Safety Standards**

Motor vehicle crashes are the leading cause of death for children four to 14 years old. In 2009, 329 children ages four through seven died in motor vehicle crashes.<sup>60</sup> Improper restraint in an adult seat belt, or lack of any restraint at all, significantly contributes to traffic fatalities among this young population. With one exception, seatback strength, the Committee has included all of the following provisions to improve child safety in the reauthorization bill. Advocates supports both the Committee bill and the Committee's efforts to strengthen child safety standards.

*Protection for Older Children*

In 2002, Congress passed *Anton's Law*,<sup>61</sup> again because of the leadership of this Committee, to improve child restraints for older children, aged four to 10 years old. The law instructed NHTSA to establish performance requirements of child restraints for children weighing more than 50 pounds and develop a 10-year-old child test dummy. While NHTSA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) in November, 2010 to address child restraint systems, the requirements of Anton's Law have gone largely unfulfilled. Advocates commends the Committee for expanding requirements for child restraint systems for children weighing more than 65 pounds in its reauthorization proposal, but also calls on Congress to direct NHTSA to implement regulations protecting older child passengers in a timely manner.

<sup>60</sup>2011 Roadmap to State Highway Safety Laws, Advocates for Highway and Auto Safety, Jan. 2011, p. 21.

<sup>61</sup>Pub. L. 107-318 (Dec. 4, 2002).

### *Side Impact Crashes*

Current Federal safety standards require U.S.-marketed child restraints to meet dynamic testing simulating a 30 mph frontal impact. This test is conducted by decelerating a test sled instead of conducting a crash test. In response to Section 14 of the TREAD Act, NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM), on May 1, 2002, on the development of a side impact protection standard for child restraint systems (CRS).<sup>62</sup> The following year, the agency decided not to proceed with rulemaking due to the lack of data to evaluate the problem, available countermeasures and proper injury criteria, but stated that research on the subject would continue.<sup>63</sup>

In recent papers summarizing the research conducted to evaluate potential child side impact test procedures, NHTSA identified that children represent over 50 percent of rear seat occupants in vehicle collisions. “Side Impacts are the second most frequent collisions resulting in child occupants sustaining serious life-threatening head, neck and chest injuries.”<sup>64</sup> The agency concluded that additional testing is needed to refine test parameters, validate the test methodology and to examine additional child restraint systems. There was no indication as to when research and testing would be concluded. It has been more than 10 years since the enactment of the TREAD Act and 9 years since NHTSA stated that it would undertake efforts to address child protection in side impacts.

### *Child Restraint Anchorage Systems*

For many years, parents have been advised for safety reasons to secure children in the rear seat of vehicles. NHTSA has taken some action to accommodate child restraints secured in vehicle rear seats, but has failed to initiate other measures to improve rear seat safety for children.

In 1999, NHTSA required that by 2002 passenger vehicles and child restraints must be equipped with lower anchorages and tethers for children—the “LATCH” system—in order to promote an easier system of child restraint in place of using vehicle seat belts to secure child restraints. Although parents have long been advised that the center rear seating position is the safest for a child, no LATCH System was required in the center rear seating position. Instead, the agency required LATCH be installed at both outboard rear seating positions. A child who is secured in the outboard LATCH-equipped seating position is at greater risk in a side impact crash than a child in the center seating position.

A 2005 agency report established that many parents and other adults were confused about how the LATCH system works, could not identify or find the lower anchorages, and did not realize that there were no LATCH systems in the rear center seating position of passenger vehicles.<sup>65</sup> Amending Federal Motor Vehicle Safety Standard Number 225 to improve the visibility of, accessibility to, and ease of use for lower anchorages and tethers in all rear seat seating positions will increase use rates.

### *Rear Seat Belt Reminders*

Although seat belt systems are installed at all seating positions in passenger vehicles, reminder systems to buckle up are only mandated in the front seating positions. Seat belt use in the rear seats is significantly lower than front seat use rates—in 2009, rear seat belt use was 70 percent, compared to 84 percent use by front seat occupants.<sup>66</sup> According to a 2010 press release from the Illinois Department of Transportation, 2009 crash data indicated that fatally injured rear seat passengers were twice as likely to be unbuckled than fatally injured front seat passengers.<sup>67</sup> 2005 data linked with hospital discharge data illustrated that failure to

<sup>62</sup> NHTSA NPRM on Federal Motor Vehicle Safety Standards; Child Restraint Systems, 67 FR 21806 (May 1, 2002).

<sup>63</sup> Report to Congress: Child Restraint Systems—Transportation Recall Enhancement, Accountability, and Documentation Act, NHTSA (Feb. 2004), pp. ii-iii, available at <http://www.nhtsa.gov/nhtsa/announce/NHTSARepor.../TREAD.pdf>.

<sup>64</sup> NHTSA’s Initial Evaluation of Child Side Impact Test Procedures, NHTSA Paper No. 09-0539, available at <http://www-nrd.nhtsa.dot.gov/pdf/esv/esv21/09-0539.pdf>.

<sup>65</sup> Child Restraint Use Survey LATCH Use and Misuse, NHTSA, DOT HS 810 679 (Dec. 2006), available at [http://www.nhtsa.gov/.../Communication%20&%20Consumer%20Information/Articles/Associated%20Files/LATCH\\_Report\\_12-2006.pdf](http://www.nhtsa.gov/.../Communication%20&%20Consumer%20Information/Articles/Associated%20Files/LATCH_Report_12-2006.pdf).

<sup>66</sup> Occupant Restraint Use in 2009—Results From the National Occupant Protection Use Survey Controlled Intersection Study, NHTSA, DOT HS 811 414 (Nov. 2010).

<sup>67</sup> IDOT, State Police and Local Enforcement Boost Efforts to Increase Safety Belt Usage and to Help Curb Impaired Driving, Illinois Department of Transportation Press Release, 12 Nov. 2010, available at <http://www.dot.state.il.us/press/r111210.html>.

wear a seatbelt in the rear seat was associated with a 44 percent increase in the cost of a hospital stay following a collision.

Rear seat reminder systems can both remind the driver and rear seat occupants to buckle up and alert the driver when a passenger unbuckles the seat belt while the vehicle is moving. Given that a majority of parents secure their children in child restraints in the rear seat of vehicles, rear seat reminder systems are needed to ensure that they are buckled up. Rear seat belt reminders would also likely increase belt use rates among teen passengers riding with a teen driver.

On August 28, 2007, safety groups filed a petition with NHTSA requesting that seat belt reminder systems be required in the rear seats of cars and in the second and third row of seats in multipurpose passenger vehicles, including minivans and sport utility vehicles.<sup>68</sup> The agency has not yet responded to the petition. Congressional action to initiate rulemaking is needed in order to move forward in a timely manner with this lifesaving feature.

#### *Unattended Passenger Reminders*

All too often, adults inadvertently leave infants and young children in child restraint systems in the rear seats of passenger vehicles. Exposure of young children, particularly in hot and cold weather, leads to hyper- and hypothermia that can result in death or severe injuries. A review of media reports on the 494 child vehicular hyperthermia, or heat stroke deaths between 1998 and 2010 found that 54 percent (268) of the incidents occurred when the child was unknowingly forgotten in the vehicle by a caregiver. Fifty-four (54 percent) of the children who die in hot vehicles are under the age of two (2). Such inadvertent deaths can be avoided by equipping vehicles with sensors to detect the presence of the child and sound a warning at the time the driver locks the vehicle with a child inside. Similar warning features currently remind drivers when they have left the key in the ignition, left the headlights on, and when a door is open while the vehicle is in motion.

#### *Seatback Strength*

The safety standard for seatback performance has not been upgraded since it was first adopted in 1967. When the driver or front passenger seatback fails or collapses in a crash, it endangers both the front and rear seat occupants. Regulatory compliance rear impact crash tests for fuel system integrity (FMVSS 301), conducted by NHTSA, reveal that almost every seatback fails, allowing a front seat occupant to be propelled into the rear seating area. Seat belt systems that are effective in frontal crashes are not designed to keep front seat occupants from slipping out of the belt system when the seatback collapses, leading to an increase in the risk of injury to the front seat occupant.

Parents have long been advised to secure young children in the rear seat. Also, as the U.S. passenger vehicle fleet gradually downsizes in response to more costly fuels and environmental concerns, the distance between forward seatbacks and rear seated occupants will be reduced. Children's Hospital of Philadelphia (CHOP) has determined that collapsing seatbacks are a serious threat to children seated behind adult occupants. Many children were found to have been injured in crashes in which seatbacks collapse or there is excessive seat deformation. The failure of a seatback directly in front of a child places the child at risk, and when there is an occupant in the seat that fails there is double risk of injury to the child. NHTSA noted in a 1997 study that an examination of the interaction between front seatback failures and injuries to rear seat occupants may be important to assess the entirety of the occupant protection implications of seatback failure. In 2004, NHTSA stated that the weight of a passenger when added to the weight of the seatback itself will, even in a low severity crash, produce loads exceeding the level required by FMVSS 207.

#### *Recommendations:*

- *Congress should require NHTSA to:*
  - *Establish a 2-year deadline for NHTSA to complete development and adopt into regulation the HIII-10C 10-year-old child crash test dummy;*
  - *Issue a final rule regarding child restraint side impact safety within 2 years;*
  - *Issue final rules within 2 years that require more visible, recognizable and easy-to-use LATCH attachment equipment and LATCH systems in the center rear seating position of all vehicles in which a center LATCH system can be properly installed;*

<sup>68</sup> Petition for Rulemaking—FMVSS Standard No. 208, filed by Public Citizen (28 Aug. 2007), Docket ID: NHTSA-2007-29108.

- *Issue a final rule within 3 years requiring that all seating positions including vehicle rear seats be equipped with seat belt reminder systems;*
- *Include rear seat belt reminders as part of the New Car Assessment Program (NCAP) to encourage industry compliance prior to issuance of final rule.*
- *Issue a final rule on child-left-behind reminders; and,*
- *Issue a final rule within 2 years that upgrades the performance of seats, including seatbacks, head restraints, and active/passive restraint to increase the protection of children and adults in passenger motor vehicle crashes.*

### **Conclusion**

The quality of life for all Americans depends on a safe, reliable, economical and environmentally sound surface transportation system. Transportation solutions to promote mobility and the economy must involve not only financial investments, but investments in safety as well. Highway crashes cost our Nation more than \$230 billion annually. This is money that could be better spent on addressing surface transportation needs. Making necessary changes to the performance and effectiveness of the state traffic safety grant programs, including incentive grant programs to spur state adoption of lifesaving laws on teen driving, impaired driving and occupant protection and directing government action to improve the safety of motor vehicles will prevent crashes, reduce deaths and injuries and lower societal costs that are an economic drain on our economy.

The decrease in highway fatalities that has occurred over the last 2 years affords an opportunity to continue the downward trend and make substantial and lasting reductions in annual fatalities. There are no acceptable excuses for delaying any longer the adoption of lifesaving laws and vehicle safety standards that can help secure these lower fatality levels in the future. Over the course of the next 2 years we can save thousands of lives each year if we act wisely and act now. If the opportunity slips away without action we could suffer more than 65,000 fatalities and another 4 million injuries in that 2-year time frame.

Thank you for the opportunity to testify before you today and I am pleased to answer your questions.

Senator PRYOR. Thank you.  
Ms. Nason?

### **STATEMENT OF HON. NICOLE NASON, FORMER NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATOR**

Ms. NASON. Mr. Chairman and Senator Toomey and Senator Blunt, thank you for the opportunity to be here today.

I am going to set a record and note that I had a written statement, which I would like to be included and ask that this letter, Coalition Support for the ROADS SAFE Act, be included with my testimony.

Senator PRYOR. Without objection.  
[The information referred to follows:]

#### **COALITION SUPPORT FOR THE ROADS SAFE ACT** *July 26, 2011*

HON. JOHN D. (JAY) ROCKEFELLER IV,  
Chairman,  
Senate Committee on Commerce,  
Science, and Transportation,  
Washington, DC.

Hon. KAY BAILEY HUTCHISON,  
Ranking Member,  
Senate Committee on Commerce,  
Science, and Transportation,  
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison:

As a diverse group of organizations and companies dedicated to reducing highway fatalities caused by drunk driving and other factors, we urge you to include the ROADS SAFE Act (Research of Alcohol Detection Systems for Stopping Alcohol-related Fatalities Everywhere—HR 510), introduced by Senator Tom Udall and Senator Bob Corker, in the NHTSA Transportation Reauthorization bill.

This legislation would authorize the transfer of currently unused safety funds at a rate of \$12 million annually for 5 years to support and expand the ongoing DADSS (Driver Alcohol Detection System for Safety) research program currently

being undertaken by the National Highway Traffic Safety Administration and leading automakers.

The goal of this research program is to develop a publicly-supported technology for vehicles that will instantaneously and passively detect if a driver is drunk (above the legal limit of .08 BAC) and prevent the vehicle from starting. The technology must be extremely accurate, inexpensive and a non-invasive optional safety feature.

Despite Americans driving nearly 21 billion more miles last year, U.S. highway traffic fatalities dropped 3 percent from 2009 to the lowest levels in recorded history. To maintain this low rate, particularly as the economy starts to recover and highway travel increases further, we need to be diligent in pursuing opportunities that have the potential to be very effective. If the DADSS research program is successful, more than 8,000 lives can be saved each year, a major step toward eliminating drunk driving (which costs taxpayers \$130 billion each year).

Again, we ask that you include this important life-saving measure in the traffic safety reauthorization legislation that is developed by your Committee.

Sincerely,

- AAA
- Advocates for Highway and Auto Safety (AHAS)
- Alliance of Automobile Manufacturers
- Allstate Insurance
- American Academy of Pediatrics
- American Association of State Highway and Transportation Officials (AASHTO)
- American Automotive Policy Council (AAPC)
- American Highway Users Alliance (AHUA)
- American International Automobile Dealers Association (AIADA)
- American Trucking Associations (ATA)
- Association of Global Automakers, Inc.
- Distilled Spirits Council of the United States (DISCUS)
- Governors Highway Safety Association (GHSA)
- Mothers Against Drunk Driving (MADD)
- National Association of Minority Automobile Dealers (NAMAD)
- National Automobile Dealers Association (NADA)
- National Beer Wholesalers Association (NBWA)
- National Organizations for Youth Safety (NOYS)
- National Safety Council (NSC)
- Nationwide Insurance
- Safe Kids USA
- State Farm Mutual Automobile Insurance Company
- The Century Council
- Wine and Spirits Wholesalers of America (WSWA)

Ms. NASON. Thank you. I just want to thank you all for—particularly for including the funding for the DADSS Act, the Driver Alcohol Detection System for Safety. I know Administrator Strickland spoke about that in his testimony, and I was so pleased to hear him say that this is reality. This technology actually can exist with funding and time.

He noted that it was the 5-year anniversary, which would put it squarely within my tenure. And I can tell you having been there, that it was shoulder to the wheel all the way. The intellectual property rights discussions alone nearly destroyed this language several times, but we got it together and now we have a model, and so I really strongly urge the Committee to firewall this provision as you move forward and protect it as this process moves forward.

And I also noted in my testimony that NHTSA is an organization that might benefit from and ombudsman. And that may seem to come out of left field, but having served as the Assistant Secretary of Government Affairs for several years at the Department and then the NHTSA administrator. And then having watched the Toyota hearings from the cheap seats in Connecticut where I now live, I observed how much anger there was at this very small agency. And most of what I read and what I saw on the web, and what I

followed on the blogs, and what I heard at the hearings related to people feeling frustrated that no one was getting back to them.

And I know, having been on the inside, that the defect investigations team worked very, very hard on a variety of issues. On any given day, it is car seats and boat trailers and motorcycle brakes. But in this age of instant communication, people feel like someone should write back very quickly to say, we got your e-mail or your letter, and we're working on it. There doesn't seem to be anybody filling that role.

And when I started in Government, I was the Assistant Commissioner of the U.S. Customs Service, and on my first day they put me in a room with another political appointee, not a Senate-confirmed, a non-career SES, And he said, "I'm the trade ombudsman." And it was because the Customs Service had so much interaction with the public that they felt like they needed to have an ombudsman there to respond to those kind of inquiries.

Now, you see one at the IRS, and I think that—I hope the Committee will consider creating a role for someone to respond to the public more quickly. They do get back to them, but getting a letter out of the Government takes time. Even quickly, it's still a matter of weeks and people expect that someone is going to back to them more quickly than that. So, I have put it out there for discussion and I hope the Committee will raise the issue with others, who might have thoughts on it, to see if this is a place where there could be some benefit to both the agency and the public.

And I thank you for your time in allowing me to be here.

[The prepared statement of Ms. Nason follows:]

PREPARED STATEMENT OF HON. NICOLE MASON,  
FORMER NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATOR

Chairman Pryor, Senator Toomey, members of the Subcommittee, thank you for the opportunity to appear before you to discuss the reauthorization of the National Highway Traffic Safety Administration.

As a former NHTSA Administrator and current National Board Member of Mothers Against Drunk Driving, I commend the Committee for including funding for advanced alcohol detection technology in the draft legislation. The Driver Alcohol Detection System for Safety (DADSS) program is a result of a cooperative research agreement between NHTSA and the Automotive Coalition for Traffic Safety, which is composed of the world's leading auto manufacturers. This work is critical, as 2009 fatality numbers make clear: 10,839 people were killed in drunk driving crashes. The technology to prevent drunk driving crashes already exists in an imperfect form, but with funding to perfect it, we can prevent nearly a third of all fatalities on our roads. Just last week, over twenty diverse organizations sent a letter to Congress in support of DADSS. I have included this letter with my testimony and ask that it be made a part of the hearing record.

There are numerous other important sections in the draft bill, including Section 109, requiring at least three DUI or seat belt high visibility enforcement campaigns annually. These campaigns are crucial to spreading the word that drunk drivers will be caught and prosecuted. The national Click It or Ticket campaign is one of the most successful highway safety programs of all time and serves as a model for other highway safety endeavors. Additionally, I commend the Committee for including incentive grants for states to pass an all offender ignition interlock program. Since MADD began the Campaign to Eliminate Drunk Driving, 15 states have passed such laws.

As safety research dollars are so precious, I would also encourage the Committee to carefully consider how each section of the draft legislation may impact available safety resource funding. In a 2009 opinion piece in the Detroit News, I expressed concern about future funding for safety while automakers were pressed to develop advanced technologies for fuel economy. I noted, "[w]hen resources are constrained, something must give. Policymakers must understand these trade-offs and recognize

the choices they might be compelling.” I believe this is still true. At a time when R&D funding is scarce, provisions that seem small could ultimately result in millions of dollars being diverted from larger safety needs in the areas of research or staffing.

Finally, a new staff-related proposal I hope the Committee will consider is the creation of a senior NHTSA Ombudsman. After the Toyota hearings last year, it has become clear that many consumers feel frustrated with their inability to get a quick response from the NHTSA. As the former Administrator, I know the agency tries to respond to as many inquiries and complaints as possible, however, that process can take several weeks or longer. A senior Ombudsman role would both alleviate the pressure on the defects investigators to respond to numerous inquiries, and provide the public with a clear outlet for their requests. Many other Departments and agencies have an Ombudsman, and I believe NHTSA could benefit from having a person directly responsible for communicating with the public.

Thank you again for inviting me to appear today and I would be happy to answer any questions.

Senator PRYOR. Thank you.  
Mr. Strassburger?

**STATEMENT OF ROBERT STRASSBURGER, VICE PRESIDENT,  
VEHICLE SAFETY AND HARMONIZATION, ALLIANCE OF  
AUTOMOBILE MANUFACTURERS (ALLIANCE)**

Mr. STRASSBURGER. Thank you, Mr. Chairman.

