THE WHITE HOUSE
WASHINGTON

11/17/00

TO: Maria Echaveste Jake Siewert
Jose Cerda
Nancy McFadden
Jim Kennedy
Mary Smith
cc: Thurgood Marshall, Jr.
FR: Sean O'Shea 67074

RE: This is still a close hold from DOT but it looks as though we will see this come out late today or Monday. This is an investigation to be announced for defects in Goodyear tires.

November 16, 2000

Jerry/Norma,

NHTSA plans to open a preliminary defect investigation on Monday into Goodyear "Load Range E" truck tires. These are used on large light trucks. We are now aware of 37 complaints, including 31 crashes with 133 reported injuries and 15 reported fatalities. Attached is some background information. We will work with Mary Trupo's office before any release to the media.

Bob

Bob Shelton

11/16/2000

Please fax a copy to Sean O'Shea = Inform him that this is still Close Hold.

DRAFT - INTERNAL USE ONLY

TALKING POINTS
GOODYEAR "LOAD RANGE E" TIRES
November 16, 2000

On Monday, November 20, 2000, NHTSA's Office of Defects Investigation (ODI) plans to open a Preliminary Evaluation into alleged sudden and catastrophic failure of "Load Range E" tires manufactured by the Goodyear Tire and Rubber Company and its affiliates.

- The tires in question are "light truck" tires. Light truck tires have a "load range" that reflects their weight-carrying capacity. Load Range E tires have the highest weight-carrying capacity of any light truck tires.

- Approximately 21 million of these tires have been produced since 1991. They are sold as Goodyear Wranglers, and under a variety of other brand names, including numerous Kelly Springfield brands.

- There are many different sizes of tires covered by this investigation. A complete list of these brands and sizes will be developed during the investigation.

- ODI is currently aware of 37 complaints regarding alleged failures of these tires, including 31 crashes with 133 reported injuries and 15 reported fatalities. These consist of six complaints submitted by consumers, 30 lawsuits reported to ODI by Goodyear, and 1 additional lawsuit provided by a law firm. The information from Goodyear was provided to ODI at a meeting on November 8, 2000. Many of the vehicles involved in these crashes were small buses and large passenger vans, and thus some involved multiple injuries or fatalities.

- The ODI complaint database contains many other complaints about Goodyear light truck tires. Some of these may relate to Load Range E tires, but we have not yet been able to confirm their load range.

- Goodyear has told ODI that after it received some reports of tread separations in its Load Range E tires in the mid-1990s, it decided to make improvements to those tires to make them "more robust." However, Goodyear did not finish implementing those changes in all of its models, sizes, and plants until this year.

Public Citizen
Joan Claybrook, President

November 8, 2000

Jose Cerda
Executive Office of the President
Office of Domentic Policy Council
Old Executive Office Building, Room 224
Washington, DC 20050

Dear Jose:

Thank you sooo much for your terrific work in preparing the President's statement on the TREAD bill and for fostering the interpretation of the secrecy provision at the DOT.

Given the fact that we were stuck with the adverse provisions in the bill, you did a marvelous job in pulling rabbits out of the hat, and hopefully they will be sustained. I sent the President's statement and the interpretation to the twenty-five families that gave up so much to come to Washington to lobby this legislation with the hope that other families would not suffer the grievous harm they experienced. They are all very grateful for this hopeful limitation on potential secrecy of defect data.

We all deeply appreciate your personal efforts.

With best wishes in every way,

Joan

Joan Claybrook

JC/alw

1600 20th Street NW • Washington, DC 20009-1001 • (202) 588-1000

Public Citizen
1600 20th Street NW • Washington, DC 20009-1001

WASHINGTON DC 200
PM
10 NOV
2000

HAPPY HOLIDAYS
U.S. Postal Service

Jose Cerda
Executive Office of the President
Office of Domestic Policy Council
OEOB, Room 224
Washington, DC 20050

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release November 1, 2000

STATEMENT BY THE PRESIDENT

Today I am pleased to sign into law H.R. 5164, the "Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act." The TREAD Act represents an important first step toward strengthening our Nation's motor vehicle safety laws, and its vigorous and quick implementation will help save lives and prevent injuries.

