

STATEMENT OF THE HONORABLE PHILIP R. RECHT  
DEPUTY ADMINISTRATOR  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
BEFORE THE  
SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE AND  
CONSUMER PROTECTION  
HOUSE COMMITTEE ON COMMERCE

October 29, 1997

Mr. Chairman, and Members of the Subcommittee. I am pleased to appear before you today to discuss H.R. 2691, the "National Highway Traffic Safety Administration (NHTSA) Reauthorization Act of 1997." With me today are Donald Bischoff, our Executive Director, and John Womack, our Acting Chief Counsel.

Mr. Chairman, I would like to begin by complimenting you and your staff on H.R. 2691. Your bill reflects the constructive concerns raised about the agency's motor vehicle safety and motor vehicle information and cost savings activities at the Subcommittee's NHTSA oversight hearing held last May. Since I believe we fully discussed those concerns at that hearing during our testimony on NHTSA's mission, programs, and activities, I will go immediately to the specifics of H.R. 2691's provisions, taking them in the order in which they appear.

**Authorizations.** Section 2 of the bill would reauthorize NHTSA's motor vehicle safety and motor vehicle information and cost savings programs. For motor vehicle safety activities, \$81,200,000 is authorized out of the General Fund for each of fiscal years 1999, 2000, and 2001. For motor vehicle information and cost savings activities, \$6,200,000 is authorized out of the General Fund for each of fiscal years 1999, 2000, and 2001.

These authorization amounts are identical to the Administration's proposal for these three years, and we support them.

**Restriction on Lobbying Activities.** Section 3 of the bill would prohibit our use of

funds, appropriated to the Secretary for motor vehicle safety or motor vehicle information and cost savings programs, for *"any activity specifically designed to advocate or oppose the adoption of any specific legislative proposal pending before any State or local legislature."*

We strongly oppose this prohibition. Although we seldom use vehicle safety or consumer information funds to address State legislation, we are sometimes asked to do so. The most active area has been odometer fraud, a crime that costs consumers more than \$10 billion every year. NHTSA's regional investigators periodically testify about odometer fraud before State legislatures. This activity with State legislatures is very important. Historically, odometer fraud has been most prevalent in States where odometer fraud laws do not contain strong criminal penalties. Moreover, because of the interstate nature of odometer fraud, used-car purchasers benefit when all States enact effective and uniform odometer fraud laws.

During the past few years, NHTSA investigators have been requested to provide testimony before State legislatures attempting to strengthen their laws. Normally, this testimony consisted of a national overview of the odometer fraud problem, the extent of the problem in that particular State, and the effectiveness of the Federal criminal laws and enforcement by NHTSA. Testimony was also provided regarding specific weaknesses in the State's current laws and how the criminal element has used these weaknesses to their advantage. In many cases, the States enacted stronger laws that accounted for a substantial reduction in odometer fraud.

In all instances where NHTSA investigators provided testimony on odometer fraud, the States were appreciative of our efforts. It is crucial in this context to point out that NHTSA is the only Federal agency able to provide State legislatures with the factual information they need to make informed decisions on matters of this type. The amendment proposed by H.R. 2691 would seriously impede our ability to provide such information about these and other consumer

information laws pending before the State legislatures.

**Standards.** Section 4 of the bill contains several amendments to NHTSA's rulemaking authority under the motor vehicle safety statute. The first amendment would direct the Secretary, "to the extent relevant and practicable," to state the relative risks and benefits to motor vehicle occupants of the safety standards in a "scientifically objective" manner that relies upon "scientific findings." In addition, the Secretary would be required to make this risk and benefits assessment available to the public in a "clear and easily understandable format," but may not require any manufacturer or dealer to provide such information.

We oppose this section. We are concerned that the additional statutory language of this section would only increase the likelihood of judicial review with no additional benefits to the rulemaking process. The agency already evaluates the impacts of its safety standards, including the costs to the public as well as the safety benefits. Before issuing any significant rulemaking proposal, we conduct a preliminary regulatory evaluation. We summarize this evaluation in the proposal and place it in the docket for public review. After analyzing the public comments on our proposal, we make appropriate changes to our regulatory evaluation and place it in the public docket at the time we issue a final rule. As a follow-up to these evaluations, NHTSA periodically evaluates the effectiveness of each of its safety standards and makes those evaluations public. We see no need for a statute mandating us to follow a practice that we have followed since long before the Executive Orders on rulemaking were issued.

With regard to the provision that would require NHTSA to make its regulatory evaluations public, I can report that the agency is already placing its regulatory evaluations on the Internet. In fact, NHTSA has initiated a major effort to enhance the presentation and

dissemination of the agency's vehicle safety information that will lead to the inclusion of almost all of the agency's regulatory and consumer information on the Internet. This effort is reflected in the work of our new Consumer Automotive Safety Information Division, which is responsible for improving how the agency presents safety information effectively and efficiently to the American public and for implementing that knowledge. It is also reflected in a May 1997 Federal Register notice, which included a request for public comments on the agency's efforts. That notice discussed NHTSA's Internet home page and other efforts to make sure the public has vehicle safety information available. Given these agency actions, we see no need to amend the motor vehicle safety statute to require us to do what we have been doing for so long without a statutory directive.

We also are concerned that the restriction on our authority to require manufacturers to disclose relative risk information might have unintended consequences for our consumer information program. For instance, if we were to require manufacturers to provide consumers with the benefits of an optional item of safety equipment, we question whether this would be permitted under this language.