As we have already this afternoon, the rate of fatalities in 2010 fell to their lowest level since 1949 despite a significant increase in the number of miles driven last year. We are seeing a sustained decline in fatalities because of the efforts begun over a decade ago by this Committee, your House counterparts, NHTSA, automakers and our other safety partners to prioritize our efforts and focus on the biggest problems in traffic safety such as unbelted motorists, drunk drivers, and protecting our children. We know what works, strong laws, visibility enforced, education about those laws and the risks associated with certain driving behaviors.

For our part, automakers are waging a safety technology revolution, conceiving, developing, and implementing new safety systems with real world benefits. But in an era of dwindling resources, we have a difficult task ahead if we are to ensure continued progress.

As this Committee moves forward, we urge you to focus on those provisions that will provide the greatest safety benefits while existing demands to adopt provisions that do not provide benefits.

The Alliance has the following recommendations: if we are to fully realize the benefits of vehicle safety technologies, we must address drivers’ most dangerous behaviors. Thirty-two percent of those killed last year died because of a drunk driver. The Alliance supports adoption of Sections 107 and 111 that support Government and industry efforts to reduce drunk driving.

Over half of those killed last year were not wearing their safety belts. Primary enforcement of safety belt use laws results in higher usage rates, and that saves lives. After nearly 30 years of trying to enact primary enforcement laws, the time has come to treat safety belt use with the same seriousness as drunk driving by withholding funding from states that have failed to adopt a primary law in the same way Congress required states to adopt 0.08 laws.

Further, the Alliance supports adoption of Section 109, which provides funding for high-visibility enforcement of safety belt use and drunk-driving laws.

The Alliance also supports adoption of Section 108, which gives NHTSA and states additional tools to impact distracted driving.

Finally, the Alliance supports the Committee's proposal to give NHTSA authority to prevent fly-by-night companies from selling defective products and failing to take responsibility when those problems surface. The Alliance would like to work with the Committee on Sections 309 through 311 to ensure that these provisions are targeted at the bad actors.

Provisions that will not result in few traffic deaths and should be dropped include Section 404, which would overturn the well-established rules for early-warning reporting, even those we heard just now from Administrator Strickland, that the rule is working.

The EWR rule has already been subject to two rulemakings and NHTSA's judgment has been upheld in court.

Other provisions deviate from NHTSA's recently published priority plan and that should be dropped. These include Section 503 mandating pedal placement requirements and Section 506(c) directing the agency to amend its existing EDR rule before it is fully implemented.

The proposal to increase civil penalties for automakers and suppliers by roughly 1,500 percent is out of proportion to the current penalty structure for other manufacturers such as those under the jurisdiction of the Consumer Product Safety Commission.

The Alliance recommends deleting Section 303.

The Alliance's written testimony submitted for the record describes our complete set of recommendations. Sustaining progress made and reducing injuries and fatalities for motor vehicle crashes is a significant public health challenge now made even more difficult because of dwindling resources.

We appreciate the leadership shown by the members of this Committee and we share your goals. We look forward to continuing to work with you to make our roads the safest in the world.

Mr. Chairman, Members of the Committee, I would be happy to answer your questions.

[The prepared statement of Mr. Strassburger follows:]

PREPARED STATEMENT OF ROBERT STRASSBURGER, VICE PRESIDENT, VEHICLE SAFETY AND HARMONIZATION, ALLIANCE OF AUTOMOBILE MANUFACTURERS (ALLIANCE)

Thank you, Mr. Chairman and Committee members. My name is Robert Strassburger and I am Vice President of Vehicle Safety and Harmonization at the Alliance of Automobile Manufacturers (Alliance). The Alliance is 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. For Alliance members, who account for roughly three quarters of all vehicles sold in the U.S. each year, safety is a top priority. The Alliance appreciates the opportunity to comment on the Motor Vehicle and Highway Safety Improvement Act discussion draft and we look forward to working with the Committee as partners in enhancing motor vehicle safety.

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. This fact is remarkable given that during the same timeframe the number of licensed drivers has more than doubled and annual vehicle miles travelled have more than quadrupled.

This is because the government and the industry are doing many things very well to innovate, develop, and implement effective safety systems and programs. Most of

the 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, lane departure warning, collision avoidance and more—were developed and implemented voluntarily by manufacturers, in advance of any regulatory mandates. The industry is 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 will never fully realize the potential benefits of vehicle safety technologies until 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 unacceptable numbers.

The safety belt is the lynchpin vehicle safety technology. The effectiveness of nearly every other technology designed to protect occupants in a crash is significantly reduced if drivers and passengers are not wearing seatbelts. While we have been reluctant to engage in the debate over incentives versus sanctions, on this critical issue the Alliance now urges Congress to include provisions for withholding a percentage of Highway Trust Fund monies from states that have failed to adopt primary enforcement safety belt laws. Sanctions have worked effectively to accelerate the process of passing laws and creating uniform safety policy in all 50 states and in the District of Columbia. Congress employed this tactic to encourage states to adopt a minimum legal drinking age of 21 (1984), zero alcohol tolerance laws for youth under 21 (1995), and 0.08 percent per se blood alcohol content (BAC) laws (2000). It is time to take a similar step with primary enforcement laws, and we urge you to work with your colleagues on the Environment and Public Works Committee on this issue. The Alliance also supports *Section 302*, which would authorize NHTSA to permit safety belt interlocks as part of an FMVSS compliance strategy. The Alliance is also prepared to support *Section 603*; however, it needs to be revised to clarify what outcome is intended.

With regard to reducing impaired driving, the Alliance supports the provisions in *Section 107*. The Alliance believes that states with higher rates of alcohol-related fatalities (“low and mid-range” states) should be required to devote some portion of funding to support both media in support of high visibility enforcement efforts (107(d)(2)(A)) and alcohol ignition interlock programs for convicted offenders (107(d)(2)(D)). Strong laws, visibly enforced and alcohol ignition interlock (breathalyzer) programs for convicted offenders are proven models with demonstrated results in reducing drunk driving.

The Alliance also supports the provisions in *Section 111*, 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 drunk, the vehicle’s starting capabilities are disabled. The Insurance Institute for Highway Safety projects that successful implementation of this kind of technology has the potential to prevent more than 8,000 deaths each year.

The Alliance supports *Section 406*, which would allow NHTSA to include crash avoidance technologies in its New Car Assessment Rating program, which provides valuable information to consumers about vehicle safety features.

Finally, the Alliance supports giving NHTSA and the states tools and 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 unintentionally sweep in technologies intended to make driving safer. The Alliance and our partners at the American Academy of Orthopedic Surgeons have launched a multimedia campaign that highlights the importance of driver focus to road safety. The high-visibility campaign includes advertising, an interactive and independently branded website and localized elements—including last year’s advertising of the campaign on dozens of metro buses in the Washington, D.C. area. And our campaign is finalizing plans for reaching out to the Nation’s schools with a new element this fall.

*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 test. At a time when we are acutely aware of our resource limitations, both industry and government need 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, reflecting extensive analysis of traffic safety data and the agency’s expert 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 widespread and far reaching rulemakings—with relatively short deadlines that affect so many aspects of motor vehicle design without greater evidence that they would make meaningful contributions to improving highway and vehicle safety.

Our concern over legislatively-mandated rules is not over improving safety—industry is competing vigorously and moving rapidly to provide ever-increasing levels of safety in its vehicles—but over process. Safety rulemakings are often complex, involving 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, prejudices the outcome of the rule-making process and deprives NHTSA of its ability to make safety-related assessments and determinations of rulemaking priorities.

Accordingly, the Alliance believes the following provisions should be revised or removed on the basis that they inappropriately divert resources from more pressing priorities:

*Section 404.* This section directs NHTSA to enter into a third rulemaking to create new “categories” of information that must be “made available to the public” regardless of whether it includes confidential business information, may cause competitive harm and is inconsistent with the Freedom of Information Act (FOIA). The current early warning reporting regulations do exactly what Congress intended, by putting vital information in the hands of agency defect investigators. Secretary LaHood and Administrator Strickland stated as much in responses for the record to this Committee last year.<sup>1</sup> This issue has already been subject to two rulemakings and NHTSA’s judgment has been upheld in court. This provision should be dropped.

*Sections 401, 403, 407, and 402.* The Alliance supports providing consumers with access to information regarding recalls; however, these provisions largely require NHTSA to duplicate existing resources. Automakers and private entities such as CARFAX already provide consumers the means to determine, using the make, model, model year and VIN, whether a vehicle is subject to recall and whether the remedy has been performed (401). Automakers already provide Technical Service Bulletins and other dealer-related communications to NHTSA, which NHTSA makes available on its *safercar.gov* website (403). Automakers are already required by law to publish in Owner’s Manuals information regarding how to report a suspected defect (407). NHTSA already maintains a hotline for reporting defects; the safety benefits of maintaining a separate hotline for manufacturer, dealer or mechanics are not apparent. If Congress believes NHTSA should give special weight to these individuals’ reports, they could simply be asked to specify their profession when calling the existing hotline (402).

*Section 503.* The Alliance recommends deleting *Section 503*, which would direct NHTSA to develop 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. Implementing brake

<sup>1</sup>“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. Since 2004, the first full year in which NHTSA received EWR data, the Office of Defects Investigation (ODI) has used the EWR data to assist in our safety-defect identification investigation process. NHTSA has utilized EWR data to assist in opening 110 defect investigations, which resulted in over 11 million recalled vehicles and equipment. Specifically, EWR data has prompted the opening of 28 defect investigations, accelerated the opening of 30 defect investigations, and supported the opening of 52 other defect investigations.” (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.)

override technology as required in *Section 502* is a better, more comprehensive solution to address any lingering concerns about unintended acceleration.

*Section 504.* In February, NHTSA released the complete results of the study it conducted with NASA concluding that electronic systems played no role in cases of unintended acceleration.<sup>2</sup> While the Alliance is not opposed to NHTSA expanding its expertise and continuing research into electronic systems, this undefined rulemaking is unlikely to have any significant near-term impact on motor vehicle safety. The agency's rulemaking resources should be devoted to addressing more pressing issues.

*Section 506.* The Alliance supports equipping new vehicles with event data recorders (EDR) as currently specified under Part 563. Manufacturers who opted not to install EDRs under the voluntary standard 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.

The Alliance also supports strong privacy protections for consumers. The Alliance believes that information stored on an EDR is the property of the vehicle owner and should not be accessed by anyone without the owner's permission or as required by law. In this regard the provisions in 506(b) are a good start but require additional clarification to ensure data is the property of the owner or lessee at the time it was recorded rather than at the time it was downloaded from the vehicle EDR, and to specify that use of data retrieved under one of the exemptions in (b)(2) is permitted only for the specific purpose indicated by the exemption.

The Alliance also believes that it is premature for Congress to specify the parameters of a second rulemaking before the first rulemaking is even implemented. The better approach would be to allow NHTSA to study the results of the first phase rulemaking as a prologue to any future enhancements to the rule.

Additionally, the Alliance opposes making EDRs subject to an FMVSS. The FMVSS are required by statute to be minimum standards for motor vehicle or motor vehicle equipment performance. By contrast, the EDR rule is—by necessity and design—a regulation that specifies exactly that data that NHTSA wishes to be captured and retained. It is neither a minimum standard nor a performance standard, nor could it reasonably be such a standard and accomplish its intended purpose. It is not appropriately classified as an FMVSS, nor are the FMVSS enforcement mechanisms (stop sale for even slight deviations) appropriate for such a data-intensive, detailed regulation.

*Section 604.* Mandating a rulemaking to address hyper and hypothermia is inconsistent with the provision in Title I giving states the option (rather than requiring them) to conduct a consumer education program in these areas. Accidental fatalities can be mitigated significantly with a coordinated, focused public education program. The provision's directive to conduct research recognizes that the reasons why children are abandoned in cars in some instances is not well understood and without such an understanding, it is not possible to evaluate the anticipated effectiveness of potential countermeasures. Finally, the provision as currently drafted would not allow the bifurcation of hyper and hypothermia rulemakings based on research findings based on safety need, practicability, or effectiveness of countermeasures.

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

*Section 303.* Motor vehicle manufacturers are already subject to higher civil penalties than other similarly situated manufacturers of consumer products. The proposed increases are so out of proportion either to the current penalty structure or the penalty structure for other manufacturers under the Consumer Product Safety Act as to appear unfairly punitive.

*Section 405.* 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.

*Sections 308, 309, 310, and 311.* The Alliance supports what we understand to be the Committee's rationale in proposing these provisions: to give NHTSA authority to prevent fly-by-night actors from injecting defective products into the U.S. market and failing to take responsibility when problems surface. However, as currently structured, these provisions are simply layered on top of existing rules for established, well-capitalized manufacturers and suppliers who already play by the rules. As such these sections will result in additional burdens that increase the cost of

<sup>2</sup>"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.

doing business for responsible parties without providing concomitant safety benefits in the market. The Alliance believes the better approach would be to direct these provisions specifically at the bad actors, and we would like to work with the Committee and the agency to identify an appropriate approach. Many of the provisions also create discriminatory conditions and may not be consistent with U.S. GATT obligations.

Senator PRYOR. Thank you very much.  
Mr. Betkey?

**STATEMENT OF VERNON BETKEY, CHAIRMAN,  
GOVERNORS HIGHWAY SAFETY ASSOCIATION**

Mr. BETKEY. Thank you, Mr. Chairman and Members of the Committee; I appreciate the opportunity to be here today to testify. And I'm here today representing Governors Highway Safety Association and states who administer the Federal Highway Safety Grant programs. And I also serve as the Director of the Maryland Highway Safety Office.

In general, the association is very supportive of the two-year proposal and has some suggestions that are largely of a technical nature.

Let me just summarize some of the things that we noted and support in the bill. Now, we support making the behavioral grant programs more performance based, and we have heard several comments today about the performance-based system. And we've been working with NHTSA for some time now, going back as far as 2008, on two sets of performance measures the states are currently using or will use in their plans—in their future highway safety plans.

And I want to compliment Mr. Strickland for helping us to continue to foster that relationship with NHTSA in making those adjustments to the performance plan.

GHSA supports the proposed changes to the 402 Program including the performance-based planning, the earmarks for training and research, the two new assurances, one having a data-driven program, which personally, I think, is an extremely beneficial ingredient to helping us move the numbers. And the other being a coordination of the Highway Safety Plan with the data collection and information systems in coordination with the state's strategic highway safety plans.

Now, we are supportive of the language that allows states to conduct programs in conjunction with neighboring States, and we are extremely supportive of the efforts to streamline grant applications and deadlines. This will be extremely beneficial to the states.

Now, we do recommend some streamlining the maintenance of effort requirements and would welcome a discussion with the Committee on that.

With respect to NHTSA'S Research and Demonstration Program, we are supportive of many of the proposed changes. We would like to talk a little bit more about the earmark of the medically impaired driver data base. GHSA supports the consolidation of the three occupant protection programs into a single one, but we would urge the Committee to consider that it be funded at a proportionately higher level.

GHSA supports the conversion of the Impaired Driving Grant Program into a performance-based formula that will ensure every State has resources as needed.

And we also support the dedicated funding for states for the Ignition Interlock Program. We, too, agree that there is evidence from New Mexico in their Ignition Interlock Program that shows great potential for how this could work on a national basis. And we strongly encourage that ignition interlocks be used as the technology and funded accordingly.

But we also support the authorization of funding for continued research on advanced impaired driving.

And we have heard several comments today about impaired driving and occupant protection and belt use, and we should consider that if we can eliminate drunk driving and we could get 100 percent belt use, we could cut the Nation's fatalities in half.

But GHSA supports the Distracted Driving Program, but it worries that the requirements of the program may be too stringent as written. It's a multi-million dollar program and we feel that a few states would qualify on the initial go round and we would suggest that the Committee consider looking into the number of states that would qualify in the beginning, and maybe make some adjustments to those criteria.

We're somewhat disappointed that the Committee did not make the changes to the Section 211, Motorcycle Safety Program. The program as it is now is very narrowly focused, and it is somewhat frustrating for the States. The funds cannot be used for impaired motorcycling, improvements to licensing, programs to reduce motorcycle speeding or even support motorcycle safety summits or the development of strategic motorcycle safety plans. We certainly understand the dynamics of this, and we would ask the Committee to consider making it a broader, more comprehensive program.

In closing, just a couple of other items. We definitely support the high-visibility enforcement provisions, the Section 408 Data Improvement Program, and the agency's accountability provisions.

Again, GHSA and NHTSA have worked very closely together in a partnership to help in those accountabilities.

That concludes my testimony, and thank you for the opportunity to testify today.

[The prepared statement of Mr. Betkey follows:]

PREPARED STATEMENT OF VERNON BETKEY, CHAIRMAN,  
GOVERNORS HIGHWAY SAFETY ASSOCIATION

### **Introduction**

Good morning. My name is Vernon Betkey, and I am Chairman of the Governors Highway Safety Association (GHSA) and the Director of the Maryland Highway Safety Office. GHSA is a nonprofit association that represents state highway safety agencies. Its State Highway Safety Office (SHSO) members administer the Federal behavioral highway safety grant programs under Title II of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU). Areas of focus include: impaired driving; inadequate occupant protection; speeding and aggressive driving; distracted driving; younger and older drivers; bicycle, motorcycle and pedestrian safety; traffic records and highway safety workforce development.

### **General Comments**

The Governors Highway Safety Association has had the opportunity to review the draft two-year reauthorization legislation and is pleased to submit comments on

Title II of the proposal. In general, the Association is supportive of the Senate Commerce Committee's draft. It attempts to consolidate some behavioral highway safety grant programs and streamline the grant application process. The proposal places a high degree of importance on performance and the use of performance measures to set targets and measure progress toward those targets. It grants states somewhat more flexibility (particularly in the Section 410 impaired driving program) if they achieve specified levels of performance.

Members of the Committee may know that GHSA has been working cooperatively with the National Highway Traffic Safety Administration (NHTSA) since 2008 to develop two sets of performance measures. The first is a set of 14 outcome and activity measures that states have been using in their Highway Safety Plans for FY 2010, 2011 and 2012. A fifteenth measure concerning changes in attitude and awareness was subsequently added, and states are using this measure with their FY 2012 plans.

In addition, GHSA and NHTSA have identified 61 performance measures that states can use with their six core state traffic records systems (Crash, Injury, Vehicle, Driver, Citation & Adjudication and Roadway). The measures address accuracy, timeliness, completeness, uniformity, integration and accessibility of the data in each of the six systems. The final report on these measures was published earlier this year, and states will begin using these measures with their FY 2013 Section 408 data improvement grant applications and plans.

GHSA is currently working with NHTSA to improve the collection of serious injury data in the short term while the Agency develops and implements long-term improvements that require new data bases and data linkage. The short term recommendations for improving serious injury data will be published as part of the updated Model Minimum Uniform Crash Criteria (MMUCC) early next year.

In effect, and GHSA is proud to say, the emphasis on setting performance goals and measuring performance is one that State Highway Safety Offices have already vigorously embraced.

#### **Section 402 Highway Safety Program**

As you know, the Section 402 program is the backbone of every state's behavioral highway safety program. In our view, the program has worked well and needs few changes.

GHSA supports the requirement that states use specific performance measures to report on current safety levels and set targets. As noted above, GHSA members are already doing that in their annual Highway Safety Plans and Annual Reports.

In GHSA's reauthorization position statement published in 2009 and found on GHSA's website, [www.ghsa.org](http://www.ghsa.org), we recognized the need for additional highway safety research and training for Federal, state and local safety personnel. The Association is accepting of the 402 earmarks for those purposes. In addition, we support the two new assurances proposed in the legislation. However, the Association recommends, that subjective terms such as "robust" (as in a robust data-driven enforcement program) are not good indicators of what performance will be specifically required of states and should be eliminated.