Most important, the Act responds directly to some of the key shortcomings in identifying the recent Firestone tire problem. Some of the deaths and injuries associated with these tires might have been prevented if automobile manufacturers and their suppliers had been required to provide the Government with more timely information about potential safety defects. The Act addresses this by: (1) specifically requiring manufacturers, within 5 days, to report to the Secretary of Transportation any relevant safety recalls or other safety campaigns in foreign countries; and (2) granting the Secretary of Transportation new authority to develop an early warning system that requires automobile manufacturers and their suppliers to submit information and analysis concerning possible safety defects in vehicles and equipment.

With this new authority, however, comes the important responsibility to notify the public, as quickly as possible, of any relevant investigative efforts and other safety-related information submitted to the Secretary by the manufacturers or their suppliers. Thus, today I am also directing the Secretary of Transportation to implement the information disclosure requirements of the Act in a manner that assures maximum public availability of information.

Finally, among many other important measures, the Act also includes proposals put forth by my Administration to provide for longer recall periods, to increase civil penalties for violations of the motor vehicle safety laws, and to authorize more funds for investigations into defective cars and their parts. I strongly support all of these provisions.

WILLIAM J. CLINTON

THE WHITE HOUSE,
November 1, 2000.

# # #

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
1. **International Cooperation:** Provides express authority to cooperate internationally to enhance motor vehicle and traffic safety by exchanging information related to safety defects, noncompliances with motor vehicle safety standards and regulations, and other matters related to motor vehicle safety, conducting vehicle safety research, and updating, developing and promoting improved motor vehicle safety standards and enforcement procedures.	No provision
2. **Testing Required for Certification:** Requires manufacturers of motor vehicles or items of motor vehicle equipment to test their products for compliance with all applicable federal motor vehicle safety standards or perform engineering analyses that demonstrate compliance, *before* they certify that their products comply with these standards.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
3. Notification of Defects & Noncompliance: Provides that a manufacturer of a motor vehicle, original equipment, or replacement equipment shall have a duty to review and consider information, including from any foreign source, to learn whether the vehicle or equipment contains a defect or does not comply with an applicable Federal vehicle safety standard, and to advise the Secretary if the manufacturer has reason to believe that a defect or noncompliance may exist. Provision that will impact dealers +/or garages.	**Preservation of Section 30118.** (Sec. 2) **Early Warning Reporting Requirements.** Directs Secretary to begin rulemaking within 120 days and issue a rule by June 30, 2002, to require a mfgr to report, periodically or upon request, information received by the mfgr from domestic or foreign sources that may assist in the identification of safety defects, including: (1) data on claims submitted for serious injury and aggregate statistical data on property damage from alleged defects, **or** (2) customer satisfaction campaigns, consumer advisories, recalls, or other activities involving the repair or replacement of vehicles or items of vehicle equipment. The rule may require a mfgr to report other information that may assist in identifying defects. (Sec. 3(b)) **Reporting of Possible Defects.** The mfgr of a vehicle or item of equipment must report to the Secretary, in a matter set by the Secretary by regulation, all incidents of which the mfgr receives actual notice which involve serious injuries or fatalities which are alleged or proven to have been caused by a possible defect in the mfgr's vehicle or vehicle equipment in the USA or a foreign country when the possible defect is in a vehicle or

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
4. **Extension of Time for Remedies Without Charge:** Extends to ten years the current eight-year limit on the obligation of manufacturers of motor vehicles or items of motor vehicle equipment to remedy, without charge, safety-related defects and noncompliances with federal motor vehicle safety standards. Extends to five years the current three-year limit on the obligation of tire manufacturers to provide such a remedy. (Congress established both limits in 1974.)	Adopts DOT proposal (Sec. 4) Adopts DOT proposal. (Sec. 4)
5. **Limitation on Sale or Lease of Used Motor Vehicles:** Prohibits dealers of used motor vehicles from selling or leasing used vehicles for purposes other than resale until the dealer informs the purchaser or lessee of any notifications by a manufacturer of a defect or noncompliance with respect to the vehicle that have not been remedied, and requires the dealer either to offer to have the defects or noncompliances remedied or give the purchaser or lessee a written description of the defects or noncompliances, the written acknowledgment of which must be received by the dealer from the purchaser or lessee.	No provision
*?. 6. **Limitation on Operation by Owners & Lessors of School Buses and Vehicles Used to Transport Passengers for Compensation:** Prohibits an owner or lessor of a school bus or of a motor vehicle used to transport passengers for compensation, who receives notice of a safety-related defect or noncompliance regarding the vehicle, from operating the vehicle until the defect or noncompliance is remedied.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
7. **Increase in Motor Vehicle and Motor Vehicle Equipment Penalties:** Increases the motor vehicle safety statute's maximum civil penalty from $1,000 to $5,000 for each violation of any of the statute's general provisions,	Adopts DOT proposal. (Sec. 5 (a))
Removes the $800,000 ceiling on civil penalties for any related series of violations (a change from the $4 million limit originally sought in March 2000).	Increases the maximum for any related series of violations to $15,000,000. (Sec. 5 (a)).
Establishes the current prohibition for violations of reporting and other informational requirements as a separate provision, setting a new penalty structure for violations of this provision of $5,000 for each violation per day, and the maximum penalty for any related series of daily violations of $500,000.	Establishes the current prohibition for violations of reporting and other informational requirements as a separate provision, setting a new penalty structure for violations of this provision of $5,000 for each violation per day, and the maximum penalty for any related series of daily violations of $15,000,000. (Sec. 5 (a))