Section 4's second amendment would direct the Secretary, when prescribing or revising a motor vehicle safety standard concerning the protection of vehicle occupants, to design the standard, to the extent relevant and practicable, to protect improperly restrained and positioned occupants only to the extent that its design would not substantially increase the risk of injury to properly restrained and positioned occupants.

We also strongly object to this requirement. Although on the surface, the principle articulated by this requirement seems sensible, closer examination leads us to conclude that it

could have unintended adverse consequences. For example, the current rulemaking actions on air bag safety are directed at protecting the class of occupants at greatest risk--infants and unbelted children. In some instances, these rulemakings--most significantly our rule on depowering--protect unrestrained occupants at greatest risk by reducing protection for belted occupants. A unanimous consensus supported this rulemaking.

Other issues could arise where an appropriate rulemaking, such as our depowering rule, might not be allowed under the bill's proposed statutory requirement. Tradeoffs of various kinds are always critical matters when issuing safety standards. Adding this requirement to our rulemaking criteria would do much more than merely increase the complexity of our task; it would add an unpredictable hurdle as well as another possible area of litigation.

**Odometers.** Section 5 of the bill contains two amendments to the odometer disclosure statute. The first would provide an exemption from the odometer requirements when new motor vehicles--vehicles that are driven no more than 300 miles prior to delivery for moving or road testing--are transferred from a vehicle manufacturer jointly to a dealer and a person engaged in the business of renting or leasing vehicles for 30 days or less.

We concur with this provision, with the understanding that it applies only to the first transfer of a new vehicle.

The second amendment to the odometer disclosure statute would permit the Secretary to exempt such classes or categories of vehicles from the statute's requirements as the Secretary deems appropriate. Until such time as the Secretary amends or modifies the exemptions to the disclosure requirements in accord with this new authority, this section provides, as a transition measure, that the exemptions listed under the Odometer Disclosure Requirements set forth in 49

CFR 580.6 will have full force and effect.

NHTSA supports this section. However, because the agency recently amended the exemption provisions of 49 CFR Part 580, the reference to "49 CFR 580.6" should be revised to read "**49 CFR 580.17**".

**International Harmonization.** Section 6 of the bill contains an amendment that describes the Secretary's authority to engage in harmonization activities that promote the worldwide improvement of motor vehicle safety. These activities would be required to be pursued without any diminution of U.S. safety performance standards.

NHTSA strongly supports this amendment. This provision would clarify the Secretary's authority to represent the United States in activities related to the process of harmonization. It reflects the Administration's policy of supporting increased international harmonization of safety standards so long as safety levels are maintained or increased. In this last regard, we view our harmonization activities as an excellent opportunity to raise the overall level of safety in the world motor vehicle fleet and to export U.S. safety standards abroad.

**Miscellaneous Amendments.** Section 7 of the bill contains four brief amendments to NHTSA's motor vehicle safety statute. The first would streamline the regulatory process and reduce paperwork by allowing the Secretary discretion whether to provide notice in the Federal Register and an opportunity for comments upon: (1) deciding, on application of a manufacturer, that a defect or noncompliance is inconsequential to motor vehicle safety; and (2) granting the manufacturer an exemption from section 30118's notification requirements.

We support this amendment. Under current law, if a manufacturer petitions the Secretary for an exemption from its responsibility to notify vehicle owners of a defect or noncompliance

on the ground that the defect or noncompliance is inconsequential, the Secretary may grant such an exemption only after notice in the Federal Register and opportunity for public comment.

Experience with the exemption process has shown that, because most petitions relate to matters such as the size of lettering on labels, comments are rarely received. The agency would follow its current practice of requesting comments on any petitions for inconsequentiality that do relate to vehicle performance. We also recommend that the Subcommittee consider adding a conforming amendment to strike the second sentence of Section 30120(h) of Title 49, United States Code, since that provision deals with inconsequential exemptions from the statute's remedy requirements.

The second amendment to the motor vehicle safety statute would close a loophole in the statute by prohibiting retailers of motor vehicle equipment from selling defective items of equipment that they have in stock.

We support this amendment. Though current law prohibits a new car dealer from selling a defective item of replacement equipment, such as a headlight, it allows auto parts stores to sell such a defective item. Similarly, a child safety seat manufacturer is required under current law to recall defective seats, but independent retailers can continue to sell defective or noncomplying seats even after receiving notice of a recall. This proposal would require equipment dealers to return any defective or noncomplying equipment, as motor vehicle dealers are required to do.

The third amendment to the motor vehicle safety statute would eliminate unnecessary pneumatic tire labeling and information requirements. Under these statutory provisions, the Secretary is directed to require manufacturers of pneumatic tires to "permanently and conspicuously" label their tires with specific information about the construction of the tires and

the identity of the manufacturer.

NHTSA supports the repeal of these requirements. Though some of the tire labeling information may be useful, the current statute prevents the Secretary from amending the content requirements to delete obsolete requirements. The Secretary already has sufficient authority under Chapter 301 of title 49, U.S.C., to prescribe regulations to carry out any statutory duties and powers. Repealing the tire labeling and information provisions would enhance the Secretary's ability to require essential information without compromising motor vehicle safety.

Finally, the fourth amendment to the motor vehicle safety statute would revise the provision requiring the Secretary to submit reports on the effectiveness of occupant restraint systems, from "every 6 months" to "annually" through October 1, 2000.

We support this amendment. It is impossible to collect data in any meaningful amount and to evaluate and process it in a new report that is useful to Congress in a six-month time frame.

Mr. Chairman, this concludes my statement. My colleagues and I would be pleased to answer any questions you might have.

#