The Association supports the proposed language allowing states to use their 402 funds in conjunction with those of neighboring states. States can achieve economies of scale by working enforcement, data or educational programs on a bilateral or regional basis. GHSA also supports the language that would allow NHTSA to promote highway and vehicle safety with states legislators. The Association urges the Committee to extend the same privileges to the state recipients of 402 funds. It makes little sense to encourage states to improve their performance by enacting certain safety laws (such as primary seat belt laws), but then prohibit them from working with their state legislators on those laws.

GHSA also strenuously supports the single grant application and deadline requirement. This should help states plan their programs with more certainty and smooth out the flow of funds to the states.

The Association is disappointed that the Committee did not address the maintenance of effort (MOE) requirement in the 402 and other grant programs. The MOE requires the states to collect information from jurisdictions all over the state regardless of whether or not they were federally funded. It is a very burdensome, labor intensive requirement and an increasingly difficult one for states in these tight economic times. We urge the Committee to streamline the requirement and/or authorize a waiver process for states that can demonstrate economic hardship.

We are perplexed by the requirement to sanction states for their inadequate 402 program and to penalize them for their inadequate 402 plan. The 402 plan is the same as the state's 402 program. It details how the state will spend 402 funds to reach performance goals. That begs the question: Under what circumstances would

a state ever have an inadequate program if it has an acceptable plan? If a state has an unacceptable plan, the state has the opportunity to redo its plan. If it still has an unacceptable plan and the Secretary, in consultation with the state, reprograms 402 funding, then the plan (and hence its program) would become acceptable. By keeping both the sanctions and the reprogramming penalties, a state is penalized twice for the same thing. GHSA urges the Committee to reconsider this issue.

#### **Section 403 Research and Development Program**

In general, GHSA supports the proposed language for NHTSA's research and development program. We are especially supportive of the language authorizing an international highway safety program. According to the World Health Organization, the United States—once a world leader in highway safety—has slipped to ninth or tenth in the world. Other countries—most notably Great Britain, France, the Netherlands, Sweden, Australia and Canada—are leading the way with widespread use of automated enforcement and BAC testing, primary belt laws and other innovations. There are significant strategies and countermeasures that the United States could learn from other countries, and an international program would provide NHTSA the opportunity for the exchange of information.

GHSA also strongly supports the legislative language that protects from liability personal health information collected by NHTSA for research purposes. Without such protection, NHTSA (and the states) would have a very difficult time collecting public health data used for a number of purposes, including the determination of serious injury, BAC testing results, medical fitness to drive, etc.

GHSA also supports bestowing NHTSA with the authority to set model specifications for certain devices (such as ignition interlocks) and to establish a Conforming Products List. Currently, NHTSA does this on an ad hoc basis. Such an official list would make it easier for states to purchase equipment that meets the specifications set by the Agency.

GHSA questions why \$1.28 million is being earmarked to create a clearinghouse and technical assistance for medical fitness to drive. Is such a clearinghouse necessary? Why should Federal funding be spent for this purpose and not for some other research-related purpose? The amount of Federal funding that NHTSA receives under the Section 403 program is very limited. NHTSA should justify that this earmark is the highest and best use of its limited research dollars.

#### **Section 405 Combined Occupant Protection Program**

GHSA supports the combination of the Section 405, portions of the 406 and the 2011 programs into a single occupant protection program. The requirements to develop an occupant protection plan, including a plan for child passenger safety specialists, will encourage a more strategic approach to occupant protection. The Association suggests that the list of eligible activities should be broadened to include sustained enforcement of adult and child occupant protection laws as well as educational programs to encourage the use of seat belts and warn adults about the dangers of not using seat belts.

Under the Administration's proposal, the combined occupant protection program was funded at a relatively low level, especially compared to other programs. GHSA urges that the Commerce Committee to consider making the occupant protection program a higher priority and funding it at higher levels. Strategies to encourage seat belt use are among the most effective countermeasures that states can employ. Strong laws and high visibility enforcement are the cornerstone to higher seat belt use. Without substantial funding, states will not have the ability to adequately participate in the national high visibility enforcement campaigns, encourage sustained enforcement or support child passenger safety programs.

#### **Section 408 State Traffic Safety Information System Improvements Program**

GHSA supports the proposed changes in the Section 408 program. As noted above, GHSA has worked with NHTSA to identify traffic records performance measures that states will use in their FY 2013 plans.

It is important to note, however, that upgrading traffic records information systems will have a huge price tag, and the current 408 program funding has been woefully insufficient. (Currently, states receive allocations of between \$300,000 and \$500,000 to make system improvements that can cost in the millions.) GHSA encourages the Committee ensure that funding investments reflect the need when there is a longer-term reauthorization in the future.

#### **Section 410 Impaired Driving Countermeasure Program**

GHSA supports the reconfiguration of the Section 410 program. The current program is overly complex, too stringent (*e.g.*, the BAC testing requirement) and fo-

cuses on issues (*e.g.*, the self-sufficiency requirement) that are not central to the reduction of impaired driving crashes, fatalities and injuries. The proposed program would allocate impaired driving funds to every state so that they can continue to make impaired driving a central part of their state highway safety effort. GHSA also supports the revised program because it would encourage a more strategic approach to impaired driving. Further, GHSA supports the dedicated funding for ignition interlocks, since widespread deployment of interlocks has the potential to dramatically reduce impaired driving.

GHSA recommends that the list of eligible activities should be expanded to include sustained enforcement and impaired motorcycling programs.

We also suggest that the Committee reconsider its requirement that states must have a full-time impaired driving coordinator. Such a requirement is not problematic for large or medium-sized states, but it is for small states. In Maine, for example, the highway safety office has seven employees including the director, a secretary, a contract Law Enforcement Liaison, a grant specialist who handles contracting and procurement and three program staff. The three program staff split responsibilities and oversee grants for impaired driving, occupant protection, law enforcement challenges, speeding, motorcycle safety, traffic records and other state safety issues. Requiring a full-time (rather than a part-time) coordinator would mean that the remaining two program staff would have to cover all other issues and would make it even more difficult for the small staff to fulfill all of their responsibilities. Maine's experiences are not atypical for small states.

#### **Section 411 Distracted Driving Grants**

GHSA supports the proposed distracted driving incentive program since this is an emerging issue that appears to be growing exponentially. We support the focus on texting and on young drivers since that is supported by some current research. We also appreciate the fact that eligible states would have some flexibility in the use of the incentive funds.

However, we are puzzled by the language that requires "increased civil and criminal penalties than would otherwise apply" if the crash is caused by a driver texting or novice driver. Is this intended for all crash involving distraction even if there is only property damage? It would make more sense to require additional penalties only in the most severe cases such as those involving a fatality or serious injury.

Further, GHSA is concerned that the requirements may be too stringent and that few, if any, states will qualify. The Association recommends that the Committee request NHTSA to analyze state distraction laws and determine which states would currently qualify and which would not. If our concern is merited, then the Committee may wish to consider minor modifications that would ease program eligibility.

#### **Section 2009 High Visibility Enforcement Program**

GHSA supports the requirement that NHTSA conduct three high visibility media efforts. This means that states will also be required to conduct three high visibility enforcement campaigns, as they currently do. Most states would find it extremely difficult to conduct additional campaigns. Some states are having difficulty attracting law enforcement personnel to the current enforcement efforts. Others have reduced state staffs and are having difficulty managing the mobilizations in their states. Still others have used up their allotment of Section 406 funds and are facing sharp cutbacks in the amount of funding available to conduct high visibility enforcement mobilizations and other safety activities.

The only minor change that GHSA recommends is to explicitly allow the impaired driving crackdown to address drug as well as alcohol-impaired driving.

#### **Section 2010 Motorcyclist Safety Program**

GHSA is disappointed that the Committee did not consider major changes to the Section 2010 Motorcyclist Safety Program.

Under the current program, states cannot use Section 2010 funds for: impaired motorcycling programs; educational campaigns to alert motorcyclists about the dangers of speeding and reckless riding; campaigns to encourage greater conspicuity of the motorcycle or ride; efforts to reduce the number of improperly licensed riders; analysis of state motorcycle data or linkage of such data to other data bases; or even support of motorcycle task forces and development of strategic motorcycle safety plans. States cannot use the funding to encourage the voluntary use of motorcycle helmets even though the use of helmets are one of the most effective countermeasures a state can deploy. The current program does not encourage a more comprehensive approach to motorcycle safety but focuses very narrowly on improvements to motorcycle training.

GHSA urges the Committee to reconsider this program and make it a research-based, effective and comprehensive program to address motorcyclist safety.

**Section 111 Driver Alcohol Detection System for Safety Research**

GHSA wants to lend our strong support for the in-vehicle research provisions. They will allow government and the private sector to continue the development of non-invasive advanced technology to detect alcohol-impaired driving. GHSA believes that such technologies could have the potential to significantly reduce the incidences of impaired driving and would be well worth the modest investment called for in the legislation.

**Section 412 Agency Accountability**

GHSA supports the proposed amendments to the Agency Accountability provisions.

This concludes the testimony of the Governors Highway Safety Association on the proposed two-year reauthorization provisions for Federal behavioral highway safety grant programs. Thank you for the opportunity to testify before the Committee on this significant piece of highway safety legislation. I would be glad to answer any questions and look forward to working with the Committee as the proposal moves through the legislative process.

Senator PRYOR. Thank you. I want to thank all of our witnesses for testifying today.

Mr. Strassburger, I'd like to start with you. I must say that I've just gone through a process where I bought my soon-to-be 16-year-old used vehicle, and I was very impressed with the options we had. And, you know, we're trying to get 5 star safety ratings and looking at all that. We had lots of options to choose from, so I think that the fleet that's here—not just the U.S. automakers. Certainly, I'm pleased to see them really improving in many ways, but also just the other options that people have, which is great, and that's a credit to your industry. But let me ask—you know, as a lawyer, they always say do not ask a question you do not know the answer to, but I'm going to ask you a question I don't know the answer to, but I would like your thoughts on it, and that is the relationship between more rigorous CAFE standards and safety. Is there a tradeoff there? Are we seeing any diminishment in safety?

Mr. STRASSBURGER. Yes, Senator, thank you. There is absolutely a relationship between vehicle mass and size and its crash performance. And the National Academy of Sciences back in 2002 quantified that the first round of CAFE rules that were adopted in the mid-1970s probably were responsible for approximately 2500 additional fatalities as a result of the downsizing of the fleet that occurred at that time.

Since that time, the agency has restructured its CAFE rules in an effort to try to mitigate and avoid any adverse consequences that might come from increased CAFE requirements. And so, as you know, we as an industry support a higher CAFE. We have, I think, 160-some odd models that get 30 miles per gallon or more—greater, and we're working both with the agency and the Administration on future CAFE rules. And our interest there is to make sure that we preserve jobs, affordability, but also that we also are able to continue to improve motor vehicle safety so that we can sustain the downward trend that we heard Administrator Strickland testify just a few moments ago. It has been ongoing now for 25 years. So, it remains a concern, but we are mindful of it.

Senator PRYOR. It seems to me that—I mean, from the layman's perspective that you all are really doing a good job in engineering, even the lighter vehicles, because if you look at the crash worthi-

ness, all the tests, not just the NHTSA test, that's one set, but also the insurance industry and others do test. And I must say I was impressed even with the, you know, vehicles that get 35–40 miles a gallon that are smaller vehicles, many of them, at least, seem to do very well in the crash tests.

Mr. STRASSBURGER. Yes. Thank you. It is very rewarding, I think, for all the engineers that I represent that actually do real engineering work. But new materials, new technologies, et cetera, have certainly helped drive the fatality numbers down and making cars safer, but one caution is, and that is this, as we move forward, sufficient time to make those changes are necessary. When we do use new materials, sometimes that means new jointing, new welding techniques that change, stamping—new stamping, forming plants are needed. New repair techniques are need, and so as we move forward, if we have to do something overnight, then we have only one option and that is to downsize, and that is not good for safety. Given sufficient time, sufficient lead time, I think we can do a very good job, as you have observed.

Senator PRYOR. Thank you.

Mr. Betkey, let me ask you from your standpoint, I have a question about the graduated drivers licenses.

Mr. BETKEY. Right.

Senator PRYOR. And different states do different things, but tell me your position on a national GDL standard, and maybe even something like the STANDUP Act that some here have been promoting?

Mr. BETKEY. Well, we certainly support increasing the conditions for the young drivers. If the STANDUP Act was passed today, I think 49 out of the 50 states would not qualify for any of the criteria that is in the Act. We definitely understand the issues involving the young drivers, and we're very supportive of trying to reduce those incidents, the crashes that are incurred, and the better education and better driving ability of our youngsters. I feel for you with your 16-year-old.

[Laughter.]

Senator PRYOR. Thank you. Senator Toomey?

Senator TOOMEY. Thanks very much. I just have to mention that Mr. Strassburger's observation that the number of additional fatalities as a result of the previously established CAFE standards could be 2,500. It is apparently a very damning statistic, and a very disturbing one, it seems to me. That's a big number. And it is my understanding that there is some discussion of moving current CAFE standards to a benchmark as high as 56 miles per gallon, now, not in the immediate future, but in the reasonably near future. Are you concerned that this will inevitably put pressure on manufacturers to lighten the vehicle and diminish safety?

Mr. STRASSBURGER. Senator, just one point of clarification. The 2,500 figure that I mentioned was associated with the CAFE rules that were first enacted in 1975. So, since that time and it's more recently, I would say—I do not remember exactly when, but 2005–2006, the agency restructured its CAFE rules to remove the incentive for downsizing. And so it is hoped, and we're just in the process of implementing that now, that those rules would hold safety harmless.

Now, with respect to the rules that are coming up, I think it is the 2012 through 2016, and then the rules that—we anticipate the agency will propose this coming September, one of our focuses will be with that rulemaking, will we be able to continue to hold safety harmless, so to speak? Will we be able to continue to make improvements that drive the numbers down or is the structure of the program or the performance requirements such that they would drive changes too fast and force us to downsize. And so it is something that we're watching. I can't say at the moment without the details that I would be concerned, but it is one that we're watching quite carefully.

Senator TOOMEY. I do have one other question, but, Ms. Nason, did you have anything you wanted to add to this question?

Ms. NASON. Well—thank you, Senator Toomey. I just—we very carefully tried to follow the National Academy of Sciences recommendation in 2005 when we were developing the new CAFE standards, and I agree with Mr. Strassburger, it can be done. You can increase CAFE without having a decrease on safety. It needs to be done reasonably though, so I think that the time-frame issue is probably one of the most critical.

Senator PRYOR. Thank you. And back to Mr. Strassburger for a minute there. In your testimony, you indicated a concern about the change in—that this draft legislation proposes regarding the disclosure of early warning reporting, but you didn't really elaborate on why you are concerned about that. So, could you share with us the nature of your concern about that?

Mr. STRASSBURGER. Yes. The concern really comes—it is probably a twofold concern. There is a concern that with the release of the data—well, let me back up and say, the information that is collected by the agency is raw, unverified consumer complaints, et cetera. It does not indicate the existence of a defect or a defect trend. Rather, it is data that requires additional analysis and, hopefully, provides higher-quality leads to true problems in the field so that the agency is devoting its limited resources to those investigations that are likely to be—lead to real problems and recalls.

The concern is this, beyond the concern that we have about releasing proprietary information that could be used by our competitors, is that it would hamper or drive the agency—the agency's defect investigation agenda would be driven from the outside by those who want a particular investigation to be conducted.

As we saw last year, as the agency indicated in its most recent report, I think, or the NASA report, that publicity drives more and more complaints and that could lead to, I think, an unstable situation where if the agency's agenda is driven from outside the organization.

Senator TOOMEY. Ms. Nason, you know, one of the things that occurs to me as a layman, who has no expertise on this whatsoever, but if you add this provision, it seems to me that there is at least a danger that there would be somehow a reduction in disclosure and reporting or somehow it could become problematic because of all kinds of associated dangers and, perhaps, liabilities on the part of manufacturers. As a former administrator, do you have any concern about this provision?

Ms. NASON. I do, Senator. I was not the administrator who signed the rulemakings. I was the administrator during the lawsuits, so I can tell you personally that there was a great deal of thought that went into a balancing between what information should be released and what information should be protected and why. Really, the agency very carefully tried to think through protecting personal privacy rights. Citizen A sends a letter to company B. They should have some expectation of privacy that it is not going to end up in the Government's hands. The Government is going to give it out to other people, and we really thought through those issues. And we thought through the concern about a chilling effect on people who might report.

And I think having seen this issue litigated and then upheld by the Court of Appeals, I would urge the Committee to think very carefully before treading in this area because it's really been litigated and debated at length.

Senator TOOMEY. Thank you very much.

Senator PRYOR. Thank you. Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman, and thank you for your work on this bill. Like the Chairman, I have a daughter who just turned 16, but because of the Minnesota Government shutdown, she was unable to take her driver's test. So there's been a big backlog in those tests. It may last all summer from what I've heard or that's what I'm telling her.

[Laughter.]

Senator KLOBUCHAR. So, anyway—so I care a lot, as you all know, about the issues of the teen driving, texting. But I first want to start, Mr. Strassburger, with this topic of the interlock devices. I know you endorse the idea of a grant program for states that adopt ignition interlock devices to discourage drunk driving. I believe this technology can be an incredibly effective way to keep drunk drivers off the road. To give you an example, Minnesota has this program, supported by Governor Pawlenty, bipartisan support of our legislature. And so these ignition interlocks have been available in Minnesota since the start of the pilot program in 2009.

Of the 1,900 people that have one, only 4 people reoffended. That's a recidivism rate of 2 percent. And so we now have a full statewide program. And I know that there is costs associated with maintaining these devices, and I just wondered if there are any ideas for how to bring down the cost and how this could work, Mr. Strassburger?

Mr. STRASSBURGER. Yes. Thank you, Senator Klobuchar. I actually don't represent the ignition interlock device manufacturers, so I don't—I'm not fully conversant in the cost, but what I will say is this: Is that typically those costs are borne by the offender and not—

Senator KLOBUCHAR. Correct.

Mr. STRASSBURGER.—paid by the State. And in those instances where the offender is unable to pay, it's often the case where indigent funds are set up where those that qualify would be able to

draw some funds. And those indigent funds are—obtain their funding from the ignition interlock device manufacturers.

Senator KLOBUCHAR. Uh-huh. And are you aware of how these programs have been working across the country?

Mr. STRASSBURGER. I'm not. I believe they are working, but I can follow up for you with information for the record.

[The information referred to follows:]

All fifty states have some sort of ignition interlock law. Research shows alcohol ignition interlocks to be effective in reducing recidivism among persons convicted of alcohol-impaired driving, ranging from 50 percent to 90 percent while the interlock is installed on the vehicle.

Thirty nine states mandate the use of an ignition interlock by a convicted offender. Fifteen states—Alaska, Arizona, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Kansas, Louisiana, Nebraska, New Mexico, New York, Oregon, Utah, and Washington—have mandatory ignition interlock provisions for all DUI convictions. Colorado's and Illinois' laws are not mandatory for a first conviction, but there is a strong incentive to install an interlock device on the first conviction. In July 2010, California enacted legislation requiring a five-year pilot program in the counties of Los Angeles, Alameda, Sacramento, and Tulare.

An additional sixteen states—Alabama, Delaware, Florida, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, North Carolina, Oklahoma, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming—mandate the use of an ignition interlock by anyone convicted of having a blood alcohol concentration (BAC) of between 0.15 and 0.17 percent (nominally two times the legal limit of 0.08 percent enacted in all 50 states). Alternatively, seven states—Georgia, Massachusetts, Missouri, Montana, Ohio, Pennsylvania, and South Carolina—mandate the use of an ignition interlock for a second conviction.

