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STATEMENT OF CLAUDE S. BRINEGAR, SECRETARY OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON COMMERCE AND FINANCE, HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, REGARDING MOTOR VEHICLE SAFETY LEGISLATION, ON MONDAY, MAY 7, 1973.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before this Subcommittee to present the Department's views on pending motor vehicle safety legislation. Specifically, I will discuss the proposed amendments to the National Traffic and Motor Vehicle Safety Act of 1966 contained in the Department's bill and in H.R. 5529 introduced by the Chairman. I will also discuss our proposed congressional resolution calling on the States to require the use of safety belts.

Let me say at the outset, Mr. Chairman, that we have reviewed your bill carefully, and have found it has much in common with our proposal. I am confident that desirable legislation can result from the combination of our efforts.

Now, I wish to briefly present the principal features of our bill. As you are aware, legislation is needed to authorize the appropriation of funds necessary to implement the Act after June 30, 1973. One of the purposes of the Department's bill is to provide this needed authority. Past authorizations for the Act have provided specific yearly amounts. Because we believe it is desirable to develop each year's fiscal requirements for this program with the maximum flexibility, we propose changing to an open-ended authorization. On the basis of the President's Budget, we expect to spend approximately $35.5 million during fiscal year 1974.

In addition, the Department's bill seeks improvement of the Act in three important respects: elimination of problems faced by safety research investigation teams, strengthening the Department's information-gathering ability, and clarifying and increasing our enforcement powers.

Teams from the National Highway Traffic Safety Administration (NHTSA) which investigate vehicle crashes for safety research purposes have, from time to time, experienced difficulty under existing authority in persuading drivers to discuss an accident or to permit inspection of their vehicles. Our legislation would protect persons willing to aid our research effort by prohibiting the use as evidence of team crash reports and thus hopefully encouraging such persons to cooperate with the NHTSA's research efforts.

Section 7 of the Department's bill provides increased authority for the collection of data and information from vehicle manufacturers, distributors and dealers. It first would remove any doubt that the Secretary has the authority to inspect and investigate for the purpose of enforcing any rule or regulation issued under Title I of the Act. This section would also make applicable to distributors and dealers the duty currently placed on manufacturers to furnish information relating to investigatory matters. An example of a problem this provision would remedy is a noncompliance investigation where the distributor has altered a vehicle after the manufacturer has certified its compliance with all applicable safety standards. Further, section 7 would authorize the Secretary to obtain from motor vehicle and equipment manufacturers such information as he requires to carry out the Act. We particularly have in mind cost and lead time information necessary for the

evaluation of proposed standards and the establishment of reasonable effective dates. Finally, section 7 would give the Secretary the general authority to conduct informational hearings and to obtain evidence from any person having information relevant to the implementation of the Act.

In the enforcement area, the Department's bill would remove any doubt that the civil penalty authority under section 109 of the Act can be used to enforce all rules, regulations and orders issued under Title I. It would also expand the injunctive authority under the Act to permit the restraining of the importation or sale of vehicles containing a defect related to motor vehicle safety. At present, the Act provides only for restraining the entry into this country or the sale of vehicles that fail to comply with all applicable safety standards. Further, it would clarify the statutory obligation of the distributors and dealers to assist tire manufacturers to obtain the names of tire purchasers.

Now I would like to turn to H.R. 5529 and discuss particularly two important provisions not contained in the Department's bill: they are (1) the recall and remedy provision, and (2) the section entitled "Agency Responsibility".

Section 3 would require manufacturers, when notifying vehicle owners of safety defects or failures, to offer to remedy such safety problems without charge to the owners. There would be one exception--for a manufacturer who could establish to the satisfaction of the Secretary that a safety problem was "inconsequential". Section 3 also provides that the manufacturers would be required to replace or refund the purchase price

of any such vehicle or equipment that "cannot be adequately repaired" within 60 days unless the Secretary extends such time for good cause and publishes his reasons in the Federal Register. Further, this section would afford the manufacturers the same opportunity provided under current law for oral and written presentation of their views prior to a decision by the Department ordering them to remedy the defect without charge.