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
8. **Administrative Penalties:** Provides an administrative penalty provision, in addition to the current civil penalty provision, to allow the Secretary to assess a civil penalty, for violations of the motor vehicle safety chapter or a regulation issued thereunder, by order after opportunity for a formal (sections 554 and 556 of the APA) administrative hearing. Penalty amounts would be set at $5,000 for each violation, with a maximum for a related series of violations of $1 million.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Criminal Penalties.** Falsifying or Withholding Information: Provides that a person who commits acts with respect to the reporting requirements of 30166 which are prohibited by 18 U.S.C. 1001, with the intent to mislead the Secretary about safety defects that have caused death or grievous bodily harm, shall be subject to a fine under title 18, imprisonment for not more than 15 years, or both. (Sec. 5 (b)) Safe Harbor to Encourage Reporting & for Whistle Blowers: A person described above may avoid criminal penalties if (1) at the time of the violation the person does not know that the violation would result in an accident causing death or serious bodily injury and (2) the person corrects any improper reports or failure to report within a reasonable time. (Sec. 5 (b)) The Secretary shall set by final rule within 90 days of enactment what constitutes a reasonable time and what manner of correction is sufficient. The effective date of the provision of criminal liability for falsifying or withholding information shall not be before that of the final rule on what

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
9. **Records and Reports:** Directs the Secretary to issue rules to require a motor vehicle or equipment mfgr to keep records and make reports periodically or to an order, based on information it obtains concerning: (1) crashes or incidents in vehicles or equipment where fatalities, serious injuries, or fires have occurred; and (2) warranty or adjustment information related to actual or potential defects. This proposal also would permit the Secretary to require: (1) a motor vehicle or equipment mfgr to give the Secretary access to its communications on defects and recalls to the same extent and manner as such communications are accessed by the mfgr's dealers; and (2) auto insurers and claims adjustors to keep records or report periodically or on request, about information they obtain concerning crashes or incidents in vehicles or equipment where fatalities, serious injuries, or fires have occurred, including information to identify vehicles and individuals, which shall be treated as confidential.	**Reporting of Defects in Motor Vehicles in Foreign Countries:** Requires that mfgr must report defects (within 5 working days) to NHTSA in motor vehicles or tires in foreign countries due to: (1) a mfgr's determination to conduct a safety recall or "other safety campaign" in a foreign country on a motor vehicle or item of vehicle equipment that is identical or substantially similar to a vehicle or item of vehicle equipment offered for sale in USA; and (2) notification to mfgr by a foreign government that a safety recall or other safety campaign must be conducted in that country on a motor vehicle, tire, or vehicle equipment that is identical or substantially similar to a vehicle or item of vehicle equipment offered for sale in USA. (Sec. 3) **Insurance Study.** Directs the Secretary to study the feasibility and utility of obtaining aggregate information on insurance claims from insurers or adjusters, on a regular and periodic basis, and, in 120 days, submit results of the study to Congress. (Sec. 3(d))