In total, twenty states have devised ways to offset costs for indigent offenders. Ten of the sixteen states that mandate the use of an ignition interlock for all DUI convictions (including the California Pilot Program) have established an indigent fund. An additional ten states that mandate the use of an ignition interlock by anyone convicted with a BAC of 0.15 percent or greater have also established an indigent fund. The eligibility requirements and funding mechanisms for these funds vary by state. The attachment to this response provides a state-by-state summary of existing ignition interlock laws for all DUI convictions and for those convicted with BACs of 0.15 percent or greater. In general, indigent funds are funded by fees paid by non-indigent offenders or the ignition interlock service provider.

The state of New Mexico appears to be one of the first to have established a fund for indigent offenders. That fund is funded from fees imposed on the ignition interlock provider. Initially, the state did not establish eligibility criteria for offenders to qualify to use the fund and judges were certifying over one-third of offenders as being indigent. The state has since adopted objective criteria for eligibility. Thus, if states choose to make funds available to indigents, it is recommended that objective criteria for eligibility be developed to ensure fair access to those resources.

Senator KLOBUCHAR. OK, very good. Thank you.

And I assume you are supportive of those efforts, Ms. Nason?

Ms. NASON. Yes. As a MADD board member, we are very enthusiastic to see that provision in the bill. And I can tell you, since I have the numbers in front of me that the number of ignition interlocks has more than doubled from 100,000 to 200,000 in use today. And New Mexico and Arizona have reduced DUI fatalities by 36 and 46 percent, respectively, due in large part to interlocks for all offenders. So, we're very pleased. MADD was very pleased to see that.

Senator KLOBUCHAR. Very good. Thank you.

Ms. Gillan, on the same day that J.C. Good graduated from college in 2008, her car was struck by a tractor trailer that had swerved to miss a teen driver running a red light because he was distracted by his cell phone. J.C. survived, but her parents died

that night. And tragic stories like this one is why it is so important, I believe, to aggressively combat distracted driving.

So I am pleased, Mr. Chairman, that the draft of the Motor Vehicle and Highway Safety Improvement Act includes a grant program that states that ban texting by all drivers and the use of cell phones by novice drivers, provisions that I strongly support. Do you think that this grant program could help spur the adoption of State bans on texting while driving? And also, second, when Congress passed legislation giving grants to states that enforced seat belt laws, how quickly did states respond and adopt, Click it or Ticket law? So I think it is an example we can look at.

Ms. GILLAN. Thank you, Senator, for that question. Advocates supports incentive grant programs, but clearly the optimal combination is incentive grants with sanctions. Every time Congress has adopted a sanction such as the 21 drinking age, on 0.08 BAC, and a zero tolerance law, the states within 3 or 4 years have all passed those laws. I mean, there is absolutely no question about it that sanctions work. And every time Congress has used a sanction, not a single State has lost a single dollar of highway construction money. There isn't a faster way to get the states to act in deference to others from the states who don't want that approach.

I do think for texting bans as well as the ignition interlock, as well as the STANDUP Act, which, thank you very much for being a co-sponsor, that if we really want to accelerate uniformity and get the states to do this, that we need the incentive grants to encourage them, but I think at some point we need the sanction in order to show that we're really serious about it. And, as I said, I am quite confident that with the sanction, the states will act.

As many of you in this room know, I have a sister who is a State Senator in Montana. She has been a sponsor of the graduated drivers licensing law, but has not been able to get a strong one through. And she says to me all the time, "Show me a sanction; I'll show you a law."

Because this Committee has jurisdiction over incentive grants, we would really like to see that put in the bill and work with the Environment and Public Works Committee to get the sanctions.

Senator KLOBUCHAR. Well, thank you, and I'm out of time, but I'll put some questions in writing about the graduated license standards, as well, which I think would be helpful. So, thank you.

Ms. GILLAN. Thank you.

Senator PRYOR. Thank you. Senator Thune?

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman, for holding this important hearing and taking a look at these important issues of highway and vehicle safety. And I want to thank our witnesses for their testimony today as well.

Ms. Fleming, in your testimony, you explained how some State officials that you interviewed would prefer more flexibility in using safety incentive grant funds. That's a view that I share. I also believe that flexibility is what states want.

And so I would like to ask Mr. Betkey and Ms. Nason, do you think the states would be supportive of a proposal to allow medium

and high-range states in the Impaired Driving program to use their 410 funds, perhaps with the approval of the administrator, on activities that are not specifically listed in the draft bill like the low-range states are allowed to do?

Mr. BETKEY. Yes, I think so, Senator. And I believe that the states would welcome the opportunity to use those in a more flexible manner. And I think that would only add to the reduction in the alcohol-involved crashes. It gives the states an opportunity to look at a wider berth of issues and narrow their countermeasures a little bit or expand those countermeasures a little bit. The states always welcome the flexibility to do that.

Senator PRYOR. Thank you.

Ms. NASON. I think there is no question, Senator, that the states always appreciate the opportunity for additional flexibility. As a former administrator, I have to latch on to your suggestion that the administrator be involved in approving that funding. Unfortunately, in the past on occasion, money was used, not in 410, but in other grants for less than valuable data-driven solutions. The one example that is always floating around NHTSA is the group that used money for bobble head dolls. So, you want to make sure that it is being used for a valuable purpose, and I think if the state has a legitimate claim and use for the money, then, absolutely, that should be an option.

Senator THUNE. OK. Ms. Fleming, any comment on that—I referenced your testimony?

Ms. FLEMING. Yes, thank you. In our work, we obviously heard from states that they appreciate flexibility. We support that. We've had examples from states where they actually received more money than they felt they needed for a particular grant, and they would have preferred to use some of that money for other activities that they felt would further their safety goals.

I think the only caution I would have is that since NHTSA is moving toward a performance-based system, that it is going to be important for them to still make sure that the overarching safety goals and the State goals are being adhered to and that once those minimum thresholds are met, excess funds could be used for other activities within the states' plans.

Senator THUNE. Did any of you think that there were other programs in the draft bill that could benefit from increased flexibility?

Mr. BETKEY. Well, we are always looking for flexibility.

[Laughter.]

Senator THUNE. Good. Good answer, by the way. What do you think some of the benefits of allowing that to occur would be, Mr. Betkey? I mean, just in terms of providing that local flexibility?

Mr. BETKEY. Well, it gives us an ability to expand the countermeasures that we implement for a particular program. When it is narrowly focused, we're limited. A good example would be in the Motorcycle Safety Program. If we were given some flexibility there to move some funds, I think we could attack some of the larger problem areas that involve motorcycle safety.

Senator THUNE. OK. And I would say—I will direct this to Ms. Fleming again. And Mr. Betkey mentioned in his testimony that GHSA has concerns about the new 410 requirement that states have to have a full-time impaired driving coordinator because of

the impact that it would have on smaller states, much like my own, who have limited staff and resources. My understanding is that the staffing requirements are being considered in other programs—and it's been a hardship in the past for South Dakota with the Safe Routes to School Program—and I'm interested in knowing during your interviews did you hear of other states that had the same concern?

Ms. FLEMING. We have, but at the same time we also have heard that having a champion in the state could really make a difference in putting forth a program and addressing some of the issues such as—with teen driving and distracted driving. So, I think it is a balancing act.

Senator PRYOR. Go ahead?

Senator THUNE. Mr. Chairman, I have a question I'd like to submit for the record for the first panel if that's OK. I see my time has expired. So, thank you all very much.

Senator PRYOR. Thank you, Senator Thune.

I have just a couple of follow-ups from earlier, but I want to thank Senator Thune for being here and all of my colleagues who are kind of, I guess, headed to the floor. I think we're about to have a vote on the floor just any minute. So, let me run through a few of these very quickly.

First, Ms. Fleming, are you in a position to look at NHTSA's highway safety grants and evaluate which ones are the most effective and which ones are not very effective?

Ms. FLEMING. I think that NHTSA is in a position to do that, quite frankly. I think that we are really pleased that NHTSA, working with GHSA, has developed the core 14 performance measures and the additional measures, and it is now going to allow them to get a sense as to how things are working at the State level and which areas they need to address. So, I think we're very pleased to see that this approach is going to allow them to have a more performance-based data-driven approach. The data is currently available for the core 14 measures, so we're not concerned about that. I think when you get into some of the optional measures our work has found that the quality of data really varies tremendously across the States, so that could hinder the ability to really fully implement a performance-based approach. But, absolutely, I think NHTSA and the states are now in a better position to have a sense as to what's working and how to prioritize using the data through efforts.

Senator PRYOR. Well, that's great because we're going to need that type of evaluation as we go through our continuing tough budget years to come. So, thank you for your insights there.

Ms. Nason, let me ask you, you became passionate in your opening statement about the DADSS Act?

Ms. NASON. Yes.

Senator PRYOR. And just for the Subcommittee's benefit, could you tell us briefly how you envision that—I know the technology may not be completely there, but it sounds like we're close, but could you indicate for the Subcommittee how you would envision that actually working and how that might be deployed around the country?

Ms. NASON. Yes. Thank you, Mr. Chairman. I think most importantly, the idea is to make a passive technology that doesn't in any way hassle the sober driver. So, it needs to be better than 6 Sigma reliable. It needs to be set at 0.08 and then effectively, you could eliminate drunk driving by stopping the drunk driver from having the vehicle start.

However, if I am home with my three children and everyone's finally in the car and they have all of their equipment and all of their backpacks and everyone has shoes on, and I go to start the car and it says, oh, have you been drinking again?

[Laughter.]

Ms. NASON. I am going to bring that car right back to the dealer and say, get this junky technology out of my car. So it needs to be really better than 6 Sigma which is why it needs more time. If—the technology in a very bulky comprehensive form really exists right now, this is not being invented out of whole cloth. You can test with a finger. You can test with breath, but it needs to be flawless for the driver, otherwise, the target demographic, a 41-year-old mother of 3 is not going to want to purchase the technology if every few days the car tells me I'm drunk and it won't let me get where I need to go. So, that's why having a funding stream over the next 5 years is so critical to this technology, but I would just remind the Committee that it is still a third of all fatalities. Alcohol-related deaths are still a third of all fatalities. And it was 39–40 percent when I was NHTSA administrator compared to, say, seat belt use, which has gone from nothing to 85 percent. So this has really been an incredible challenge for NHTSA and the Department of Transportation and MADD, and we think that the DADSS technology holds enormous promise.

Senator PRYOR. Good.

Mr. Betkey, let me ask you from a State perspective about safety grants programs that you all administer around the country. Do you have a way to measure how effective they are and what's working out there and what's not?

Mr. BETKEY. Well, we developed the performance standards that we talked about earlier with NHTSA, and they have been in for the last couple of years now. They are uniform. To narrow it down to the individual grant programs, I don't think we have—we have that process in place, but from a more global perspective, we have the base performance measures that we can certainly share.

Senator PRYOR. Well, listen, I will have some more questions for the record, and I know that other Committee Members will as well. In fact, I think Senator Thune has one right now.

Senator THUNE. Mr. Chairman, just a quick follow-up in responding to something that Ms. Nason said, and that is if we need more time, then why are we doing an interlock grant specific now? I mean—

Ms. NASON. As part of the campaign to eliminate drunk driving, we had several pieces, media outreach, ignition interlocks for all offenders, which is a technology that is available right now.

And then the long-term technology would be equipment built into your car as opposed to an interlock that can be attached and detached for a drunk-driving offender that would be available in a seamless invisible form. That is a technology that is not ready for

prime time right now. And when I say we need a long-term funding stream, I mean for the advanced technology, the advanced alcohol-detection systems, not for the ignition interlocks.

Senator THUNE. And, again, this comes back to the issue that I mentioned earlier, Mr. Chairman, the flexibility. But interlocks are effective, but in my home, State of South Dakota, our response to impaired driving has been a 24/7 monitoring program for the offender which ensures that alcohol and drugs are not used. And it just strikes me that, you know, Congress maybe should not be in the business of mandating a one-size-fits-all solution. There is some of these programs that have been designed by states that I think work very well—it certainly does in our case—and having a sort of a niche program that, you know, where you've got grant money available specifically for that particular purpose might preclude funding for some of these other things that are working with a high level of effectiveness?

Ms. NASON. Yes, I agree, Senator Thune, that in some states they have worked to reduce drunk-driving fatalities in other ways that are extremely effective. NHTSA does the same thing with seat belt grants. Some states have passed a primary belt law; some states have exceptionally high belt use through messaging and other means to encourage the use. And I think you could see that same flexibility with 410, with alcohol links as well.

Senator THUNE. Thanks, Mr. Chairman.

Senator PRYOR. Good. Thank you.

Well, listen—did you have something, Ms. Gillan?

Ms. GILLAN. Mr. Chairman, I just wanted to add one thing before the hearing closed. And there has been a lot of discussion about early warning data and making it available. And I just wanted to say on behalf of Advocates and other consumer groups that I think one of the lessons of the Toyota sudden acceleration—and this Committee held hours and hours of oversight hearings in exploring that—is the fact that there needs to be greater transparency and making that early warning data available to the public. So, I just wanted to add that we're very pleased that Administrator Strickland supports that. We strongly endorse that provision, as well as increasing the penalties. Without criminal penalties, we need to have civil penalties that are set high enough that it will be a deterrent to corporations to misbehave and mislead the agency on these defects investigations.

Thank you.

Senator PRYOR. Thank you. Listen, I want to thank all of you all for testifying today. I want to thank all my colleagues for being here. We are going to leave the record open for 7 days. And the staff here will work with you all to get those answers to you and back from you as quickly as possible.

Thank you for being here. And there is no other business before the Subcommittee, we're adjourned.

[Whereupon, at 4:02 p.m., the hearing was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Thank you, Chairman Pryor and Ranking Member Toomey, for holding this important hearing today on highway and vehicle safety. I would like to also thank the witnesses for their testimony. Our nation's highway system plays a critical role in the U.S. economy and ensuring that they are a safe place to not only do business, but also for our families is important.

Thankfully, the work of Congress, the National Highway Transportation Safety Administration (NHTSA), the states, and other stakeholders has led to a remarkable decline in traffic fatalities. In fact, fatality rates have dropped to their lowest rate since 1949. Even with these improvements there is always more work that can be done and I appreciate the efforts of Senator Pryor and others in writing a draft NHTSA Reauthorization.

There are many provisions in the bill that I think will improve traffic and vehicle safety. Specifically, I believe in the consolidation of the grant process to one application with one deadline will be incredibly beneficial to states. For smaller states like my own with limited staff and resources this change will ensure that they are able to apply for many of NHTSA's grants at once.

I do have some concerns with the bill particularly when it comes to oversight and flexibility. While oversight and regulations are needed for all Federal grant programs we must ensure that we are not placing so many demands on the grant recipients that they cannot spend their time focusing on what is most critically important: traffic and vehicle safety. Additionally, we have to ensure that these grant programs are not so limited that they inhibit innovation at the state level. I think it is clear that all good ideas do not come from inside the beltway and this reauthorization bill must also allow for new traffic and vehicle safety ideas to come from those dealing with these issues daily.

I look forward to discussing these issues with the Administrator, the rest of the witnesses, and this Committee as we work to reauthorize NHTSA. However, while this reauthorization is needed I would urge the Committee to resist the temptation to rush into a mark-up before the bill can be fully vetted and concerns addressed even if other Committees decide to mark-up other titles of the highway bill before recess. None of these provisions will be able to move to the Senate floor until the Finance Committee, of which I am a member, is able to find the estimated \$12 billion necessary to pay for a highway bill over the next 2 years and those discussions will not occur until solutions to the debt crises are addressed.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
HON. DAVID L. STRICKLAND

*Question 1.* The *Click It Or Ticket* and *You Drink, You Drive, You Lose* campaigns, NHTSA's primary high-visibility enforcement efforts, have proven successful at reducing unrestrained and impaired driving fatalities. What challenges does NHTSA face to maximizing the effectiveness of high-visibility enforcement efforts?

Answer. High visibility law enforcement programs continue to be among the most effective strategies for changing dangerous motorist behaviors, including drunk driving, unrestrained occupants and distracted driving. The high visibility enforcement strategy utilizes a combination of paid advertisements, news coverage and observable law enforcement activity. In combination, these elements notify the community that strict law enforcement is planned, display the commitment of community leaders, and provide observable confirmation that enforcement is actually taking place.

One key challenge to implementing high visibility enforcement programs is maintaining Federal leadership and providing adequate resources to support state and community implementation. Federal leadership is needed to keep states and communities focused on high visibility enforcement as an effective cornerstone of their drunk driving, seat belt and distracted driving programs. Highlighting high visi-

bility law enforcement in eligibility and reporting requirements in grant programs and coordinating national implementation periods would help meet this challenge.

Another key challenge is maintaining and expanding where possible state and local involvement in high visibility enforcement in the face of tight budgets and increasing alternative demands on law enforcement resources. The need for state and community resources can be addressed by including high visibility enforcement programs as a central eligible expenditure for funds administered under sections 402, 405, 410 and 411. Together these programs would provide more than \$400 million per year for use by states and communities for the support of high visibility law enforcement programs and other safety countermeasures.

*Question 2.* With the budget concerns we have been facing, which highway grant programs are considered most critical for NHTSA's safety mission?

Answer. With leadership from the Senate Commerce Committee, NHTSA's highway safety grant programs have evolved over time from the original Section 402 State and Community Highway Safety Grant Program, which provides highway safety funding to the States through a formula, to a series of discretionary grants that address the critical issues affecting safety on the Nation's roadways.

The Department recommended consolidating the eight SAFETEA-LU discretionary grant programs to six to ease administration of the program for States as well as the Department. These include the following grant programs:

- Section 402—State and Community Highway Safety Grant Program
- Section 405—Consolidated Occupant Protection Grants (seat belt use and child passenger protection)
- Section 408—State Traffic Safety Information System Grants (State data collection and analysis)
- Section 410—Impaired Driving Countermeasures (32 percent of all highway fatalities per year)
- Section 2011—Motorcyclist Safety Grants (nearly 4,500 fatalities per year)
- Distracted Driving Grants (over 5,400 fatalities per year)

In total, these grants would provide a comprehensive highway safety system designed to provide data and analysis for identifying safety problems in the States. In addition, these grants would provide targeted grant funding to address these problems and implement countermeasures with the greatest potential for improving safety.

Because of the integrated, mutually supportive nature of these grants in providing a comprehensive approach to addressing the most pressing State highway safety problems, it is difficult to select those that are most critical. We look forward to working with the Committee to establish safety and funding priorities as part of the reauthorization process.

*Question 3.* In NHTSA's vehicle safety mission, what specific areas or departments are the most critical and need the most funding in order to maintain a strong safety standard for automobiles?

Answer. The President's budget request for Fiscal Year (FY) 2012 sets forth the Administration's views on the vehicle safety program's most critical funding needs. All components of the vehicle safety program—crash data, research, rulemaking, and enforcement—are critical to the program's success. We need to ensure that funding continues for our important baseline work, such as defects investigations and compliance testing, collection and dissemination of crash data, development and promulgation of new and revised safety standards, and research to support our standards. Modernization of our data systems is a key underpinning for these activities. In addition, we need to stay ahead of the rapid movement toward safety-critical electronic controls, alternative fuels/batteries, and crash avoidance technologies. This requires additional money for research, training, development of new data collection techniques, development of appropriate standards, and focused enforcement efforts. As our FY 2012 budget makes clear, meeting these challenges will require not just additional money for contract support but additional funding for employees as well.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CLAIRE MCCASKILL TO  
HON. DAVID L. STRICKLAND

*Question.* I know that NHTSA has done at least one study on the safety standards of seatback performance and has stated that the weight of the passenger when added to the weight of the seatback itself can exceed the safety standard. But has

NHTSA fully examined this issue to learn more about the ramifications of relying on a standard that is over 40 years old? Is the auto industry responding to concerns that have been raised about seatback standards? Does Congress need to step in to address the problem?