While the Department does not have any opposition to the mandatory recall and remedy provision in H.R. 5529, we do not regard this legislation as necessary to the accomplishment of our safety mission. I say this because the willingness of manufacturers to remedy without charge has been generally good. Manufacturers have voluntarily offered to remedy without charge about 90 percent of vehicles found to have defects. However, we recognize that adoption of this provision in H.R. 5529 would ensure continuation of the manufacturers' general practice of remedying defects without charge. It also would prevent recurrence of the relatively few but nonetheless substantial recall campaigns in which vehicle owners have had to either share the defect repair cost with the manufacturer or bear the full cost themselves. It is worth noting that even if an offer to remedy without charge is included in defect or noncompliance notifications, this will not ensure that all notified owners will bring their vehicles in for repair. However, we recognize that the owners are more likely to respond to safety defect notifications which include a manufacturers' offer to repair without charge.

Now I would like to comment on some specific aspects of section 3 of H.R. 5529. The provision exempting "inconsequential" defects and noncompliance

from the remedy recall requirement is consistent with past Departmental practices in this area. If this provision becomes law, we intend to define "inconsequential" by regulation. We also would suggest that a second exemption provision be added: namely, that manufacturers be exempted from remedying without charge vehicles and equipment which are more than six years old, unless the Secretary finds that such a vehicle presents a high probability of accident or injury. We base this cut-off date on several factors, including the comparatively high usage rate of recent-model vehicles, the high probability of early detection of a defect in the newer vehicles, and the sharp increase after six years in the rate at which vehicles from a particular model year wear out.

With respect to the opportunity for the manufacturers to present their views on a proposed remedy and recall order, I wish to emphasize our position that an informal expeditious proceeding is the appropriate procedure. We oppose any provision in the motor vehicle safety area which requires a formal administrative proceeding prior to the issuance of a safety defect or noncompliance order. We believe that the requirement of a formal proceeding could likely lead to undesirable delays between the discovery of a safety problem and the date that the affected vehicle owners are notified of the problem.

The second important provision in H.R. 5529 which I would like to discuss is section 7, entitled "Agency Responsibility". This is a very complicated provision and, as we understand it, has two principal purposes. First, it seeks to facilitate the efforts of interested parties to petition the Department regarding the commencement or completion of rulemaking or a defect

or noncompliance investigation. Second, it proposes to reduce the amount of time permitted the Department to reach a decision on such petitions by permitting interested parties to obtain judicial review of their petition if the Secretary denies it or fails to act upon it within 120 days.

Rulemaking proceedings and defect investigations are a major function of the National Highway Traffic Safety Administration. Interested parties have been encouraged to participate in our rulemaking and to file petitions urging the commencement of rulemaking or an investigation regarding a particular safety issue. Because the filing of rulemaking petitions by interested parties is expressly provided in NHTSA's regulations, we view the first part of section 7 as a way to codify existing practices. While we consider the provision unnecessary, we do not object to it.

However, we do oppose the balance of section 7. First, in our opinion, the 120-day time constraint poses many problems. We presume that the bill does not intend that the full action requested by an interested party be carried out within this period. However, even if the bill envisions that the Secretary's duty during the 120-day period is only to decide whether he will initiate or complete the requested action, we could find this difficult as a practical matter. Although a decision on whether to proceed might not take as much time as conducting the proceeding or investigation itself, there are cases that properly require lengthy investigative and analytical work. Also, where promulgation of a safety standard is called for, consideration of whether to proceed will require a substantial investment in time to determine the feasibility of developing a practicable standard. In short, while meeting the

proposed time period might be possible in some instances, the time provision could nevertheless cause difficulties in other cases.

Second, we find the judicial review provisions troublesome. According to section 7, a party seeking review of the Secretary's denial of or failure to act on his petition would have to show by a preponderance of the evidence that: (1) the vehicle or equipment involved presents an unreasonable risk of injury or fails to comply with a safety standard; and (2) the Secretary's failure to commence or complete a proceeding unreasonably exposes the petitioner or other consumers to risk of injury. Upon such a showing, Federal district courts would be empowered to order commencement or completion of the proceedings. This provision could well place the courts in the position of having to take the "first bite" on the difficult factual questions presented in petitions urging the initiation of a defect investigation or a rulemaking proceeding. It thus would run counter to the primary jurisdiction principle in our administrative law. The doctrine of primary jurisdiction--well-founded in the decisions of the Supreme Court--focuses on the question of whether an administrative agency or a court should act first. The doctrine is based on the recognition that there must be an orderly and sensible coordination of the work of agencies and courts and provides that a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer. Otherwise, parties who are subject to the agency's continuous regulation may face uncoordinated and conflicting requirements. We firmly believe this doctrine should continue to be applied to the regulation of motor vehicle safety.