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
10. Definitions: Records and Reports: Provides new definitions for the terms 'dealer', 'distributor', 'manufacturer', 'owner', 'purchaser', and 'person' in the context of the statute's section on records and reports (section 30166) in order to extend the statute's reach outside of the United States.	No provision
11. Effective Date: Makes effective 180 days after enactment the following proposals: 3 (Notification of Defects & Noncompliance), 8 (Administrative Penalties), 9 (Records and Reports), and 10 (Definitions: Records and Reports).	No provision
12. Increase in Odometer Penalties: Increases the civil penalty under the odometer fraud statute from \$2,000 (set by statute in 1986) to \$5,000 for each violation, and increases the maximum penalty from \$100,000 (set by statute in 1976) to \$1,000,000 for any related series of violations. Increases the limit on damages that the victims of odometer fraud can recover from violators of the statute, from the current three times actual damages or \$1,500, whichever is greater, and reasonable attorney fees (set by statute in 1972), to three times actual damages or \$10,000, whichever is greater, and reasonable attorney fees.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Acceleration of Mfgr Remedy Program.** Amends Section 30120(c)–Adequacy of Repairs–to provide that if the Secretary determines that a mfgr's remedy program is not likely to be capable of completion in a reasonable time, the Sec. may require the mfgr to accelerate the remedy program if the Sec. finds–(1) there is a risk of serious injury or death if the remedy program is not accelerated; and (2) that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both. (Sec.6)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Sales of Replaced Tires.** Amends Section 30120(d): In a remedy program involving the replacement of tires, the mfgr shall include a plan addressing how to prevent, to the extent reasonably within the mfgr's control, replaced tires from being resold for installation on a motor vehicle, and how to limit, to the extent reasonably within the control of the mfgr, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses. The mfgr must include information about the implementation of the plan with each quarterly report to the Secretary about the progress of any notification and remedy campaigns. (Sec. 7)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Sales of Replaced Equipment.** Amends Section 30120: Prohibits sale or lease of any item of vehicle equipment (including a tire) for installation on a motor vehicle, that is subject of a decision or notice to be defective or not to comply with a FMVSS unless (1) the defect or noncompliance is remedied as required by law before delivery under the sale or lease; or (2) notification of the defect or noncompliance is required by law but enforcement of the order is set aside in a civil action to which section 30121(d) [Venue] applies. (Sec. 8)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision.	**Certification Label.** Amends Section 30115: Requires that for a certification label affixed by an intermediate or final state mfgr of a motor vehicle built in more than 1 stage, each intermediate or final stage mfgr must certify to each applicable FMVSS that it has: (1) complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle mfgr in accord with regulations prescribed by the Secretary; or (2) elected to assume responsibility for compliance with that FMVSS. If the intermediate or final stage mfgr elects to assume responsibility for compliance with the FMVSS covered by the documentation provided by an incomplete motor vehicle mfgr, the intermediate or final stage mfgr must notify the incomplete motor vehicle mfgr in writing within a reasonable time of affixing the certification label. However, a violation of this certification label provision shall not be subject to the civil penalty provision of the motor vehicle safety statute. (Sec. 9)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Endurance and Resistance Standards for Tires:** Directs NHTSA to complete rulemaking by June 1, 2002, to update the tire safety standards published at 49 CFR 571.109 and 571.119 (Sec. 10).
No provision	**Improved Tire Information.** Directs the Secretary to initiate rulemaking within 30 days and complete the rulemaking by June 1, 2002, to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall and to ensure public awareness of tire load limits and proper inflation levels. The rule may require information from the vehicle mfgr. (Sec. 11)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Rollover Tests.** Not later than 2 yrs from enactment, the Secretary shall: (1) develop a dynamic test on rollovers of motor vehicles (defined as covering passenger cars, mpvs, and trucks with a gvwr of 10,000 lbs. or less, & excluding a vehicle designed to provide temporary residential accommodations) for the purposes of a consumer information program; and (2) carry out a programof conducting such tests. As the Secretary develops a rollover test, the Secretary must conduct a rulemaking to determine how best to disseminate test results to the public. (Sec. 12)
No provision	**Tire Pressure Warning.** A yr after enactment, the Secretary, must compete a rulemaking to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under-inflated. The rule must be effective within 2 yrs of completing the rulemaking. (Sec. 13)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Improving the Safety of Child Restraints.** The section directs the Secretary to initiate a rulemaking, within 12 months of enactment, to improve the safety of child restraints, including minimizing head injuries from side impact crashes, and to complete that rulemaking 12 months later. In carrying out this rulemaking, the Secretary must consider a number of specific elements, such as requiring more comprehensive tests for child restraints than are presently required by Federal Motor Vehicle Safety Standard (FMVSS) 213, including dynamic tests that replicate side- and rear-impact crashes and that reflect the designs of current passenger motor vehicles. If the Secretary does not incorporate any of these elements in the final rule, the Secretary must explain its omission in reports to Congress. For each fiscal year, of the funds made available to the Secretary for activities relating to safety, not less than $750,000 must be made available to carry out crash testing of child restraints. The section also directs the Secretary to issue a notice of proposed rulemaking (NPRM), within 12 months of enactment, to establish a child restraint safety rating consumer

