

**STATEMENT OF
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TRAFFIC SAFETY ADMINISTRATION
BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
U.S. SENATE**

HEARING ON

S. 3302, The Motor Vehicle Safety Act of 2010
May 19, 2010

Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss legislative proposals to strengthen the authority of the National Highway Traffic Safety Administration (NHTSA) and to address many issues raised by the recent Toyota recalls. I applaud the committee members and their staff for working so hard to understand these issues and for reflecting that understanding in S. 3302, “The Motor Vehicle Safety Act of 2010.”

Status of NHTSA’s Activities Related to Toyota Recalls

Before I speak to some of the proposed measures in the bill, allow me to briefly summarize the current status of NHTSA’s activities related to the Toyota recalls. As you know, we initiated three separate actions in February: a timeliness query (TQ) related to the pedal entrapment recall; a TQ related to the “sticky pedal” recall; and a recall query (RQ) looking at whether those two recalls were sufficient in scope and whether there are other matters related to unintended acceleration in Toyota vehicles that should have been addressed by the company. On April 19, Toyota agreed to pay \$16,375,000 in civil penalties in connection with the sticky pedal TQ. This is the maximum penalty available under current law. NHTSA believed the penalty was warranted due to the company’s failure to inform the agency in a timely way about the safety defect involved in that recall.

We are continuing to review the large number of documents submitted by Toyota in response to the pedal entrapment TQ. We have not reached a decision yet on whether the facts of that case warrant a civil penalty. We have recently begun to review the huge volume of documents received in response to the RQ. The documents are so numerous that we have entered into an agreement with the Department of Justice to help us categorize and analyze the documents. That task will take some time.

At the same time we have undertaken two important reviews of issues related to unintended acceleration. The first is a review of the electronic throttle control (ETC) system in Toyota vehicles. This review entails in-depth research into the design, function, and safety measures associated with that system, including all of its electronic components and software. The National Aeronautics and Space Administration (NASA) is assisting us in this effort, which is well underway. NASA brings its great expertise in electronic control systems, forensic analysis, and fail-safe design to the project. NASA's expertise is being complemented by specific automotive electronics and safety systems expertise from both inside and outside of NHTSA. The team is working to identify any possible failure modes in the ETC system that can lead to unintended acceleration and that involve conditions that can realistically be expected to occur in consumers' use of these vehicles. We are hoping to complete this review of the ETC system by the end of August, but that will depend on just how quickly the necessary testing and analysis can be done. If we do find such possible failure modes that might explain any of the unintended acceleration events reported to NHTSA, we will open a defect investigation.

The second review will be conducted by an independent panel of experts chosen by the National Academy of Sciences (NAS). This group will study the broad subject of unintended acceleration and electronic control systems across the automotive industry. They will look at subjects such as electronic vehicle control systems' design and reliability (including hardware and software issues), electromagnetic compatibility and electromagnetic interference, existing relevant design and testing standards, human factors and the possibility of human error, and mechanical failure. The panel will make recommendations to NHTSA on research, rulemaking, and enforcement activities and the personnel, infrastructure, and financial resources required for NHTSA to help ensure the future safety of ETC systems and other electronic control functions. NAS has begun the process of identifying panel members, and we have been informed that the panel will be established by July and will complete its work within 15 months. We think this group's work comes at a very opportune moment, not only to provide advice to the agency on the unintended acceleration issue, but also to provide such advice on the range of electronics issues that might affect motor vehicle safety as new electronic crash avoidance and other technologies rapidly proliferate in the vehicle fleet.

Legislative Proposals

We very much appreciate the provisions in the bill that would enhance NHTSA's vehicle safety authority. If enacted, these measures would significantly increase the agency's leverage in dealing with recalcitrant manufacturers in situations where we think recalls are necessary or where the manufacturer has not been totally forthcoming on possible defects or noncompliance issues. As illustrated by our recent penalty action against Toyota, the current maximum penalty

is not a very significant sum of money for a major corporation and, accordingly, does not present much of a deterrent.