Answer. There has been significant debate and a lack of consensus in the past about whether the rearward strength of seats should be strengthened. The agency studied the strength of seats in the late 1990s in response to several rulemaking petitions. We determined that the strength of seats is far greater than is required by the seat standard (FMVSS No. 207). In 2004, NHTSA terminated the rulemaking petitions related to upgrading FMVSS No. 207 because we concluded that further study was needed to determine the relative merits of different potential rulemaking approaches. The agency's resources and priorities have not allowed additional study to take place.

Because rear impacts are a relatively small percentage of crashes that are severe enough to cause moderate-to-severe injuries, there is limited data available to assess the potential benefits of upgrading the standard. Although there is anecdotal evidence that injuries to children and others seated in the rear row of seats can be contributed to collapsing front seats, our field data bases are not able to show strong evidence of this.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
HON. DAVID L. STRICKLAND

*Question 1.* Given the high priority that mass reduction is receiving in the 2017–2025 CAFE standards, which NHTSA indicates may require a 15–30 percent mass reduction, can you provide me with an update on NHTSA's plans to continue implementation of the 2007 NHTSA Safety Roadmap for Plastic and Composite Intensive Vehicles?

Answer. NHTSA continues to follow up on the 2007 report, "A Safety Roadmap for Future Plastics and Composites Intensive Vehicles" (PCIV). NHTSA has an ongoing research project to investigate lightweighting opportunities using advanced plastics and composite materials. NHTSA has funded George Washington University (GW) to develop and document component material test procedures and predictive engineering tools to demonstrate the use of structural composites in a finite element model for a full size pickup truck. GW has been working with several plastics and composites suppliers to implement structural and non-structural plastics components in the vehicle model. This research is ongoing, and we expect to complete the research by the end of 2011.

In support of ongoing CAFE rulemaking, NHTSA is developing a fleet simulation model to evaluate safety considerations and countermeasures for future lightweight vehicles. We intend to incorporate the results from the PCIV research program into the fleet simulation studies to evaluate the PCIV safety performance against other lightweight vehicle designs.

*Question 2.* Since implementation of the 2007 Roadmap would directly support vehicle safety, as well as promote increased fuel economy, what is the timeline and what are the key milestones for execution of the NHTSA Safety Roadmap for Plastic and Composite Intensive Vehicles?

Answer. In August 2008, NHTSA conducted an experts workshop to refine near-term safety research and development priorities in the 2007 Roadmap. This workshop defined the need to develop relevant testing standards and refine predictive tools for materials and structural characterization, multi-scale damage characterization, failure predictions, and crash energy absorption of component and vehicle structures.

Also in 2008, NHTSA sponsored a study by the University of Utah entitled "Crash Safety Assurance Strategies for Future Plastic and Composite Intensive Vehicles (PCIV's)." This report was published by the Volpe Center in 2010. It identified outstanding safety issues and research needs for future PCIVs in order to facilitate the deployment of safe PCIV vehicles by 2020.

In 2009, NHTSA initiated research with the George Washington University and the University of Dayton Research Institute for fabricating, testing, and simulating crash performance of composite materials for automotive safety applications. This research is ongoing, and we expect to complete the research by the end of 2011.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. DAVID L. STRICKLAND

*Question 1.* The impaired driving program section of the draft bill allows low-range states to have some flexibility in the use of their 410 funds and they would not be limited to activities listed in the bill. I think it is good to allow the states a chance to innovate. I would like to see that flexibility also provided to medium and high-range states, perhaps with the approval of the Secretary. If someone outside the Beltway has a good idea let's not shut the door in their face. Would you support such a change?

Answer. The draft Section 410 is designed to use flexibility in the use of grant funds as an incentive and reward for State impaired driving program performance. This approach ensures that States with the most severe problems will use grant funds to focus on countermeasures with the greatest proven safety potential. States with less severe problems are allowed to select from a broader range of countermeasures, and those with the lowest alcohol-impaired driving rates are permitted to use grant funds for new and innovative programs that address identified State problems. We believe that this approach balances the need for innovation with the need to ensure progress among the States with the most severe impaired driving problems.

*Question 2.* Another 410 draft provision I have concerns with is the creation of a separate grant to states that have ignition interlock laws. I wonder whether we should have such small niche programs with no flexibility. While interlocks are effective, in my home state of South Dakota our response to impaired driving has been a 24/7 monitoring program of the offender which ensures that alcohol or drugs are not used. It seems to me that Congress should not be in the business of mandating one size fits all solutions. Do you see a requirement for this niche program? If so, do you think expanding it to include other successful programs, like 24/7, would actually allow for the overall goal, a reduction in impaired drivers, to be achieved more easily in other states?

Answer. The draft Section 410 includes a provision under which the Secretary would make grants to States with mandatory ignition interlock laws covering all impaired driving offenders. The amount of grant funds allocated under this provision is not to exceed 15 percent of the total Section 410 grant program. We believe that this incentive provision is appropriate since the effectiveness of ignition interlock devices has been well-established and about 35 States lack interlock laws that apply to all impaired driving offenders.

NHTSA is also very interested in the 24/7 program and is impressed by the reports of success from South Dakota. The 24/7 program shows promise in addressing high-risk offenders although it has not yet been demonstrated in a broad range of environments and applications. Because the 24/7 program addresses a different impaired driving offender population than an all-offender ignition interlock law, we believe that interested States could pursue both programs. Funding to support all-offender interlock laws would be available under Section 410 and funding for 24/7 programs could be available through either Section 410 (eligible under the Low Range State provision) or through Section 402.

*Question 3.* I have concerns with very detailed requirements being imposed as a condition of receiving grant funds. Given how specific some of the requirements can be, and with there being some discretion at NHTSA in interpreting and applying the conditions, I wonder whether we should continue to operate on an "all or nothing basis" in terms of states qualifying for program grants. Would you support a provision that allowed you the ability to award partial grants to a state for compliance that was "substantial" but not "complete" enough for full compliance? Would such an approach help states that would not qualify otherwise receive some of the much needed safety funds, or would it result in NHTSA treating a close case as "substantial" but not "complete?"

Answer. Qualifying for a "partial grant" by "substantial compliance" with grant eligibility requirements may lead to two significant problems that could affect national highway safety program progress and complicate program administration by the agency and States.

First, grant eligibility criteria are often used as a means to stretch current State program and statutory systems to greater effectiveness by providing an incentive to enact new, more stringent or effective laws or safety programs. Allowing "partial grants" for "substantial compliance" will serve to diminish safety progress as grantees may set the bar lower for "substantial compliance" with grant criteria rather than "full compliance" with the grant criteria.

Second, grant eligibility criteria seek to establish an objective standard that States must meet in order to qualify for a grant. For example, a State enacts and

enforces legislation or meets certain program coverage requirements that are specified in statute or regulation. This allows for yes/no decisions regarding whether the law or the program complies with the grant criteria. Providing a “partial grant” for “substantial compliance” introduces an element of uncertainty and judgment into the grant eligibility determination process. States and the administering agency may have different perspectives on the meaning of “substantial compliance.” This can and will lead to disputes about inconsistent or arbitrary grant decisions when administering agencies make grant eligibility determinations based on their judgment of whether a State has “substantially complied” with the grant criteria.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO  
HON. DAVID L. STRICKLAND

*Question.* During today’s hearing, you mentioned the overwhelming success of the New York and Connecticut pilot programs in reducing handheld cell phone use and texting. However, it was my understanding that the actual goal of distracted driver programs is to reduce the number of accidents. Is there any evidence that these pilot programs reduced the number of auto accidents, injuries, or fatalities?

*Answer.* For this pilot program, NHTSA selected relatively small cities, Syracuse, New York and Hartford, Connecticut, for the demonstrations because program implementation can be closely monitored and measured. However, a consequence of the limited population is the relatively small number of serious crashes, and therefore a limited opportunity to measure crash effects. For this reason, the findings from the current distracted driving demonstration programs focus on changes in driver cell phone use and texting and do not include crash data, such as traffic injuries and fatalities. Our next step will be to deploy a number of Statewide distracted driving demonstration programs where crash results are more likely to be measurable.

Although crash outcome data is not yet available, we believe that other information points to a positive effect from distracted driving programs. Specifically, a number of studies indicate that driver cell phone use increases crash risk. Other studies show that handheld cell phone laws reduce observed cell phone use while driving. The New York and Connecticut studies provide additional evidence that strong enforcement of such laws further reduces cell phone use and texting by drivers. We believe that these studies collectively indicate that the reduction of cell phone use and texting by drivers is likely to impact crash risk.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO  
HON. DAVID L. STRICKLAND

*Question 1.* Mr. Strickland, in your testimony in front of the subcommittee you stated that the various sectors of the automotive industry had a “systemic” problem in terms of their annual automotive recall completion rates. However, at the time you did not have the supporting data to corroborate that statement. Would you please supply me with recall completion rate data for new car sales, used car sales, automotive fleets, rental car companies and individual consumer automobiles from the past 5 years?

*Answer.* As I mentioned at the hearing, NHTSA is conducting an Audit Query to determine whether there is a systemic problem with the recall completion rates for vehicles owned by rental car companies. The average vehicle recall reaches a completion rate of about 70 percent after the full six quarters for which manufacturers must report completion data. Based on data received from the three largest domestic manufacturers, we believe that there is a systemic problem with rental car fleets. That data indicate that, at the one-year mark after the announcement of a recall, about 67 percent of consumer-owned vehicles have had the recall remedy performed on them. Comparable figures for rental car companies were about 56 percent, with the larger rental car companies having higher rates than smaller ones, but still lower consumer-owned vehicles. Among the major companies, there is also a range of completion rates, with the best company being essentially at the same level as consumer-owned vehicles. The major rental car companies generally contend that the manufacturers’ data do not accurately reflect the rental companies’ completion rates, which they claim to be higher, at least in some cases. However, the rental car companies seem to have selected examples of specific recalls with higher rates rather than providing data on all of the recalls on which the manufacturers have supplied information.

We have also found that, while most of the major companies have recently revised their policies with regard to renting recalled vehicles, they still rely on their own

assessments of risk—in some cases based on consultation with the manufacturer—to determine whether to rent such vehicles prior to repairs. For vehicles not repaired prior to rental, we are not aware of any company that informs the customer of the un-remedied defect or noncompliance. In short, while we think that recent attention given to this subject has resulted in some improvements, we believe that there is still a systemic problem with the completion of recalls by rental companies and their disclosure of pending recalls to customers.

Other than the data cited above concerning rental fleet vehicles, we do not have data that are broken down in the categories you have requested. Recalling manufacturers provide six quarterly reports after the start of a recall campaign, identifying in aggregate numbers how many vehicles have been remedied under the campaign. They do not report these data under the categories requested and NHTSA does not have a way of breaking the aggregate data into the categories you requested for the last 5 years.

*Question 2.* How does the National Highway Traffic Safety Administration compile automotive recall completion rate data?

Answer. Manufacturers are required to provide six quarterly reports starting from the quarter in which they launch the recall campaign. Manufacturers provide the data in aggregate totals and under the categories defined by regulation. (49 CFR 573.7) In essence, manufacturers report the aggregate number of vehicles repaired (or inspected and not requiring repair). NHTSA divides that number into the total number of vehicles recalled in a campaign to determine the completion rate for that recall. NHTSA is then able to gather the respective completion rates on recall campaigns to ascertain average completion rates.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
SUSAN FLEMING

*Question 1.* The number of motor vehicle related fatalities and injuries are trending significantly downward. Do you believe that overall NHTSA has done a good job? What other improvements would you suggest?

Answer. Overall GAO is pleased with NHTSA's efforts, including changes they have made in response to our recommendations. Specifically, NHTSA has taken several steps to better oversee states' management of federally funded safety grants and move toward a more performance-based, data-driven grant structure. For example, NHTSA improved its grant oversight by developing a tool—the corrective action plan—to track states' implementation of management review recommendations and encourage states to act on the agency's guidance. Also, NHTSA—in collaboration with the Governor's Highway Safety Association (GHSA)—developed two sets of performance measures to assist states in developing and implementing traffic safety grant programs, as well as to monitor and improve data in their traffic record systems.

Our work indicates that NHTSA can do more in several areas. For example, NHTSA can continue to move toward a more performance-based approach by using the performance measures developed with GHSA to help assess states' progress in making safety improvements. NHTSA can also help states prioritize improvements to their traffic safety data systems by continuing to address our recommendation to ensure that traffic records assessments are complete and consistent.

*Question 2.* Do you know what NHTSA highway safety grants have shown the most results and the best use of Federal dollars in improving safety?

Answer. While we did not assess which of the highway safety grants was the most effective, when we reviewed the grant programs in 2008 we reported that state officials generally found the safety grant programs help improve safety by funding activities and help address key safety issues in their states, including safety belt use, child safety and booster seat, impaired driving, motorcyclist safety, and traffic safety information systems. At the same time, we noted that while NHTSA planned to rely on performance measures to help determine the results of these programs, NHTSA had not yet assessed the grant programs' effectiveness because it had not yet developed sufficient performance measures and the safety incentive grants had not been in place long enough to evaluate trends.

We have also reported that linking grant funding with states' progress in achieving goals—as tracked through performance measures—could help improve accountability for Federal funds. However, criteria for continuing to receive traffic safety incentive grants are generally not tied to states' demonstrating safety improvements from the prior year. NHTSA has worked with GHSA to develop performance measures to help assist states in developing and implementing traffic safety programs. Using broad performance measures has the potential to hold states accountable for

achieving results and can provide information on what areas should be prioritized for improvement. The use of such measures represents an important step toward a more performance-based approach. In reauthorizing traffic safety grant programs, Congress will be faced with deciding whether to move further toward a performance-based, data-driven grant structure by linking a state's receipt of grant funds to achieving progress toward safety goals.

*Question 3.* You issued a report in 2010 highlighting key components of a graduated licensing program for teen drivers and noted that states often vary in the extent to which they include such provisions. Why do states have difficulty implementing teen driver laws and what can the Federal Government do to assist them?

Answer. Officials reported several reasons for difficulty in passing teen driver legislation, including: (1) concerns over infringing upon individual's personal freedom; (2) concerns over limiting teens from driving themselves or others to and from activities such as school or work; and (3) challenges reaching consensus on specific driving provisions. Our work also identified several strategies that states can take to address these challenges, including: (1) establishing a task force to act as a "champion" to improve a state's ability to strengthen teen driver safety laws; (2) publicizing teen driver crashes, which can create momentum to change state laws; and (3) using data and research to convince key stakeholders, such as legislators, to support pending legislation. One very important way that NHTSA can help states determine whether it is appropriate to pass new teen driver legislation is continuing to conduct research on the optimum teen driver provisions to include state laws.

*Question 4.* What are some of the key challenges to the auto safety recall process and how could they be addressed?

Answer. In our June 2011 report, we identified a number of challenges that affect parts of the recall process, including: (1) identifying and notifying vehicle owners of auto safety defects; (2) motivating vehicle owners to comply with notification letters; (3) providing better information to vehicle owners and the public; (4) using existing data to improve completion rates; and (5) NHTSA's lack of authority to notify potential used car buyers about outstanding recalls.

We made several recommendations to NHTSA to address these challenges based on our interviews with auto manufacturers, industry stakeholders, and the consumer focus groups we convened. First, NHTSA should modify its requirements for notification letters to include additional information, such as the word "urgent" in large type to obtain readers' attention and the vehicle owner's VIN number so that it is clear that the letter pertains to the owner's current vehicle. Second, NHTSA should create a VIN-searchable database on its website, *www.safercar.gov*, so that vehicle owners and the public can search for outstanding recalls that relate to their specific vehicles. We also recommended that NHTSA make additional efforts to publicize the website to vehicle owners and the public, as our focus groups indicated that NHTSA's website was not well publicized. Third, NHTSA should develop a plan to use the data it collects on recall campaigns to analyze patterns or trends to determine the characteristics of successful recalls. Finally, NHTSA should seek legislative authority to notify potential used car buyers of recalls prior to sale. In particular, we believe Section 411 of the Motor Vehicle and Highway Safety Improvement Act, as proposed in the draft legislation prior to the hearing, is a good step toward preventing consumers from unknowingly putting their lives at risk by purchasing a defective vehicle. Tying this provision to the development of a VIN-searchable database available to the public (as section 411 does) is a necessary step to ensure that used-car dealerships have the information they need to determine if a vehicle they possess has an outstanding recall to comply with this requirement. The development of such a database will also help vehicle owners themselves to identify outstanding recalls and improve safety for the motoring public.

*Question 5.* Given the shortfalls in the Highway Trust Fund, how should Congress look to fund these highway grant programs?

Answer. The highway trust fund, as currently constructed, is not sustainable. We have reported on other options to help manage the solvency of the fund, including altering or supplementing existing sources of revenue, applying user-pay mechanisms, such as congestion pricing and tolls, and improving the performance of the existing transportation infrastructure. However, each of these options has different merits and challenges, and the selection of any option will likely involve trade-offs among different policy goals.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
JACQUELINE S. GILLAN

*Question 1.* What highway safety grants do you view as the most critical to safety in our Nation's roadways? What suggestions do you have in how we can improve these grants' effectiveness in safety?

Answer. Highway safety grants that are awarded to states that have already enacted specific traffic safety laws and are used for education and enforcement of those laws are the most effective expenditure of resources. For example, seat belt use has been increasing since 1994, and reached 85 percent in 2010 and has saved thousands of lives.<sup>1</sup> Higher seat belt use rates are largely the result of passage of primary enforcement seat belt laws in states that have been accompanied by high profile enforcement measures such as the "Click It or Ticket" and other enforcement campaigns to educate motorists about the safety and legal importance of buckling up.

Funding of education programs alone which encourage changing driver and occupant behavior but are not coupled by enactment of a state law addressing that behavior are not effective and waste scarce grant funds. For years education campaigns to discourage drinking and driving were not effective until laws were passed threatening license revocation, imposing stiffer penalties and requiring the use of ignition interlock devices. The Insurance Institute for Highway Safety (IIHS) reports that media campaigns and educational announcements alone do not improve highway safety unless they are accompanied by enforcement of traffic safety laws.<sup>2</sup> For example, while motorcycle helmet use is more than 75 percent in states with universal helmet laws covering all riders, the rate falls to approximately 40 percent in states that do not have all-rider motorcycle helmet laws.<sup>3</sup>

For this reason, Advocates supports highway safety incentive grant programs for states that adopt graduated driver licensing (GDL), alcohol ignition interlock devices (IID) for first-time offenders, primary seat belt, booster seat, and anti-texting laws. We commend the Senate sponsors for including these provisions in S. 1449, the Motor Vehicle and Highway Safety Improvement Act of 2011.

In addition, Federal funds provided to states, especially under the Section 402 program, must be expended on worthwhile state projects that improve public safety. For this reason, the National Highway Traffic Safety Administration (NHTSA) should establish performance goals in conjunction with each state and review state plans for the expenditure of those funds to ensure that state performance goals to improve public safety are being met.

*Question 2.* What vehicle safety issues concern the safety advocates the most at this time?