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Improving Criteria Used in a Recall.** Directs the Secretary to undertake a comprehensive review of all "standards, criteria, procedures, and methods" used in determining whether to open a defect or noncompliance investigation and to take such steps as may be necessary to improve these measures. The review is to begin within 30 days and conclude with a report to Congress within one year. (Sec. 15)
No provision	**Follow-Up Report.** One yr after enactment, the Secretary must report to Congress on the implementation of the amendments made by this Act and on any recommendations for additional amendments for consumer safety. (Sec. 16)
No provision in the bill submitted September 11, 2000, but a bill submitted on February 29, 2000, seeks $115,954,000 for vehicle safety programs for FY 2001., an increase of $17,640,000 over the previously authorized level.	**Appropriation of Appropriations.** In addition to any sums authorized to be appropriated [for the motor vehicle safety chapter or for the motor vehicle information and cost savings chapters], the section authorizes an additional $9,100,000 for FY 2001 to carry out this Act and the amendments made by this Act. (Sec. 17)

U.S. DEPARTMENT OF TRANSPORTATION
~~TALKING POINTS~~
September 12, 2000 Revised
~~Firestone Tires~~

- **The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) opened an investigation into the Bridgestone/Firestone matter promptly when data supported an inquiry.**
  - The Department actively promotes its Auto Safety Hotline -- calls to an 800 number -- so as to enable consumers free of charge to register complaints about possible safety defects. There were only 46 complaints about these tires out of 47 million produced between 1990 the end of 1999. On May 2, after the number of complaints had doubled between January and April, NHTSA opened an investigation. (The Hotline number is 1-888-327-4236.)
  - Other information provided at an earlier date, such as data on 21 State Farm insurance claims over eight years, was limited and also showed no trend in a total number of 40 million of these specific tires.
- **This initiative -- the investigation -- resulted quickly in a recall by Bridgestone/Firestone.**
  - At NHTSA's request and only four months after opening this investigation, Ford Motor Company and Bridgestone/Firestone announced a recall of more than 14 million tires produced between 1991 and this year.
  - NHTSA felt it was critical to not limit the recall to the southwestern United States but to expand it to the entire country, and convinced the manufacturer to move immediately.
- **We are continuing this investigation by reviewing information about the remaining tires in the group under inquiry and will be getting information from other tire manufacturers.**
  - NHTSA moved quickly to issue a consumer advisory last week, warning owners about the increased failure rate we found in this group of tires. We felt there was increased risk and the owners ought to know it even when Bridgestone/Firestone refused to expand this recall at our request.
- **The continuing investigation could result in an order directing Firestone to recall additional tires. NHTSA has over the past several weeks received thousands of pages of documents from Ford and Firestone and is reviewing these documents.**
  - In testimony before the Senate Commerce, Science and Transportation Committee, Secretary Slater on Sept. 12 asked that Congress share with the Department of Transportation all the information it has been provided.
- **The Secretary has directed NHTSA to use every available means to conclude the investigation within six months.**
- **NHTSA is carefully monitoring the Firestone recall to make sure that consumers receive replacement tires in a timely manner.**

- **We are committed to developing new ways of obtaining and discovering safety defect information from all possible sources so that we can identify potential motor vehicle, vehicle equipment and tire safety defects as early as humanly possible.**

- **We have requested that Congress authorize additional authorities for NHTSA to expedite the investigation. These include the following:**

  - Enhanced authority to require manufacturers to provide information to NHTSA about foreign recalls and customer satisfaction campaigns.

  - Authority to cooperate internationally by exchanging with other countries information about motor vehicle safety defects, enforcement of safety standards, safety research, etc.