In addition, the proposed provision would to some extent mean that our defect investigations and rulemaking priorities would be set by petitions filed by members of the public. This could mean that we would no longer be carrying out the original desire of Congress that the Department direct its resources to what it considers the most important aspects of the vehicle safety problem. The need for a safety regulation--in essence what a petitioner would have to demonstrate to prevail in court--is only the first of the considerations in the decision to initiate a rulemaking proceeding. Often NHTSA's principal task is developing a standard that is technologically and economically feasible, as is required by the Act. In addition, our rulemaking priorities must take into account such considerations as available resources, the significance of particular safety problems, and the practicability of quantifying and selecting appropriate levels of performance. We do not believe the standard of judicial review proposed in H.R. 5529 would take these factors into consideration. Instead, it would direct the court to look only to the generally undisputed question of need.

There are a few other provisions in H.R. 5529 which I would briefly like to comment upon. First, we support the proposed prohibition against removal or deactivation of federally-required safety equipment by motor vehicle manufacturers, distributors, dealers, and repair businesses. This provision would help ensure that safety equipment on a vehicle continues to benefit motorists during the life of the vehicle.

Second, there are several provisions in our bill, Mr. Chairman, which are similar to those in H.R. 5529. In particular, section 5 of that bill

which seeks to expand our ability to conduct safety research and to gather information is in that category. We support the objective of section 6, authorizing the Secretary to obtain cost data from manufacturers. However, the authority provided by this section may be exercised only after the manufacturers have first chosen to raise increased cost as an issue in opposing a rulemaking proceeding. We believe that broader cost data gathering authority is needed and would urge the adoption of our provision. It would authorize the Secretary to require manufacturers to provide whatever data he deems necessary to implement the Act.

I would now like to turn to the Department's proposed congressional resolution regarding safety belt usage laws. One of the important concerns that led to the passage of the Act in 1966 is the "second collision"--the collision of vehicle passengers with the vehicle interior. It is during this collision that most deaths and injuries involving vehicle passengers occur. To carry out this Committee's directive urging that the problem of the second collision be solved, this Department issued safety standards requiring the installation of safety belts in passenger cars beginning January 1, 1968.

Nevertheless, the second collision continues to needlessly kill and injure thousands of persons annually. This is largely because 24 out of every 25 persons in cars equipped with lap and shoulder safety belts fail to wear them. Further, three out of every four persons fail to wear available lap safety belts.

The Department has sought to remedy this situation by requiring the installation of more convenient safety belts and buzzer systems to encourage

belt usage, and these devices are helping. We have also recently reaffirmed our decision to require the installation of seat belt interlock systems in most 1974 passenger cars. However, these systems will not have any effect upon belt usage in the millions of older vehicles not equipped with the systems.

The Department's proposed resolution would be directed particularly at these passenger cars which will be on the road well into the 1980's. Early experience in Australia, where all States have mandatory seat belt laws, indicates that such laws can help prevent a substantial number of deaths and injuries. While it may be premature to make any final conclusions about the ultimate level of benefits, the initial results are very promising. The Australian states appear to have realized a reduction in annual highway fatalities of 15 to 20 percent.

Since conditions in this country are somewhat different, the savings in lives may be somewhat less. However, we believe it is time that States in this country adopt similar legislation. Mandatory safety belt usage legislation is pending in approximately twenty State legislatures across the country. Passage of our resolution will encourage these States to complete the necessary legislative steps, and perhaps a few others to initiate such action. If mandatory seat belt laws in these States prove to be as beneficial in this country as preliminary results indicate they are in Australia, we expect that many other States will enact similar laws.

This concludes my prepared testimony. My colleagues and I will now be happy to answer any questions you or other members of the Committee may have.