Answer. The series of hearings held by Senate and House committees in the 111th Congress investigating sudden unintended acceleration highlighted major deficiencies in vehicle safety standards and agency oversight. The Motor Vehicle and Highway Safety Improvement Act of 2011, S. 1449, looks at regulatory issues that have languished for years and contains provisions that will require DOT to upgrade outdated standards and dramatically improve auto safety. The inclusion of provisions requiring the Secretary to mandate event data recorders (EDRs), require final rules for vehicle electronic performance standards and vehicle stopping distance and brake override standards, and initiate rulemakings for a pedal placement standard addresses serious safety problems and offers remedies that are long overdue and will save lives and reduce economic costs.

Provisions to provide greater transparency and accountability are essential to ensure that the public is not kept in the dark about potential vehicle defects that can kill or maim. S. 1449 improves and corrects problems with public availability of information initially required under the 2000 Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. Advocates supports language contained in S. 1449 to improve the NHTSA vehicle safety data base, including requirements to improve public access and require recall information to be available and searchable. The agency still has the authority to protect confidential proprietary information and trade secrets. Passage of S. 1449 will both improve the safety performance of motor vehicles and the performance of NHTSA.

<sup>1</sup>National Highway Traffic Safety Administration. Traffic Safety Facts: Seat Belt Use in 2010. DOT HS 811 378. Sept. 2010.

<sup>2</sup>Insurance Institute for Highway Safety. Status Report: What Works and Doesn't Work to Improve Highway Safety. Vol. 36, No. 5. 2001.

<sup>3</sup>National Highway Traffic Safety Administration. Traffic Safety Facts: Motorcycle Helmet Use in 2010. DOT HS 811 419. Dec. 2010.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CLAIRE MCCASKILL TO  
JACQUELINE S. GILLAN

*Question.* As Ms. Gillan references in her testimony, the safety standard for seatback performance has not been upgraded since it was first adopted in 1967. If the driver or passenger seatback fails in a crash, both the front and rear seat occupants are endangered. The failure of a seatback directly in front of children places them at risk. In particular, there have been several incidents of children sitting in rear seats who have been injured in crashes in which seatbacks collapse on them. Some have suffered brain damage in the crashes.

How rampant a problem is this and how often are incidents occurring? Are there safeguards that can be taken now to prevent this from occurring? What steps is the auto industry taking to protect both front and rear seat occupants? Are new cars still using 1967 standards or has the industry been using higher standards?

*Answer.* One of the most important public health and safety messages that safety groups, medical organizations, government agencies, and the insurance auto industries all agree on and is widely promoted is that the back seat is the safest place for a child of any age to ride in a car. We therefore have an obligation to parents and others to ensure that putting children in the rear seat does not jeopardize their safety or cause death or injury in the event of a crash. Unfortunately, seatback performance and the risk of seat back failure is a real and serious problem that needs to be immediately addressed by the National Highway Traffic Safety Administration (NHTSA). For this reason, Advocates urges passage of a provision in the NHTSA authorization bill that directs the agency to upgrade this 1967 standard to ensure that children are not seriously injured or killed in a crash because the front seat fails.

Children's Hospital of Philadelphia (CHOP) has determined that collapsing seat backs are a serious threat to children, who are often secured in the rear seat of passenger vehicles behind adult occupants. In its study using data from 2000 through 2006, CHOP reported that 2.3 percent of child occupants seated in rear row outboard positions sustained injuries in rear impact crashes.<sup>4</sup> In these cases, occupants were seated in front of the rear seat child occupants 71 percent of the time, and front seat back deformation into the child's space occurred 8 percent of the time. For children in the rear seating area who had seatback deformation directly in front of them, injury risk doubled. Requiring the Secretary to issue final rules that upgrade the performance of seats, including seatbacks, head restraints, and active/passive restraint, will increase the protection of children and adults in passenger motor vehicles crashes before more injuries occur.

The 1967 safety standard for seatback performance is just one of many vehicle safety standards that has not been updated for decades. For example, the Federal bumper standard (49 C.F.R. Pt. 581) has not been updated since the 1970s, despite changing technologies and vehicle structures. As a result, vehicle safety systems and passengers are not as protected as they could be in low-speed collisions. Many Federal motor vehicle safety standards (FMVSS) were revised and upgraded by NHTSA only as the result of congressional mandates directing action adopted in legislation, including the roof strength standard, the vehicle stability standard, the occupant protection standard, the pneumatic tire standard and the side impact standard.

This is why Advocates pursues and proposes the adoption of legislative provisions directing the Department of Transportation (DOT) to act when there is a serious safety threat that requires action. Congressional direction means that updated, stronger safety standards will be a priority for DOT, and these regulations will be implemented in a timely manner. We strongly urge that language to require a final rule upgrading the safety standard for seatback performance within 2 years be included in S. 1449, the Motor Vehicle and Highway Safety Improvement Act of 2011.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
HON. NICOLE NASON

*Question 1.* Given your experience on the issue, what highway safety grants for states do you believe have been the most effective in improving safety?

*Answer.* The most effective grants administered by NHTSA are the ones that are based on sound data and enjoy strong oversight. The best grants also allow for flexibility in the use of the funds. The seat belt grant program was a success because the States were clear on the goals and everyone understood the options for achiev-

<sup>4</sup>KB Arbogast, JS Jermakian, DR Durbin. Center for Injury Research and Prevention, Children's Hospital of Philadelphia. Injury Risk for Rear Impacts: Role of the Front Seat Occupant. *Annals of Advances in Automotive Medicine*. Vol 52. 2008: 109-116.

ing those goals. The program was not overly complex, but did allow for various pathways for States to receive the funding. Most significantly, several States passed primary belt laws as a result of this program. The seat belt remains the single most important and effective safety device ever developed. In order to make the best use of the funds, NHTSA needs to continue a robust data-gathering program. Funding for the National Automotive Sampling System (NASS) is extremely important, as it is the nationwide system used by researchers for collecting and analyzing crash data. I believe NASS is currently underfunded, and the data regarding child injury and death is woefully lacking. I hope the Committee supports the improved use of NASS in the future, and directs the agency to focus on the issue of more accurate data regarding children.

*Question 2.* What highway safety grants have been less effective? How can we improve these less effective grants?

*Answer.* The least effective grants are the ones that are based solely on the needs or desires of one constituency. In order for grant programs to be valuable, the States need some flexibility in the use of the funds. Grants that specifically limit or prohibit a State's ability to discuss a significant safety question, such as motorcycle safety, end up without value. I hope the Committee will review that particular grant program and make appropriate changes. NHTSA should be required to ensure that funds are being used effectively, but the States should be able to focus their limited resources as they determine would be best.

*Question 3.* During your time as Administrator, as far as NHTSA's vehicle safety mission, what specific areas or departments did you find as the most critical and need the most funding in order to maintain a strong safety standard for automobiles?

*Answer.* As a former Administrator, I can report that the agency does more, with less funding, every year. While additional funds do not always solve internal problems, I hope the Committee will continue to focus resources on the vehicle safety office, and support the recall team. In addition, I believe the multiple international travel budgets should all be consolidated. I also hope the Committee will consider the creation of an Ombudsman at NHTSA. For many people, their car is the most valuable item they own. As the Toyota recall hearings made clear, the public needs to feel more connected to the Federal agency that oversees the safety of their vehicles.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
ROBERT STRASSBURGER

*Question 1.* As the auto industry continues to make developments to increase safety, what should the Federal Government's role be in setting a strong safety standard that keeps our drivers and passengers safe?

*Answer.* According to NHTSA's data, traffic fatalities have been steadily declining over the last 5 years, decreasing by about 25 percent from 2005 to 2010. The number of people injured in crashes is also at its lowest point since NHTSA began estimating injury data in 1988. This constitutes the 10th consecutive yearly reduction in people injured. In fact, fatalities and serious injuries resulting from motor vehicle crashes in 2010 are at their lowest level in over 60 years. This progress is even more remarkable given that the number of licensed drivers has more than doubled and the number of annual vehicle miles travelled has more than quadrupled in the last 60 years. These reductions can be attributed to many factors including improvements in motor vehicle design, effective highway safety programs, and to a limited extent, the economy.

NHTSA, and the Safety Act that establishes its mission, came to be because the marketplace didn't value safety; didn't demand ever safer vehicles. That's no longer the case. Many of today's safety features have been developed and implemented voluntarily by manufacturers not in response to regulatory mandates. Thus, the Alliance welcomes this Committee examining what should the Federal Government's role be going forward.

The Alliance and others often emphasize the importance of adhering to a model for effecting safety enhancements that has been proven effective the world over. This model has three components which are:

1. Enactment of strong laws that are visibly enforced;
2. Education about those laws and the risks associated with certain driving behaviors; and

3. Research into the scope and magnitude of various safety concerns and potential technological countermeasures, and the effectiveness of those countermeasures once implemented.

Thus, at minimum, the Federal Government's role should be to ensure that sufficient resources and attention is being given to implement safety grant, enforcement and communication programs. The Federal Government also has a role to play in guiding and funding needed research into safety concerns and potential countermeasures, and in ensuring that the findings are disseminated in a timely manner.

With most of today's safety features being voluntarily developed and implemented by vehicle manufacturers, the command and control rulemaking model of the 1960s is not only no longer an effective model but is actually counterproductive because it risks frustrating and delaying, rather than facilitating the implementation of safety enhancements. The Federal Government's role with respect to rulemakings has evolved to be one of exercising rulemaking authority judiciously by promulgating rules to adopt "best practices" once known to ensure that all market participants, including new entrants, are engineering their vehicles and safety systems according to these practices.

A lasting legacy for enhancing motor vehicle safety that the Committee could undertake is to require that NHTSA periodically prepare and provide to the Committee the agency's research and rulemaking priority plan. NHTSA's current plan, which was released in March 2011, was developed by the agency and finalized only after the agency published a draft in the *Federal Register* and took public comment. Administrator Strickland testified that this plan was developed, ". . . by focusing on the most significant safety risks, particularly vulnerable populations and high occupancy vehicle issues." NHTSA's Research and Rulemaking Priority Plan not only sets the "safety agenda" for the nation, but it is also an excellent tool for the Committee to exercise oversight.

*Question 2.* Do you believe NHTSA should provide regulations on vehicle safety in response to nomadic devices, or cell phones and similar devices, as they relate to use in vehicles?

Answer. NHTSA Administrator, David Strickland, testified at the hearing that there exists a gap in Federal authority to regulate the performance of "nomadic" devices relating to motor vehicle safety. Administrator Strickland urged that this gap be eliminated and recommended that his agency be given authority to "develop performance standards regarding <the use of> nomadic devices in vehicles." See pages 16–17 of hearing transcript.

The Alliance agrees with the Administrator that a gap in authority exists and that this gap should be eliminated. How this gap is filled and by whom potentially has significant implications. Currently NHTSA has rulemaking authority over systems integrated into motor vehicles and "*items of motor vehicle equipment*" as that phrase has been defined by the Safety Act and interpreted by NHTSA. Nomadic devices are not currently considered items of motor vehicle equipment. The Federal Communications Commission (FCC) has authority over some aspects of performance of nomadic devices such as maximum power or frequency spectrum. However, it does not have the authority to regulate the performance of these devices as it relates to motor vehicle safety.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CLAIRE MCCASKILL TO  
ROBERT STRASSBURGER

*Question.* As Ms. Gillan references in her testimony, the safety standard for seatback performance has not been upgraded since it was first adopted in 1967. If the driver or passenger seatback fails in a crash, both the front and rear seat occupants are endangered. The failure of a seatback directly in front of children places them at risk. In particular, there have been several incidents of children sitting in rear seats who have been injured in crashes in which seatbacks collapse on them. Some have suffered brain damage in the crashes.

How rampant a problem is this and how often are incidents occurring? Are there safeguards that can be taken now to prevent this from occurring? What steps is the auto industry taking to protect both front and rear seat occupants? Are new cars still using 1967 standards or has the industry been using higher standards?

Answer. In the 21st century automobile, seating system performance in a crash cannot reasonably be considered in isolation from other aspects of the vehicle's ability to manage crash energy and mitigate injury risk. Seating system crashworthiness is a complex design issue that requires consideration of biomechanics of crash injury to different size occupants, the geometry of the interior cabin of a given

vehicle, the performance of head restraints, location of the safety belts relative to the occupants, the height of the seat back, the seat track mechanisms, and other vehicle system considerations.

While seat back strength has been enhanced over the years, industry research has documented that significantly stiffer seat backs do not result in fewer injuries to rear seat occupants in high-speed rear impact crashes. See, for example, *Relationship Between Seatback Stiffness/Strength and Risk of Serious/Fatal Injury in Rear Impact Crashes*, SAE 2009-01-1201 (2009)(concluding that seatback stiffness or strength is not a statistically significant predictor of the risk of serious/fatal injury for belted drivers and belted rear seat occupants in high-speed rear crashes). Indeed, some research shows that making the seat back more rigid may actually increase the risk of serious injury in various collisions, including rear-impact collisions, for vehicle occupants particularly older, heavier, or child occupants. See, for example, *Influence of Seating Position on Dummy Responses with ABTS Seats in Severe Rear Impacts*, SAE 2009-01-0250 (2009)(concluding that occupants may be at risk for serious injury when the strength of the seat exceeds the extension tolerance of the spine and their upper body, head, or neck is unsupported.) Others have advocated for different “yield” behavior of seating systems in crashes, but without any evidence that one type of “yielding” will produce better outcomes in crashes than other “yield” patterns.

The automotive safety community, including NHTSA, Alliance members, other vehicle manufacturers and equipment manufacturers, has devoted substantial resources over the past two decades to studying the issue of seating system performance in crashes, especially since the Hybrid III crash dummy was validated in the late 1990s for use to research injury risk during high-speed rear impact crashes. NHTSA continues to perform substantial research to evaluate the contribution of seat back performance to injury risk in crashes. In 2004, NHTSA terminated a rule-making proceeding on this subject, noting:

“Improving seating system performance is more complex than simply increasing the strength of the seat back. A proper balance in seat back strength and compatible interaction with head restraints and seat belts must be obtained to optimize injury mitigation. Comprehensive information needed to determine that proper balance is not available, although there has been work on pieces of the problem.” 69 Fed. Reg. 67068, 67069 (November 16, 2004).

Although terminating rulemaking in this area, NHTSA promised to continue research on issues related to rear impact protection, and specifically the performance of seats in this crash mode, and has done so. However, as the agency noted in 2004, the available crash data do not show that seating system performance in crashes represents a significant national problem. NHTSA has committed to continuing research into these issues as other safety priorities allow, and the Alliance agrees that NHTSA has assigned an appropriate priority to this issue, given the relatively small number of injuries attributable to this condition.

You asked how frequently the condition of rear impacts resulting in seat back failures arises. The answer is that these crashes are very rare, and the contribution of seat performance is even harder to discern. As NHTSA noted in 2004:

“. . . [R]ear impacts cause less than 2 percent of moderate-to-severe injuries. Similarly, the Fatality Analysis Reporting System (FARS) shows that about 3 percent of all traffic crash fatalities involved occupants of vehicles struck in the rear (FARS annualized data 1998-2002). Thus, in comparison to other crash modes, there is considerably less data available to assess the potential benefits of upgrading FMVSS No. 207 for higher speed rear impacts. The problem associated with the relatively small number of moderate-to-severe injuries in rear impacts is compounded by the difficulty in determining the extent to which those injuries can be attributed to seat performance.” 69 Fed. Reg. 67068, 67069 (November 16, 2004)

The science of crash energy management is much more sophisticated in 2011 than it was when FMVSS 207 was adopted, and has moved beyond the requirements of the NHTSA standard, which is a component-based approach, to a vehicle systems perspective that seeks to improve outcomes in crashes for all vehicle occupants. The crash data support the conclusion that modern seat and vehicle design are performing very well in minimizing serious injury and death in rear impacts. As any area of crash safety, future improvements and refinements are constantly being studied, but in this case are more complex than simply increasing the strength and stiffness of the seat back frame. Alliance members are taking appropriate steps to protect occupants, both front and rear, in crashes, through vehicle design strategies that are drawn from among the best available solutions today.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
VERNON BETKEY

*Question 1.* While young driver fatalities have declined in the last decade, motor vehicle crashes remain the leading cause of death for drivers 15–20 years old. What are the states doing to address this issue? What are your thoughts on a national GDL standard such as the STANDUP Act?

Answer. 49 of the 50 states have graduated licensing laws. According to AAA, nearly all states have tightened the passenger and nighttime driving restrictions in the last several years. (See attachment.) 30 states and DC ban cell phone use by novice drivers. 34 states ban text messaging for all drivers, including novice drivers.

GDL laws are difficult to enforce because law enforcement officials cannot easily distinguish between a 16-year-old novice driver and a fully licensed 17-year-old. New Jersey is leading the Nation with its decal program which makes it easier for law enforcement to enforce GDL laws. Research on the New Jersey effort has not yet been published. Other states are likely to follow suit if the decal strategy is found effective. Many states have developed training materials for law enforcement on teen driving.

States have also been very active in developing educational programs on teen driving. Many states have peer-to-peer educational efforts such as the Texas *Teens in the Driver Seat* program and the Illinois *Operation Teen Safe Driver* program. A number of states are currently developing educational programs aimed at parents. Oregon, for example, has developed a teen driving curriculum specifically for parents. Most states host teen driving summits, support their local SADD chapters and conduct media campaigns aimed at teen drivers. A number of states support state-wide teen driving coalitions whose purpose is to review teen driving laws and policies and make recommendations to their Governor or state legislatures for improvements. The New Jersey Teen Driving Commission is a prime example of this.

In addition to efforts involving public funds, states are engaged in privately-funded teen driving programs. More than half of the states have participated in the Ford *Driving Skills for Life* program over the last several years. The program focuses on teaching teens four basic driving skills (hazard recognition, speed management, space management and vehicle handling) through an online academy, games, contests, Ride-And-Drives, summer camp and other activities.

A number of states have received funding from the Allstate Foundation for peer-to-peer educational programs. Ten states are currently receiving additional Allstate funding to form state coalitions to address the teen driving issue.

In 2010, GHSA published *Protecting Teen Drivers: A Guidebook for State Highway Safety Offices* funded by State Farm®, <http://www.ghsa.org/html/publications/sfteen/index.html>. GHSA is currently developing a more detailed case study report of state teen driving programs which is expected to be published next spring.

GHSA would support a national standard that is research-based, comprehensive and attainable. The difficulty with the STANDUP Act is that 49 out of 50 states are not in compliance. Only DC and NJ are. If the nighttime restriction is set at 10 p.m., then no state would be in compliance. There is too much emphasis in the STANDUP Act on the age of licensure, to the detriment of passenger and nighttime restrictions—aspects of GDL which are more researched and, hence, more supportable. GHSA does not support sanctions and would not support that part of the STANDUP Act.

*Question 2.* What steps have the states taken to address improving driver education requirements for new drivers and monitoring the capabilities of elderly drivers to ensure they are prepared to drive safely on roads? What more can be done?

Answer. Driver education is the responsibility of only three State Highway Safety Offices—OR, OH and VA. In other states, the motor vehicle administrations, the department of state, the department of revenue, the department of transportation or other regulatory agency are responsible for providing and regulating driver education.

Despite that, GHSA recognizes the importance of driver education and has assisted in two national efforts on the topic. GHSA has been involved in the development of administrative standards for driver education which were released by NHTSA last year. The Association is represented on the working group to oversee implementation of the administrative standards. Last year, my state of Maryland as well as Oregon piloted the development of a new NHTSA assessment for state driver education programs. NHTSA has added this new assessment tool to its litany of assessments available to states and intends to market it to the states.

NHTSA, through a cooperative agreement with the Association of Driver & Traffic Safety Education Association (ADTSEA), developed a model driver education curriculum as well as curriculum standards. The curriculum, the curriculum standards

and the administrative standards constitute a best practice for state driver education programs.