  - Authority to tighten reporting requirements for manufacturers by fixing loopholes -- in effect, require manufacturers to provide NHTSA all communications available to dealers and require original equipment manufacturers to report to NHTSA on safety defects.

  - Continue to seek the introduction of previously submitted bills, i.e., amendment to increase the civil penalty for violations, remove the ceiling (now $925,000) on civil penalties (a change from the $4 million limit originally sought), extend the period during which vehicles and tires are subject to recall, and require manufacturers to test their products before certifying their compliance with standards.

- **The President's Budget for Fiscal Year 2001 includes an additional $1 million for NHTSA's Safety Defect Investigation Program. In addition, the U.S. Department of Transportation in testimony on Sept. 12 will requested an additional $9 million to enhance the Safety Defect Investigation Program. These funds will complement the $1.8 million reallocated by NHTSA to expand the Bridgestone/Firestone investigation. This funding would be within the levels requested in the President's budget.**

  - From 1995 through 1999, 87.5 million motor vehicles have been recalled. Over 66 percent of the vehicles recalled were influenced by NHTSA investigations. The fact that NHTSA has not had to go to court to order a vehicle manufacturer to conduct a drecall in the past five years is due to the quality of the investigations. This has enabled NHTSA to convince manufacturers to step up, do the right thing, and conduct recalls.

- **On Tuesday, Sept. 12, Secretary Slater presented the Administration's request for increased funding and additional authority in testimony before the Senate Commerce, Science and Transportation Committee. As head of the agency directly responsible for the Safety Defect Investigation Program, Dr. Sue Bailey testified before subcommittees last week.**

- **The Office of Defects Investigation will continue to use its current threshold guidelines as criteria in examining complaints about tires to determine when tire investigations are warranted.** (Just as we normally do not publicly discuss the progress of a safety defect investigation while it is on-going, we normally do not discuss these criteria.) **Among these criteria are the following:**

- Complaints to NHTSA numbering more than 13 but fewer than 25 in the preceding two years on the same make and model of a tire alleging a similar defect prompts management review.

- Complaints to NHTSA numbering more than 25 but fewer than 63 will prompt an investigation.

- Crashes involving injuries or fatalities or an indication that a reported failure could lead to such a crash, reduces the number of complaints required to usually lead to action.

- **A NHTSA team next month will conduct an inspection of Firestone's Decature, Ill., plant as part of NHTSA's on-going investigation. NHTSA will obtain the Ford and Firestone investigation report and documents relating to it as well as other information relating to the operation of the Decatur plant.**

- **Safety is and remains our highest transportation priority.**

BACKGROUND

On May 2, 2000 the National Highway Traffic Safety Administration (NHTSA) opened an investigation into an alleged defect in 47 million Firestone tires covering numerous sizes and models produced over 10 years. That investigation is continuing.

On August 9, 2000 Firestone announced a recall of an estimated 14.4 million ATX, ATXII and Wilderness tires that were covered under the NHTSA investigation. The tires were predominantly installed as original equipment on Ford Explorer sport utility vehicles.

On September 1, 2000 the National Highway Traffic Safety Administration issued a consumer advisory affecting an additional 1.4 million tires not included in Firestone's Aug. 9 recall. The tires affected by the Sept. 1 advisory were found to have tread separation rates that, in many cases, exceeded the rates for the tires already recalled, based on NHTSA's analysis of documents provided by Firestone.

As a result of the defect investigation and attendant publicity, NHTSA has received reports of over 1,400 incidents of tire failure resulting in at least 88 fatalities and over 250 injuries. In most instances, the tread separated from the tire. These numbers continue to grow on a daily basis.

###

U.S. Department of Transportation

News :

Office of the Assistant Secretary for Public Affairs
Washington, D.C. 20590

FOR IMMEDIATE RELEASE **NHTSA 22-00**
Thursday, May 25, 2000 **Contact: NHTSA, Rae Tyson, (202) 366-9550**

U.S. Transportation Secretary Slater Announces Proposal to Add Rollover Ratings To Auto Safety Consumer Information Program

U.S. Transportation Secretary Rodney E. Slater today proposed a rating program to provide consumers with a measure of a vehicle's likelihood to roll over. The program would provide star ratings for rollover performance, the same approach currently used for providing information about performance in frontal and side crashes in the New Car Assessment Program (NCAP).

