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ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

March 9, 2010

To: Members of the Subcommittee on Commerce, Trade, and Consumer Protection

Fr: Subcommittee on Commerce, Trade, and Consumer Protection Staff

Re: Hearing on NHTSA Oversight

On March 11, 2010, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Trade, and Consumer Protection will hold an oversight hearing entitled "NHTSA Oversight: The Road Ahead." The hearing will examine the operations of the National Highway Traffic Safety Administration.

I. BACKGROUND

NHTSA has broad jurisdiction relating to motor vehicles. The agency was established in 1970 with a mission to save lives, prevent injuries, and reduce the economic cost of crashes through education, research, safety standards, and enforcement activity. NHTSA conducts crash data analysis, research, and rulemaking for vehicle safety, and is responsible for overseeing issues related to fuel economy, child car seat performance, and tire safety. NHTSA also is responsible for collecting consumer complaint data, investigating potential vehicle defects, and overseeing recalls of vehicles with safety defects. In addition, the agency administers grants to states to enforce laws requiring seat belts and prohibiting drunk driving.

There have been several Congressional hearings in recent weeks examining the performance of NHTSA in investigating and understanding the incidents of sudden unintended acceleration in Toyota vehicles, including a hearing in the Subcommittee on Oversight and Investigations on February 25. During the hearing, concerns were raised about whether NHTSA has the resources and the capability to conduct in-depth investigations into new and complex systems in vehicles, and to evaluate manufacturer's claims about the operations of their vehicles.

II. TREAD ACT

In the late 1990s, an alarming number of rollover crashes involving Ford Explorer vehicles led to a massive recall of Firestone tires and to public concern about NHTSA's ability to detect safety defects and to force recalls of unsafe cars and vehicle components. In response,

Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000.[1] The legislation aimed to strengthen NHTSA's ability to detect safety defects in a timely manner and more rapidly initiate investigations and recalls to prevent death and injury.[2]

Specifically, the TREAD Act established an Early Warning Reporting (EWR) system that requires auto manufacturers to make quarterly reports about production information, consumer complaints, warranty claims, incidents of death, injury, property damage, and other information that may help the company or the agency identify a problem.[3] The legislation left many of the details of the reporting system to be established by the agency. Consumer groups unsuccessfully challenged NHTSA's final rule, which classified the data submitted by manufacturers as Confidential Business Information (CBI) that can be withheld from the public and exempt from disclosure under the Freedom of Information Act.[4] Since that time, NHTSA has only made production information and death and injury statistics available to the public.

In addition, the TREAD Act authorized NHTSA to seek civil penalties of up to $5,000 per motor vehicle per day, with a maximum penalty of $15 million for all related violations, in the event that an auto manufacturer fails or refuses to comply with a NHTSA regulation.[5] The law also authorized criminal penalties for falsifying or withholding information with the intent to mislead the agency about a safety defect that has caused death or serious bodily injury.[6] In February 2010, NHTSA launched an inquiry to examine whether civil penalties would be appropriate in connection to the Toyota recall.[7]

III. DEFECTS INVESTIGATION AND ENFORCEMENT

[1] Pub. L. No. 106-414 (2000).

[2] The law also mandated new standards for tires, tire pressure monitoring systems, and consumer information on rollover stability.

[3] *See* 49 C.F.R. § 573, 574, 576, 579 (2000). Information required to be provided to NHTSA under the TREAD Act includes production information; information on accidents involving death or injury; aggregate data on warranty claims, consumer complaints, and property damage claims; field reports by company technicians; green tire identifiers; and the vehicle identification number (VIN) for vehicles involved in a fatal or injurious crash.

[4] *Public Citizen v. Mineta*, 427 F.Supp.2d 7 (D.D.C. 2006).

[5] 49 U.S.C. 301 § 30165. As indexed to inflation, the maximum penalty for violations is now $16.4 million. To date the highest civil penalty ever assessed by the agency is $1 million. *See NHTSA Considers Imposing Civil Penalty Over Toyota Recalls*, Detroit News (Feb. 2, 2010) (online at: detnews.com/article/20100202/AUTO01/2020414/NHTSA-considers-imposing-civil-penalty-over-Toyota-recalls).

[6] 49 U.S.C. 301 § 30170. A criminal penalty under this section has never been assessed.

[7] *See* National Highway Traffic Safety Administration, *NHTSA Launches Probe into Timeliness of Three Toyota Recalls* (Feb. 16, 2010).

The Office of Defects Investigation (ODI) is responsible for screening consumer complaints and other data collected by the agency, reviewing petitions for defect investigations, and conducting investigations of possible safety defects. The Administrator has the authority, following a review by ODI, to issue a mandatory recall if the agency finds a defect. However, the agency generally relies on manufacturers to conduct voluntary recalls as the investigation process proceeds, and has not issued a mandatory recall since 1979.[8]

ODI relies on the approximately 30,000 consumer complaints received by the agency each year, Early Warning Reporting data submitted to the agency by manufacturers, as well as defect petitions submitted by members of the public as the starting point for investigations.