NHTSA should pilot test the ADTSEA curriculum, evaluate the pilot and widely market the results to the states. NHTSA also should collect information about the state of practice of driver education programs in every state. Once this baseline information is collected, then improvements in state driver education programs can be documented and evaluated against the ADTSEA model.

With respect to elderly drivers, much more research is needed. Since elderly drivers age differently, there is no single age at which drivers should be permitted to drive or have their drivers' license revoked. Current age-related driver tests by the state motor vehicle administrations do not accurately evaluate an elderly's physical or cognitive ability to drive.

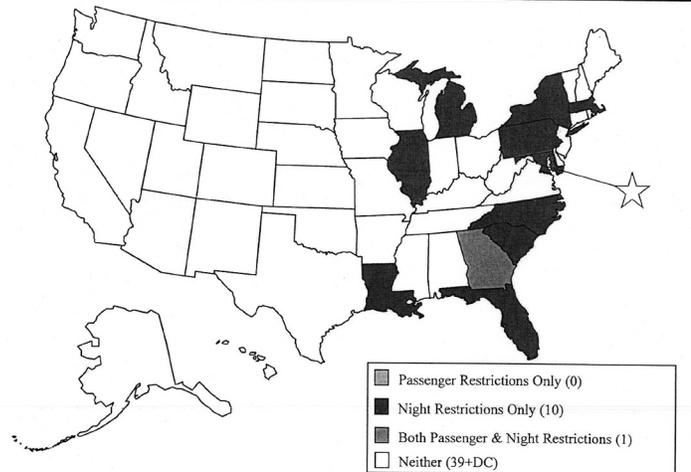
The AAA Foundation has developed a good skills assessment tool for elderly drivers, Drivers 65+, but it is designed only to be an early warning tool to be used by seniors and their families. There is no single, evidence-based, widely accepted test of an elderly driver's knowledge, physical abilities and cognitive abilities that can determine whether an elderly driver should continue to drive or not. NHTSA funded a promising approach several years ago but that was never replicated and has not been widely used by the states. NHTSA should continue to fund research that would support the development of a more appropriate testing standard that can be used with elderly drivers.

ATTACHMENT



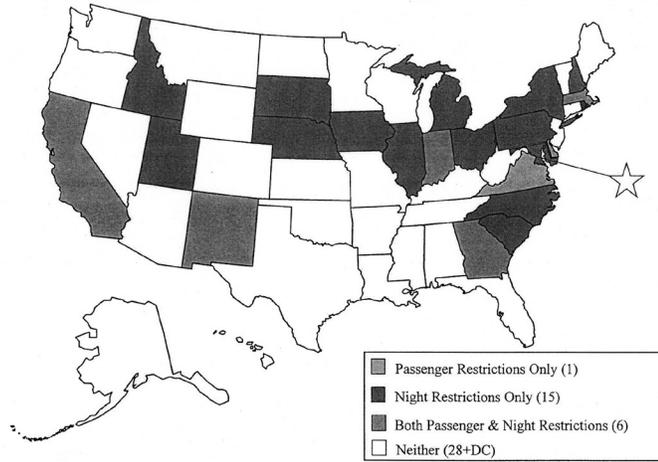
## GDL: Passenger and Night Limits

*(Effective Jan. 1997)*

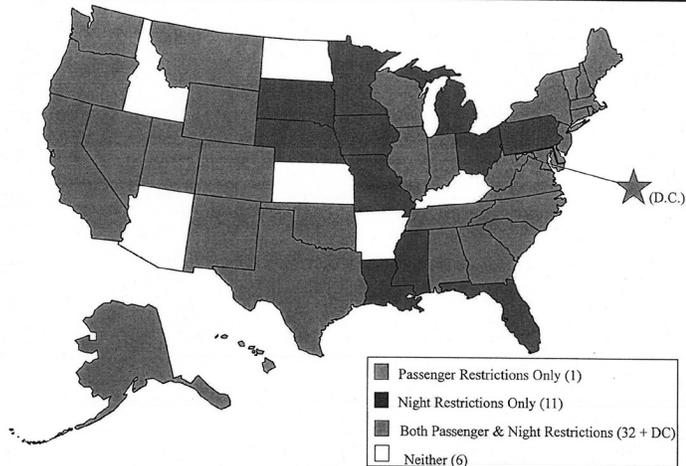




## GDL: Passenger and Night Limits (Effective Jan. 2000)

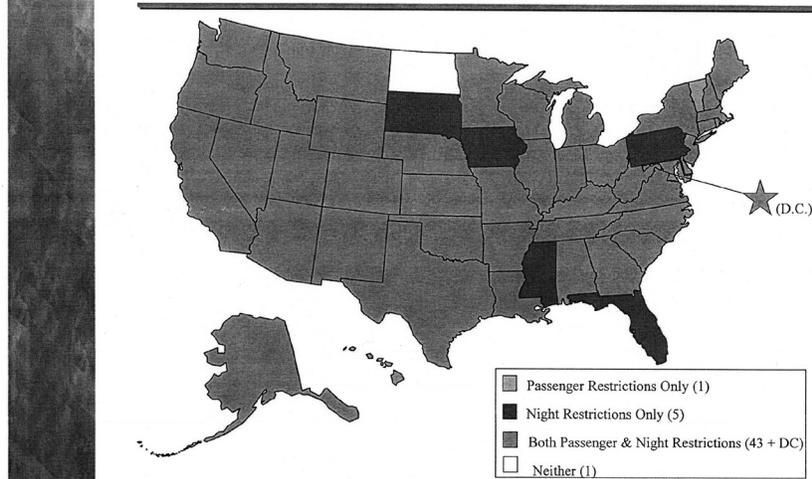


## GDL: Passenger and Night Limits (Enacted as of Jan. 2006)





## GDL: Passenger and Night Limits (Enacted as of Jan. 2011)



### PREPARED STATEMENT OF THE HERTZ CORPORATION

This statement is submitted on behalf of The Hertz Corporation (“Hertz”), both to endorse the statement submitted by the American Car Rental Association, and to address comments made by National Highway Traffic Safety Administration (“NHTSA”) Administrator David L. Strickland in his testimony before the Subcommittee on July 27, 2011.

First, please note that Hertz wholeheartedly agrees with and endorses the statement submitted by the American Car Rental Association. Those comments provide an important industry perspective which the Subcommittee has not yet heard, and identify significant issues with sections 411 and 412 of the discussion draft of the reauthorization legislation.

Second, we do wish to separately address the comments made by Administrator Strickland in support of his Agency’s request that Congress expand NHTSA authority so that the Agency has direct regulatory authority over rental car companies in the same manner as the Agency now has control over vehicle manufacturers. From its earliest formation, NHTSA has always been charged with ensuring the safety of the design of new motor vehicles and new motor vehicle equipment, by giving the Agency authority to regulate the activities of motor vehicle and equipment manufacturers, dealers and distributors in order to: (1) “prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce;” and (2) “carry out needed safety research and development.” 49 U.S.C. § 30101. NHTSA has never had regulatory authority over individual or fleet owners of vehicles, which authority has always been reserved for States, many of which regulate through periodic inspection and maintenance programs and some of which regulate through vehicle registration renewal requirements (see, e.g., State of California Registration Renewal/Recall Enforcement Program).

In response to questioning from Senator Roy Blunt (R-MO), NHTSA Administrator Strickland stated that he was seeking regulatory authority over rental car companies because, he said, there is evidence that rental car companies are not fixing vehicles subject to recall in a timely manner, and that rental car companies are renting vehicles subject to recall to consumers prior to the completion of the recall repair. Both assertions are erroneous and neither assertion has any basis in the complete record before NHTSA. In its Inquiry Into rental car repair completion rates, NHTSA Docket No. AQ 10-001.

First, and perhaps most importantly, Hertz and other major rental car companies are not renting vehicles subject to NHTSA safety recall notices pending completion of the repair or an interim remedial measure that makes the vehicle safe to operate before final repair is conducted (as in the Toyota floor mat example provided in the ACRA comments). With the exception of the one tragic accident in 2004 with respect to one rental car company, Hertz is aware of no other accidents which have been shown to be the result of a rental car company renting a vehicle subject to a NHTSA recall prior to completion of the recall remedy, or of an Interim remedial step approved by the vehicle manufacturer to make the vehicle safe prior to the final recall repair. Certainly, no other such accident has been identified in the NHTSA audit query or in the materials submitted to the NHTSA docket related to the audit query.

The rental car companies themselves submitted evidence that, on average, 80 percent of vehicles subject to recall are repaired within 60 days, and that in those few instances in which repairs are not conducted in that timeframe, vehicle parts availability and availability of dealer bays to conduct repairs are the primary culprits. Data submitted by Hertz to NHTSA on July 22, 2011 (which is attached), demonstrates both points. While three vehicle manufacturers submitted data that suggested slower rates of recall repairs, both Ford and Chrysler specifically stated on the NHTSA record that the recall repair completion data presented by vehicle manufacturers is not accurate as to the timing of recall repairs or as to the ownership of the vehicle at the time a recall is announced. These inaccuracies include: (1) that the vehicle manufacturers overstated the number of vehicles in the rental car fleet, in some cases by more than 85 percent, because they relied on R.L. Polk & Company vehicle registration data which often lags as much as 2 months or more in reporting change of vehicle ownership at the end of the relatively short, 12–18 month term that vehicles remain in rental car fleets; and (2) that vehicle manufacturers reportedly used their own dealer claims records to determine date of recall repair, but many vehicles are repaired at rental car maintenance facilities, meaning that dealer recordkeeping and claims records are likely to be incomplete. Both Ford and Chrysler suggested that NHTSA should instead rely on data submitted by rental car companies as to repair completion rates, and that data shows consistently timely repairs.

Given the specific demonstration by rental car companies that they are not renting vehicles pending recall repairs, it is unclear why NHTSA is now expressing concern about the speed with which rental car companies are repairing recalled vehicles. Obviously, rental car companies have every economic incentive to get recalled vehicles repaired and back on the road as soon as possible. Since the NHTSA audit query has clearly shown that the greatest constraint to timely recall repair completion is vehicle manufacturer capacity to produce new parts and franchised dealer capacity to repair vehicles, if speed of repair is truly a concern at NHTSA, the Agency could use its existing authority under 49 U.S.C. § 30120(c) to require manufacturers to be ready to accomplish recall repairs within 60 days of announcement and to prioritize recall repair availability to fleet owners and/or other vehicle population segments, as appropriate. NHTSA's legitimate regulatory interest in encouraging faster production of replacement parts so recalled vehicles can be repaired promptly and put back into the stream of commerce by responsible fleet owners like Hertz, can be addressed by the Agency's existing regulatory authority. No change in the current NHTSA authorizing statute is needed.

When the actual facts regarding recall management practices of rental car companies are understood, it is clear that the rental car industry has—with the single exception noted above—an excellent safety record handling vehicle recalls. Given that safety record, rental car companies should not be singled out for NHTSA regulatory authority and oversight with respect to rental car industry completion of safety defect repairs among all other vehicle owners whose vehicles need these repairs, and certainly not among other commercial owners of vehicles, delivery companies, government and company employee fleets, and the rental industry's direct competitors at taxi, limousine, car-sharing and other private car services.

## ATTACHMENT

ARENT FOX  
July 22, 2011

Via e-mail and First-Class Mail

O. KEVIN VINCENT, Esquire  
Chief Counsel  
National Highway Transportation Safety Administration  
Washington, DC.

Re: Hertz Corporation Supplemental Submission of Recall Repair Completion Rates

Dear Kevin:

As you know, this firm represents The Hertz Corporation ("Hertz"). I am writing to provide you with the attached supplemental information regarding recall repair completion rates for National Highway Transportation Safety Administration ("NHTSA") vehicle recalls in the Hertz rental fleet that have been initiated since July 1, 2010.

Hertz is reporting recall repair completion rates since July 1, 2010 for 50-state national recalls of private passenger cars as to which Hertz had more than ten vehicles in its fleet affected by the recall. Please note that for all of these recalls, from the time that the owner notification letter specifying YIN information was received by Hertz, the vehicle was coded in Hertz' computer systems as on "S" (Safety) hold pending repair. The "S" hold designation directs rental personnel that the affected vehicles are not to be rented pending completion of the recall repair.

As we previously indicated in discussions with the agency, until late 2010, Hertz was using a computerized system to track maintenance on vehicles which did not capture all of the data sought by NHTSA and that we would like to report here. As a consequence, the attached actually understates Hertz' timely recall repair completion performance. Many off-site repairs and vehicle sales/scrappage conducted could not be tracked exactly into 30, 60, 90 and 120-day periods. However, those completions are later accounted for in the column "percentage completed to date."

As you can see from the attached chart, Hertz maintenance facilities are averaging repair rates of 81 percent and better within 60 days, and this does not include offsite repairs and sold/scrapped vehicles. In most instances in which Hertz has not been able to promptly repair vehicles (several of which are footnoted on the attached), delay was caused by parts availability and available access to dealer facilities to obtain the repair. When parts are available and repairs can be conducted at Hertz facilities, repair completion rates are significantly shortened. In all cases, rental counter personnel are instructed not to rent affected vehicles awaiting recall repair. Given this, NHTSA can be assured that Hertz has every incentive to repair these vehicles as promptly as possible to get them back on the road, and prompt repairs are in fact happening.

The attached data is significantly more reliable than data submitted by the vehicle manufacturers in early 2011. Consequently, we ask that NHTSA evaluate Hertz' recall repair completion performance based on this data. We also ask that NHTSA acknowledge that in this period, as in prior periods, Hertz' policy has been to place vehicles subject to NHTSA recalls on "Safety" hold so that such vehicles are not rented to the public before a repair or interim remedial measure approved by the manufacturer has been performed. Indeed, we should note here that in compiling this data, Hertz identified additional vehicles the company had pulled from the rental pool and put on "S" hold based on vehicle manufacturer service campaigns for "customer satisfaction," which Hertz concluded had a safety component even though no NHTSA recall was being conducted. So, the attached data actually understates the number of Hertz vehicles that have been on "Safety" hold for vehicle manufacturer issues in the last 12 months.

Given that, unlike other commercial users or individual customers, Hertz is actually parking vehicles subject to recall, waits of 60-120 days or more for a repair cause significant strain and business disruption to Hertz and its rental customers. As we have previously noted, under 49 U.S.C. § 30120(c), NHTSA has considerable authority to require manufacturers to prioritize recalls and to conduct recalls within what NHTSA considers a reasonable time. Hertz asks that NHTSA exercise this authority to shorten the time frames from defect notification to repair for vehicle users like Hertz who lose use of their vehicles pending the defect repair.

We also continue to recommend that NHTSA convene a meeting of vehicle manufacturer and rental car company industry participants to address open issues with respect to: (1) unclear communication to vehicle owners (including rental car companies) about required steps when vehicles are subject to safety recall or are subject

to some other sort of notification, including a "customer satisfaction" issue which appears to have a safety implication; (2) the possibility of according rental car companies priority treatment with respect to part and repair availability for vehicles subject to safety recalls; and (3) the accuracy of vehicle manufacturer safety campaign completion data. We think the parties could choose a neutral to moderate their discussions and that much could be achieved if NHTSA directs the parties to work toward resolution of these and other issues.

We would be pleased to provide further detail or information about any particular recall. Please let us know if you have questions about any of the attached information.

Sincerely,

DEANNE M. OTTAVIANO.

Hertz Rental Car Fleet 50-State Private Passenger Vehicles  
NHTSA Recall Repair Completion Rates

July 1, 2010 to July 15, 2011

Rental Availability	Date Issued	Mfg	Recall Number	Total Owned at Activation	Percent Completed 30 Days	Percent Completed 60 Days	Percent Completed 90 Days	Percent Completed 120 Days	Percent Completed to Date <sup>1</sup>
S	7/7/2010	Ford	10C13	20	50	85	85	85	100
S	7/16/2010	GM	2010216	47	68.75	75	75	81.25	100
S	8/19/2010	CHRY	K08	12	1.82	1.82	1.82	1.82	98.15
S	8/19/2010	GM	2010243	7011	69.12	75.11	77.84	78.49	99.94
S	8/19/2010	CHRY	K15	22	86.36	90.91	90.91	95.45	100
S	8/27/2010	NISSAN	R1029	1413	58.64	65.69	67.02	67.49	100
S	9/28/2010	MAZDA	6010H <sup>2</sup>	866	39.36	44.3	46.31	47.07	99.42
S	10/25/2010		2010312	2205	58.34	62.51	63.82	64.97	99.55
S	10/27/2010	MERCEDE	2010100002	319	53.45	58.33	60.34	64.66	94.67
S	11/4/2010	VW	97S8 <sup>3</sup>	156	15.18	20.94	21.99	31.94	98.08
S	11/10/2010	MAZDA	5409D	495	42.37	49.91	53.48	55.37	100
S	11/18/2010	GM	2010351	1703	76.46	80.27	81.09	81.42	99.82
S	11/30/2010	GM	2010211	12	83.33	83.33	83.33	83.33	100
S	11/30/2010	NISSAN	PM062	1484	81.38	89.72	95.09	96.91	99.8
S	12/1/2010	GM	2010309	608	32.8	63.68	75.2	79.68	99.84
S	12/10/2010	CHRY	K13 <sup>4</sup>	33	3086	39.51	39.51	39.51	82.5
S	12/20/2010	MAZDA	6110K	4373	55.84	72.27	77.33	78.44	99.61
S	12/21/2010	GM	2010370	498	79.36	88.98	90.58	91.18	100
S	12/29/2010	GM	10426B	617	80.26	95.63	98.06	98.38	99.51
S	1/14/2011	GM	2010256	157	75.16	85.71	86.34	86.34	100
S	2/10/2011	CHRY	K37	55	68.85	78.69	78.69	78.69	98.18
S	2/17/2011	VW	2014	894	76.4	84.13	85.5	85.93	99.89
S	2/24/2011	TOYO	A0P	3144	96.63	91.39	93.11	93.55	98.92
S	3/10/2011	GM	2011057	148	92.57	95.95	95.95	96.62	100
S	3/17/2011	GM	2011029	15	73.33	80	80	80	100
S	3/22/2011	MAZDA	6211B	4377	77.15	82.31	83.71	83.71	98.79
S	4/12/2011	MITSU	SR10-001	11	81.82	81.82	90.91		100
S	4/12/2011	SUBARU	WVP26	12	66.67	83.33	83.33		91.67
S	4/15/2011	TOYO	B0B	156	53.37	65.64	69.94		89.74
S	4/26/2011	VW	97V3	372	85.79	90.62	91.96		98.66
S	4/28/2011	TOYO	B0F	52	76.92	88.46	88.46		92.31
S	5/9/2011	GM	2011149	1523	81.38	90.95			97.24
S	5/9/2011	HONDA	11V176	297	82.82	92.26			92.59
S	5/10/2011	GM	2011142	2995	74.04	90.39			96.76
S	5/17/2011	NISSAN	PC012	73	35.29	44.71			91.78
S	6/9/2011	GM	2011162	630	84.52				93.02
S	6/30/2011	CHRY	L23	868	55.41				57.37
S	7/5/2011	GM	2011191	12	23.08				25
S	7/12/2011	MAZDA	6411F	44					2.27
S	7/28/2011	GM	2010038 <sup>5</sup>	56	33.33	35.09	36.84	38.6	100

<sup>1</sup> This Column includes off-site repairs and vehicle sales/scrappage which could not be tracked in 30,60,90 and 120-day periods

<sup>2</sup> Pursuant to Mazda requirements, this vehicle had to be repaired at the Mazda dealership, and available access to a dealership caused significant delays. Note that, pursuant to Hertz policy with respect to these and all other vehicles subject to NHTSA recall, affected vehicles were coded and rental personnel were instructed not to rent vehicles pending recall repair completion

<sup>3</sup> These vehicles were in Hawaii when recall was announced, and delays were encountered in getting necessary parts and getting access to repairs at available dealer under recall. Note that, pursuant to Hertz policy with respect to these and all other vehicles subject to NHTSA recall, affected vehicles were coded and rental personnel were instructed not to rent vehicles pending recall repair completion

<sup>4</sup> These vehicles were in Hawaii when recall was announced, and delays were encountered in getting necessary parts and getting repairs at dealer under recall. Note that, pursuant to Hertz policy with respect to these and all other vehicles subject to NHTSA recall, affected vehicles were coded and rental personnel were instructed not to rent vehicles pending recall repair completion

<sup>5</sup> This NHTSA recall was related to floor mats causing potential pedal entrapment in 2009-10 Pontiac Vibe and, pursuant to manufacturer instructions, removal of floor mat made vehicle safe for use while awaiting redesign and delivery of new floor mats.