"It is vital that consumers have information about the comparative rollover risk of various types of vehicles," Secretary Slater said. "Consumers are entitled to the best information possible on safety of vehicles, which is President Clinton and Vice President Gore's highest transportation priority, and this program would provide it."

More than 9,500 people are killed every year in rollover crashes, according to the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA). Over 60 percent of the sport utility vehicle (SUV) occupants and more than 40 percent of pickup truck occupants killed in 1998 died in crashes when the vehicle rolled over, compared to 22 percent for car occupants.

Some light trucks, including sport utility vehicles (SUVs) and many pickup trucks, are constructed with higher ground clearance, a feature that contributes to a higher rollover rate compared to other vehicle types.

NHTSA Deputy Administrator Rosalyn G. Millman said the rollover potential of these vehicles underscores the need for consumer awareness.

"We know from our crash test ratings that when consumers have information, they buy safety. With the proposed rollover propensity rating, we are helping the public understand crash avoidance potential, in addition to our crash worthiness star ratings," Millman said.

After extensive research, NHTSA determined that a vehicle's "static stability factor" is the most reliable indicator of rollover risk in single-vehicle crashes. The static stability factor of a vehicle is one-half the track width (the distance between two wheels on the same axle) divided by the height of the center of gravity above the road.

NHTSA expects that its new rollover information program will motivate manufacturers to respond to consumer demand for safer, more stable vehicles. For example, in 1979 when NCAP ratings for frontal crashes began, just 33 percent of vehicles achieved a four- or five-star rating. By 1997, 85 percent had received four or five stars.

Millman emphasized that the best consumer advice about rollover is the dramatic effect of seat belts. "If you are in a rollover and unrestrained, you are at a high risk of being killed or seriously injured - if you are belted, you will likely survive with minor injuries," Millman said.

Millman said a key component of the NHTSA rollover information campaign will be to continue educating the public about the importance of always using seat belts and age- appropriate child restraints.

The agency is opening a 60-day comment period to solicit public views on its proposed rollover rating program. Final decisions on the rollover rating program, which is set to begin with Model Year 2001 vehicles, will be made later this year.

###

OLDER Return to Press Release Page NEWER

U.S. DEPARTMENT OF TRANSPORTATION
TALKING POINTS
September 19, 2000

Firestone Tire Investigation - Release of Updated Complaint Database

- **NHTSA today released an update to its working database of complaints received regarding the Firestone Tire investigation. As expected, the investigation and resulting publicity has increased the complaints being received -- consequently, the numbers in each category have increased.**

- **The number of fatalities is now 103 - up from 88 known fatalities on August 31. The total number of complaints in the data base is 2226 - up from 1524 on August 31.**

- **None of these fatalities in this working database have occurred since the recall was announced by Firestone on August 9.**

- **Reports to NHTSA of serious crashes - certainly fatalities - is often delayed for many weeks. Thus, this investigative database does not include reports of recent fatalities.**

- *If asked:* **Do you expect the number of fatalities to increase?**
  Answer: As the investigation continues and we continue to review and analyze data, there unfortunately will be additional complaints, fatalities and injuries recorded. This is to be expected with an on-going investigation. Also, to reduce the potential for additional deaths, NHTSA will continue to diligently work with Firestone, Ford and other manufacturers to help ensure that these tires are replaced as soon as humanly possible.

- **The Firestone investigation is NHTSA's highest priority.**

- **NHTSA has asked Congress for additional information-gathering authority.**

- **NHTSA is reallocating funds and employees to support the investigation and help monitor the recall.**

BACKGROUND

The NHTSA complaints database is a cumulative working database to assist in the investigation into automotive defects. It does not purport to be a census of all incidents involving the tires in question.

This database includes all complaints received by NHTSA that pertain to the investigation of Firestone tires as of Friday, September 15. The previous update was made on August 31. .

	August 31	September 15
Complaints	1,524	2,226
Fatalities	88	103
Reported Injuries*	250+	413
Reported Crashes*	306	377
Reported Rollovers*	193	237
Report Tread Separation*	1,023	1,506

* May include duplicates of the same event

Sources of the Data
As of September 15, there are 103 fatalities in the database - 95 of those fatalities were reported directly to NHTSA. Firestone has provided NHTSA with information about 44 incidents with fatalities - 8 of those had not been reported directly to NHTSA.