The addition of imminent hazard authority would bring NHTSA's authority into line with that provided to many safety and health agencies. If the threat to human life is truly imminent, the agency needs to act quickly and not be slowed down by a lengthy procedural process. Of course, we understand the need to use such extraordinary authority very judiciously, and would use it only in those situations where the hazard was truly imminent and the manufacturer unwilling to cooperate.

However, as drafted, the imminent hazard provision (section 202) stops short of giving NHTSA full recall order authority in these situations. The bill would permit NHTSA to order manufacturers to notify "purchasers" (we think this should be "owners, purchasers, and dealers") that the vehicle or equipment poses an imminent safety hazard and provide the purchaser "with information explaining the safety risk and actions the purchasers can take to reduce the risk." Such notification does not constitute a recall, which consists of both notification to the owners and the provision of a remedy for the noncompliance or defect. We would like to work with the committee to ensure that the legislation provides consumers with an actual remedy in the face of an imminent hazard.

Of course, the bill would ensure that a manufacturer facing a recall order issued under this authority would have the opportunity for prompt and thorough review in the court of appeals. This important aspect of the draft legislation retains the manufacturer's right to judicial review of a recall order but situates that review directly in the appellate courts. Current law requires NHTSA to bring an action in district court to enforce a recall order and to prove its case in a trial *de novo*. The manufacturer could further challenge a district court decision in the appellate courts. Meanwhile, the vehicles or unsafe equipment would still be in use by consumers who remain exposed to all of the dangers associated with the defect or noncompliance. We think the balance struck by the committee greatly enhances the protection of consumers.

We believe the bill's rulemaking provisions correctly identify the major areas where new or revised standards may have a beneficial effect on reducing the frequency or severity of unintended acceleration. In many of these areas the agency has already begun to increase its understanding of the subject and possible regulatory options, and we expect to learn a great deal more from the two reviews discussed earlier. Of course, to get to the point where we can propose well-conceived and fully researched new safety standards will, in most cases, take a great deal more work. These rulemakings would be additions to NHTSA's already ambitious regulatory agenda, which includes many other high priority safety and fuel economy topics. The possibility exists that our ability to achieve the deadlines set for us in the proposed legislation

may be constrained by circumstances. In light of these issues, we look forward to working with the committee to help ensure that the deadlines contained in the legislation are achievable.

Some of the rulemaking provisions contain language that we believe would not preserve sufficient substantive flexibility for NHTSA in determining the best way to devise standards that accomplish the bill's purposes. For example, the event data recorder (EDR) provision (section 107) contains very specific time periods during which data would have to be recorded under the new rule. NHTSA needs the flexibility to determine what parameters are technologically feasible and would best serve the provision's purpose. Similarly, that section's prohibition on permitting EDRs to record or transmit vehicle location may be disruptive to advanced crash notification systems that can provide emergency responders with precise location information. NHTSA needs the discretion to balance the competing interests of privacy and automatic notification of emergency responders.

The bill would also require NHTSA to improve the accessibility of the information on its publicly available safety databases. We will be very happy to do so and we have several ideas on how to make our recall and investigations data more user friendly. We appreciate the fact that the bill would give us some time for this project because significant changes to such large and publicly used databases require great care in planning and execution. While we surely share the view that our databases can be improved, I must add that even in their current state they are among the most outstanding consumer safety databases in government.

The bill also includes what this Administration believes are extremely important whistleblower protections (section 306) for employees of motor vehicle manufacturers, part suppliers, and dealerships. The safety of our vehicles is better ensured when the workers who manufacture, supply, or sell them feel they can come forward with safety concerns without retaliation. NHTSA has, on rare occasions, received reliable information from whistleblowers and, of course, has not revealed their identities. However, we believe that NHTSA is not the appropriate agency to administer whistleblower protection provisions. Additionally, the diversion of administrative resources that would be required to carry out section 306 could detract from achievement of NHTSA's safety mission. We encourage the committee to contact the Department of Labor (DOL) for technical assistance on this section. DOL already administers five other whistleblower statutes relating to the transportation sector.

This Administration's appointees are subject to the most stringent ethical standards ever applied within the Executive branch. We are certainly supportive of strengthening ethical standards applicable to career employees where the need exists.

Thank you and I would be happy to answer any questions.