PREPARED STATEMENT OF JAN WITHERS, NATIONAL PRESIDENT,  
MOTHERS AGAINST DRUNK DRIVING (MADD)

Thank you Chairman Pryor and Ranking Member Toomey for the opportunity to submit testimony before the Committee and for holding this important hearing. Last year, MADD celebrated its 30th Anniversary with a rally on Capitol Hill to celebrate our Nation's past success and to focus on what more must be done to eliminate drunk driving.

Since our founding in 1980, drunk driving fatalities have dropped by over 40 percent, with more than 300,000 lives saved. We are proud of our success, but as we reflect on three decades of advocacy with the goal of saving lives, we must not accept complacency. We all must recommit to saving lives and the elimination of drunk driving. Every one of us should be outraged that:

- In 2010 alone, 10,839 people, one-third of all highway fatalities, were killed due to drunk driving.
- Over 350,000 people were injured last year in drunk driving crashes.
- 50–75 percent of convicted drunk drivers will continue to drive on a suspended license.
- Drunk driving costs our Nation \$129 billion per year.
- One Arkansas resident holds the record for most DUIs with 44 convictions.

MADD has put a face to the crime of drunk driving, sharing story after story of lives cut short due to someone's senseless actions. It is these stories, including my own, that continue to propel our organization forward, moving toward the attainable goal of eliminating this public health epidemic once and for all.

I came to MADD in 1992 after my 15-year-old daughter, Alisa Joy, was killed by an underage drinker who chose to drive drunk after consuming numerous beers. Alisa was a gift of sunshine to us. She was a kind and funny person, evoking a gracefulness of spirit as well as movement. I loved watching her friends naturally gravitate to her as much as I loved watching her dance. In both, she radiated joy.

On a balmy evening during spring vacation, Alisa and two of her friends decided to go out with two senior boys. While out, the guys drank a couple of "six-packs" they had previously hidden in the woods. On the way home, when the driver's judgment and reactions were impaired, he lost control of the car. As the car was vaulted into the air after hitting a guardrail, the right side was sliced away and Alisa was ejected from the car. She sustained massive injuries as her body was hurled through the forest of trees.

The driver had a blood alcohol concentration of .08—the illegal limit. I personally know what the effects of a .08 BAC sound like as I listened to a respirator pump air into Alisa's lungs in the emergency room. I personally know what the effects of *underage drinking* feel like when Alisa was declared dead. A piece of me died with her at that moment.

The statistics we often hear are not just numbers to me. Alisa Joy Withers was my baby. She had a face and a story to tell. Now I must tell her story, instead. Many of you have children with stories to tell. We want them to be able to tell their own stories—not have their mother telling it for them after they died. This is why I am here representing MADD.

#### **Campaign to Eliminate Drunk Driving**

Fortunately, MADD has a plan. In 2006, following research of proven countermeasures, MADD announced its Campaign to Eliminate Drunk Driving which:

- First, supports more resources for high-visibility law enforcement;
- Second, requires convicted drunk drivers to install an ignition interlock device; and,
- Lastly, turns cars into the cure through the development of advanced in-vehicle technology.

#### **High-Visibility Law Enforcement**

Studies show that the combination of paid media ads with law enforcement is proven to deter drunk drivers from getting behind the wheel. MADD supported authorizing \$29 million per year for NHTSA to conduct three annual mobilization efforts as part of SAFETEA–LU. We thank the Committee for authorizing the program, and we hope to see it continue at even more robust funding levels. *Drunk Driving: Over the Limit, Under Arrest* is conducted twice yearly and *Click it or Ticket* once per year. Both campaigns have been highly-effective.

The paid ads target audiences who have the highest risk of driving drunk. While the ads are running on television and radio, law enforcement conducts sobriety

checkpoints and saturation patrols. Would-be offenders see the advertisements, see law enforcement out in force, and realize that they will be caught if they drive drunk. This deterrence approach is one of the most effective tools the Nation has to prevent drunk driving.

MADD recommends that the next reauthorization bill include increased funding for a minimum of 3 yearly crackdowns focusing on drunk driving and seat belt enforcement.

*We commend the Committee for the inclusion of Section 109, the High Visibility Enforcement Program, in its draft bill, and specifically for stipulating "at least three" national crackdown periods each year.*

#### **Interlocks Save Lives**

An ignition interlock is a breath test device linked to a vehicle's ignition system. The interlock allows a DUI offender to continue to drive wherever they need to go—they just can't drive drunk. The research on interlocks is crystal clear and irrefutable. Since New Mexico and Arizona implemented all offender interlock laws, DUI fatalities in those states have been reduced by 36 and 46 percent respectively.

Every American should be protected under an all-offender interlock law. MADD is now hitting roadblocks from the alcohol industry and DUI defense attorneys as we try to pass this law in state legislatures. We strongly urge this Committee to work with the Senate Environment and Public Works (EPW) Committee to develop a strategy to encourage every state to adopt an all-offender interlock law as part of the reauthorization bill.

Under this Committee's jurisdiction, incentives could be offered to states which enact an all-offender interlock law in the first half of the life of the new Federal law, and under the EPW Committee's jurisdiction, an all-offender interlock Federal standard could be included for the second half of the life of the law. This lifesaving measure is sound policy.

*MADD commends the Committee for including Section 107(g), Grants to States That Adopt and Enforce Mandatory Alcohol-Ignition Interlock Laws, in the draft bill.*

#### **Advanced Alcohol Detection Technology**

While interlocks are currently the most proven technology available to stop drunk driving, a program is underway to provide an advanced in-vehicle option for consumers. This technology could potentially eliminate drunk driving. The Driver Alcohol Detection System for Safety, or DADSS, is the result of a research agreement between NHTSA and many of the world's leading auto manufacturers.

The purpose of this agreement is to research, develop, and demonstrate non-invasive in-vehicle alcohol detection technologies that can very quickly and accurately measure a driver's BAC. The Insurance Institute for Highway Safety estimates that over 8,000 lives could be saved if the technology is widely deployed in the U.S.

Senator Tom Udall and Senator Bob Corker have introduced bipartisan legislation, called ROADS SAFE, which would authorize an additional \$12 million per year for DADSS. In the House, Representatives Shelley Moore Capito, Heath Shuler, and John Sarbanes have introduced identical legislation.

Just this week a diverse coalition of organizations and companies sent a strong letter of support to Chairman Rockefeller and Ranking Member Hutchison, outlining the importance of this life-saving research effort. MADD would like to submit this letter for the record.

*MADD would like to thank the Committee for including ROADS SAFE in the draft bill under Section 111, Driver Alcohol Detection System for Safety Research. We look forward to working with the Committee to ensure that this program is authorized and funded.*

#### **Reevaluating the Highway Safety Grant Formula Program**

Turning to the grant programs, MADD agrees with the Governors Highway Safety Association that the current program needs to be streamlined. It is also critical that dollars are spent on programs that work. SAFETEA-LU traffic safety grants represent the majority of funds that states spend on drunk driving prevention. With respect to the impaired driving grant program, funding must be spent on activities that save the most lives, with meaningful performance and activity measures in place to gauge program effectiveness. NHTSA must have the authority to ensure states are moving in the right direction.

A series of Department of Transportation Office of the Inspector General (OIG) and Government Accountability Office (GAO) reports have been released, showing what is needed to improve traffic safety grant programs. The OIG and GAO have made several recommendations to NHTSA, including the development of perform-

ance measures in coordination with the states. While NHTSA has since worked with the states to develop performance measures, MADD does not feel that these measures are meaningful enough to fulfill the intent of the OIG and GAO.

MADD appreciates the work this Committee has done over the years in directing GAO and the OIG to review NHTSA's programs, and outlining steps that NHTSA can take to improve its oversight functions and the effectiveness of state expenditures.

*We commend the Committee for including provisions in Section 102 that require performance measure development and provide additional oversight authority to the Secretary of Transportation.*

### **Conclusion**

MADD applauds the Committee's leadership to eliminate drunk driving and specifically thanks the Committee for including several important provisions in its draft reauthorization bill:

- Section 109—High Visibility Enforcement Program, with at least three national crackdown periods;
- Section 107(g)—Grants to States That Adopt and Enforce Mandatory Alcohol-Ignition Interlock Laws;
- Section 111—Driver Alcohol Detection System for Safety Research;
- Section 102—Inclusion of performance measure development and additional oversight authority to the Secretary of Transportation to ensure states spend funds on activities that will save the most lives and prevent the most injuries.

Thank you for holding this important hearing to advance our Nation's highway and highway safety programs. You are to be commended for your leadership on these issues.

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### PREPARED STATEMENT OF THE AMERICAN CAR RENTAL ASSOCIATION

This statement is submitted by the American Car Rental Association ("ACRA") on behalf of its members, which include every major car rental company (with the exception of the Hertz Corporation).

ACRA members—along with the Hertz Corporation—account for more than 90 percent of all vehicles rented in the United States each year. Safety is a top priority for our industry, and we appreciate the opportunity to comment on the Motor Vehicle and Highway Safety Improvement Act of 2011 discussion draft.

We understand that the Motor Vehicle and Highway Safety Improvement Act introduced on Friday, July 29 by Senators Pryor and Rockefeller does not contain Sections 411 and 412, which were part of the draft discussed during the July 27 Subcommittee Hearing. Because those particular sections are of significant interest to our industry, we appreciate the opportunity to provide our comments for the record.

The Motor Vehicle Safety Act ("MVSA") was enacted in 1966 to promote safety on our Nation's roadways for all vehicle operators and their passengers. Under the MVSA, all vehicle owners have been treated equally including rental car companies; numerous other owners of fleets of vehicles such as the Federal Government, state and local government entities; corporate fleet owners; and individual owners. For the first time, the discussion draft inexplicably singled out rental car companies from hundreds of millions of other vehicle owners (fleets and individuals).

If the concern is that someone drives and/or is a passenger in a vehicle subject to a recall—without knowledge of the recall—it obviously should make no difference whether the owner of the vehicle is a rental car company or taxi company, government agency or a parent transporting the neighborhood kids to the park. Yet, the draft legislation was directed only at rental car companies. Such discrimination has no rational basis and ignores the fact that the major rental car companies (uniquely among vehicle owners in general) ground/do not rent vehicles subject to a recall notice in almost all instances.

Section 412 of the discussion draft, as noted, was the first-ever attempt to regulate the rental car industry under the Motor Vehicle Safety Act. As a result, it would seem to require some justification, analysis or data (particularly since the Administration has recognized the burden regulation puts on business and the need to carefully justify regulation). We have seen no such data or analysis presented by NHTSA or any other proponent of the bill, and we do not believe a case can be made that the regulation of our industry in this way is justified.

When NHTSA launched its Audit Query last fall to investigate how rental car companies were responding to recall notices versus the general population of vehicle owners, a number of rental car companies including Enterprise Holdings, The Hertz

Corporation and Avis Budget Group offered to provide NHTSA assistance in the agency's review. Ultimately, representatives of those companies met with representatives of NHTSA and voluntarily responded to NHTSA's requests for information.

In its initial inquiry NHTSA asked three automobile manufacturers—Ford, General Motors and Chrysler—for data on response rates to certain selected recalls. When the data was submitted, Ford and Chrysler each advised NHTSA that the manufacturers' data was likely to be inaccurate because rental car company fleets turn over much more rapidly compared to other vehicle owners. They also each advised NHTSA that the best source of information concerning the completion rates for rental cars would be the rental car companies themselves. However, NHTSA did not request the rental car companies to provide such information.

Enterprise Holdings, The Hertz Corporation and Avis Budget Group nonetheless voluntarily provided their own current and accurate data in an effort to educate NHTSA and help the agency avoid reaching erroneous conclusions. Therefore, we are understandably troubled by Administrator Strickland's answers to Senator Blunt's questions during the July 27 hearing because it appears he is not familiar with the information provided by the rental car companies to NHTSA (including information which was, at the time of his testimony, posted on the agency's website).

More specifically, Administrator Strickland appeared to be unaware of three critical facts during his testimony. They are:

1. With rare exceptions the major rental car companies do not rent any vehicle subject to a recall notice until the recall work is completed. The rare exceptions consist of instances when no safety issue would be presented by operation of the vehicle pending completion of the recall work given the particular circumstances presented by the recall.
2. The major rental car companies have recall work completed on 80 to 90 percent or more of their vehicles within thirty to sixty days. This record likely far exceeds that of any other group of vehicle owners. (Meanwhile, to our knowledge, NHTSA has taken no steps to try to analyze completion rates of any category of vehicle owners besides rental car companies.)
3. When rental car companies experience delays in getting recall work done promptly, it is often because necessary parts are not readily available. However, because those vehicles are not available for rent in almost all instances, there is no public safety issue created by such delays.

The rental car industry is proud of its performance in handling recalled vehicles and believes it exceeds that of any other class of vehicle owners. To the extent that NHTSA has a problem with how vehicle owners respond to recall notices, that problem does not lie with rental car companies.

For example, consider the Toyota pedal entrapment recall in 2010. Toyota advised vehicle owners that if they removed the drivers' side floor mat, the vehicle could be safely operated pending Toyota's development and implementation of a repair for the pedal. Rental car companies responded by removing the floor mats from these vehicles and continuing to rent them while Toyota developed a remedy. Removal of the drivers' side floor mat was so effective as an interim solution that NHTSA permitted Toyota to continue to manufacture and sell the affected vehicles in the very same condition that caused the recall—but without the floor mats. Thus, Toyota continued to sell such vehicles for months until the auto manufacturer was able to develop a fix for the problem and notify owners that they could now bring their vehicles to a Toyota dealer to have the fix implemented. In the period after that second notice, rental car companies continued to rent these vehicles without the floor mats recognizing that, just as before the Toyota notice of the final remedy had been sent, there was no safety issue presented as long as the floor mats had been removed. Following Toyota's notice that the pedal fix was ready to be implemented, rental car companies had the pedal fix completed. The fact that our industry rented these vehicles without the floor mats during the interim (something which would be prohibited by the proposed legislation unless disclosures were made) cannot be criticized given that all involved recognized the vehicles were safe to operate in that condition. To prohibit such rentals makes no sense and is an example of regulation without justification.

A typical recall notice advises all vehicle owners that an appointment should be made to have the vehicle inspected and/or repaired at an authorized dealer as soon as possible. If the work cannot be done *within sixty days*, a complaint may be filed with NHTSA. Recall notices do not typically recommend that the vehicle owner cease operation of the vehicle in the interim period nor does the notice recommend owners advise unsuspecting passengers or other users of the vehicle of the existence of the recall.

Notwithstanding the fact that a typical recall notice does not recommend the owner discontinue operation of the vehicle, it is, as noted earlier, the practice of the rental car industry, in almost all instances, to cease renting such vehicles until the recall work is completed. In this regard, we believe our industry is unique among vehicle owners including taxicabs, limousines, and corporate and governmental fleets in taking this step pending completion of the recall work.

There are some instances, rare in our experience, when the manufacturer's notice advises that the owner "*Not drive the vehicle to the dealer*" or words of similar import. In such cases, it is the practice of our members to not only cease renting such vehicles but to also take immediate steps to retrieve any vehicles already on rent.

Members of the Committee undoubtedly are aware that there was a tragic accident in 2004 involving a rental car that was subject to a recall. As tragic as this accident was, it must be placed in the context of the scope of our business and our track record. Since this accident in 2004, nearly 7 years and billions of rental days later, there has not been any similar incident. In fact, as an industry we are not aware of another such incident even predating the one in 2004. Moreover, our industry's practices have substantially changed since then due to technological improvements and policy changes with respect to how recalled vehicles are handled.

Furthermore the discussion draft (which was prepared and submitted without consultation with our industry) proposed a "disclosure" process that would be unworkable and apparently was prepared with little knowledge of the car rental industry. Firstly, we note the draft legislation was silent on the specific disclosure that would be required. Even if it were possible to make a disclosure, rental car companies would undoubtedly be subject to litigation with respect to the adequacy of any disclosure that was made.

Setting aside the potential for litigation, and the failure to specify the disclosure to be made, the required disclosure would be impossible to provide given current business practices. For instance, many customers rent vehicles without ever going to a rental counter and engaging with a rental agent. In fact, customers often use kiosks or other methods to bypass the counter, go directly to their vehicle and drive to the exit booth with a vehicle of their own selection. One small but growing segment of the rental car business is car sharing and the car sharing model provides for no interaction with a rental car company agent at the time of the transaction.

In short, even if the statute provided more clarity, there is no practical way the car rental industry could comply with the disclosure requirement—regardless of whether a vehicle was being rented for an hour, a day, a week or longer.

Another obvious problem with Section 412, as proposed in the discussion draft, was that it provided no time between receipt of a recall notice and the obligation to disclose and/or to cease renting. Many rental car companies, including those representing more than 90 percent of the rental car business in the United States, have locations across the country but receive recall notices at a central location. There is no way a recall notice could be received at a central office of a major rental car company and somehow be instantaneously communicated all across the country so that a written disclosure would be available to a customer (assuming the customer went to the rental counter) and/or that the company could instantaneously cease renting the vehicles in question.

Furthermore, to identify the vehicles in rental car company fleets subject to a recall requires VIN numbers from the manufacturers (typically not provided in the mailed recall notice). Those vehicles then have to be identified in company computer systems and marked as subject to a recall. The discussion draft language apparently was drafted on the mistaken assumption that all this would occur instantaneously upon receipt of the recall notice. Unfortunately, this is not the case.

Section 411 of the discussion draft proposed that used car sales require a disclosure of the existence of a recall or no sale could take place until the recall was completed. Some rental car companies are engaged in the retail sale of vehicles, and we believe it is the practice of such companies to have recall work performed before a vehicle is sold to a retail customer. However, the vast majority of rental vehicles are sold by rental companies in wholesale channels, at auctions and/or to automobile dealers who are knowledgeable and fully capable of ascertaining the status of a recall on a given vehicle. It is not standard practice that recall work is done prior to sales in wholesale channels as the expectancy is that recall work is performed prior to the ultimate sale to a retail customer. We have no objection to a requirement that used car dealers have such work done before a retail sale (although there may be legitimate concerns in the used car industry with respect to the ability to obtain adequate information to identify such vehicles within used car dealers' inventories). However, there is no reason why the wholesale sale of vehicles should be regulated in this way. At any given time, as recall notices are received, rental car companies will have vehicles in transit to dealers and/or to auctions or already at auctions for

sale. It would be burdensome and costly for those vehicles to have to be pulled back from sale in those venues. There is no offsetting benefit to be obtained given the nature of wholesale buyers and their ability to have the recall work done (for which they will be compensated by the manufacturer) once they have acquired possession of the vehicle. Thus, we believe that any version of section 411 of the discussion draft ultimately proposed should be amended to clarify that it applies only to retail sales.