ODI investigations have two stages. During the Preliminary Evaluation (PE), ODI examines the data submitted to the agency and obtains information from the manufacturer to determine if more analysis is needed. The second stage is an Engineering Analysis (EA) during which, according to NHTSA, ODI "builds on information collected during the PE and supplements it with appropriate inspections, tests, surveys, and additional information obtained from the manufacturer and suppliers."[9] At either stage, the investigation can be closed because the manufacturer begins a recall that ODI believes will address the defect under investigation or because it does not see a defect trend.

If ODI identifies a safety defect during the EA that is not addressed by the manufacturer, it may begin the process toward a mandatory recall. The agency must first submit a recall request letter to the manufacturer. If the manufacturer declines to conduct a recall voluntarily, the Office of Enforcement could issue an Initial Decision that a safety-related defect exists, and hold a public meeting at which both the manufacturer and the public can present arguments. The NHTSA Administrator would then be able to issue a final decision on the matter and order a recall. This order may be challenged in court.

In the cases of sudden unintended acceleration of Toyota vehicles, the agency has reviewed six defect petitions, opened several PEs, and two EAs since 2003. A lack of resources was noted as a key reason for ending several of the analyses. For example, a 2003 defect petition was denied, "in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission."[10]

IV. BUDGET

Although the NHTSA budget as a whole has grown in recent years, the portion of the agency dedicated to vehicle safety has remained stagnant for ten years, and has resources far below the resources available when the agency was at its height. In the Administration's 2011

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[8] *Auto Safety Agency Labors to Keep Pace,* Los Angeles Times (Dec. 31, 2009).

[9] National Highway Traffic Safety Administration, *Motor Vehicle Safety Defects and Recalls Booklet* (Undated) (Online at: www-odi.nhtsa.dot.gov/recalls/recallprocess.cfm).

[10] Department of Transportation, National Highway Traffic Safety Administration, *Denial of Motor Vehicle Defect Petition, DP-03-003,* 68 Fed. Reg. 55076 (Sept. 22, 2003).

budget request, more than 70% of NHTSA's budget is dedicated to highway safety grants to states and localities.[11] The budget for these grants, which are funded predominantly through the Highway Trust Fund, have nearly tripled in the past ten years.

NHTSA's work on vehicle safety is contained within the budget for "Operations and Research." NHTSA's FY 2011 budget request for this segment of the agency is $238.3 million; approximately $5 million lower than the FY 2010 request.[12] Operations and research encompasses all vehicles safety work as well as all of the agency's data collection and highway safety research. Much of the highway safety research is used to inform the behavioral grants to states and localities, such as research into drunk driving, distracted driving, and seatbelt use.

Within the Operations and Research budget request for 2011, $133 million is targeted for "vehicle safety research." This account supports all research and development into new car technologies, rulemaking, enforcement, and investigations work as well as the New Car Assessment Program.[13] The agency's request for ODI, which is part of NHTSA's enforcement program, is flat from 2010, remaining below $10 million.[14]

The stagnant budget in recent years followed years of decreases in vehicle safety budgets. The impact of this was made clear in recent Congressional testimony by former Administrator Joan Claybrook, who noted that in the 1970s, 119 people worked in the enforcement division. Today there are only 57.[15]

Safety advocates believe that the lack of budget growth for vehicle safety programs has constrained the agency from staying on top of critical safety issues and the rapid introduction of electric and electronic systems to operate core automobile functions. There are concerns that resource constraints have prevented the agency from hiring electronic and software engineers and hampered the ability of ODI to appropriately staff and administer investigations. Resource limitations have also hampered the agency's ability to develop key safety standards in a timely way. As a result, Congress has initiated legislative mandates to compel the agency to issues

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[11] The Highway Safety Grant program provides grants to states for various traffic safety behavioral programs administered by state law enforcement and public health authorities. Examples include enforcement and education concerning seat belts, drunk driving, distracted driving and child passenger protection.

[12] U.S. Department of Transportation, *Fiscal Year 2011 Budget Estimates: National Highway Traffic Safety Administration* (online at www.dot.gov/budget/2011/budgetestimates/nhtsa.pdf) (accessed March 4, 2010).

[13] The New Car Assessment Program conducts crash testing and rating of new cars, car seats and tires. For more information see www.safercar.gov.

[14] The budget request for enforcement also includes $8 million for vehicle safety compliance, which tests vehicles for compliance with federal safety standards, and $200,000 for odometer fraud investigation.

[15] House Oversight Committee, Testimony of Joan Claybrook, *Toyota Gas Pedals: Is the Public At Risk?*, 111th Cong. (Feb. 24, 2010).

rules for rollover prevention, motorcoach safety, fuel economy, and safety features to protect children in and around cars.[16]

V. WITNESSES

The following witnesses have been invited to testify:

Panel I:

The Honorable David Strickland
Administrator
National Highway Traffic Safety Administration

Panel II:

Joan Claybrook
Former Administrator
National Highway Traffic Safety Administration

Ami Gadhia
Policy Counsel
Consumers Union

Dave McCurdy
President and CEO
Alliance of Automobile Manufacturers

[16] NHTSA rulemaking mandates have been included in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Act of 2005 (Pub. L. No. 109-59); the Cameron Gulbransen Kids Transportation Safety Act of 2008 (Pub. L. No. 110-189), the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140); and S. 554, the Motorcoach Enhanced Safety Act of 2009 (reported favorably by the Senate Commerce Committee on Dec. 17, 2009).