Firestone's Claim of Confidentiality for Information Provided to NHTSA
Bridgestone/Firestone invoked claims of confidentiality on the information it submitted about tire claims. Thus, the Firestone data are not individually listed in the database. On September 1, NHTSA denied Firestone's request for confidentiality, and notified Firestone of that decision. Bridgestone/Firestone has until approximately September 22 to request reconsideration of the agency's denial of their confidentiality.

Sean P. O'Shea
09/29/2000 12:27:40 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: FIRESTONE

This has not yet been released so please use this internally until DOT notifies Firestone, the Hill, and the public.

Either today or Monday, DOT will announce an investigation into a new type of Firestone tire which has received 170 complaints, 168 of which were received in August and September of this year. There have been 2 reported fatalities and 11 injuries on this tire type (Steeltex - sp?) which is found mainly on pick-up and heavy duty trucks. We do not yet know how many tires this involves nor if it is in one area or several. The reports have been a mix of tread separation, tires blown, bubbling, etc. DOT is cross checking this information and will have updates. It is expected, with the other Firestone issues occurring simultaneously, that this will receive significant attention. DOT is preparing - and will send to us - press releases, talking points, and Q & A's on the issue. This is the first stage of the investigation and may move to a second phase depending on what they find. We are also going to get the most recent talking points on the Firestone issue in general as DOT has dispatched inspectors to the Decatur plant.

Message Sent To:

Richard L. Siewert/WHO/EOP@EOP
Nancy McFadden/OVP/EOP@EOP
James E. Kennedy/OVP/EOP@EOP
Jose Cerda/OPD/EOP@EOP
Jenni R. Engebretsen/WHO/EOP@EOP
Michele Ballantyne/WHO/EOP@EOP
Rachael F. Goldfarb/WHO/EOP@EOP

THE WHITE HOUSE

9/29

TO: Jake Siewert
Nancy McFadden
Jim Kennedy
Jose Cerda
Jenni Engebretsen
Michele Ballantyne
Rachel Goldfarb

FR: Sean O'Shea 67074

RE: This has just been released from DOT on new Firestone tires to be investigated.

U.S. DEPARTMENT OF TRANSPORTATION
TALKING POINTS
September 29, 2000

Firestone Steeltex Tires

- **The Department's National Highway Traffic Safety Administration (NHTSA) has opened an investigation into an alleged defect involving Firestone Steeltex Tires.**

- **NHTSA initiated this action after analyzing consumer complaints and seeing numerous complaints within the past two months.**

- **While complaints about most tire makes and models have risen in the wake of the Firestone investigation and recall, this increase far and away exceeds that of any other brand. That is why NHTSA opened this investigation now.**

- **NHTSA will be seeking additional information from Bridgestone/Firestone, including production, use and warranty data.**

- **NHTSA will pursue this investigation vigorously along with more than 60 other safety defect investigations currently in progress. Safety is President Clinton and Vice President Gore's highest transportation priority.**

BACKGROUND

- This is a new investigation, unrelated to the Firestone tire investigation opened May 2.

- Steeltex tires are radial light truck tires that appear to come in two models, designated by Firestone as "A/T" and "R4S." They are heavier duty tires than the Firestone ATX and Wilderness tires that the Office of Defects Investigation (ODI) has been investigating. They come in a variety of sizes, some of which are used as original equipment on GM Blazers, pickups, and Suburbans, and on Ford F-250 and F-350 pickups and E-250 and E-350 vans.

- The decision to open the investigation was based primarily on complaints made to ODI's consumer complaint database. A preliminary search of that database uncovered over 160 reports about problems with these Steeltex tires. Almost all of those complaints were received within the past two months, although they concern incidents that occurred over a longer period of time.

- The 160-plus consumer complaints refer to over 275 incidents, at highway speeds, of tread separation, blow out or other major failure such as cracking, large bubbles, or splitting. Twelve reported injuries and two reported fatalities have been identified in that preliminary search.

- At this point, we do not know how many of the tires in question were produced or over what time period they were produced. We intend to send an information request to Firestone (and to the manufacturers of vehicles on which these tires are installed as original equipment) to ask about these and other issues.
-
- This is a preliminary evaluation, the first step in NHTSA's defects investigation process. In contrast, NHTSA's current Firestone investigation is in the engineering analysis stage, which follows a preliminary evaluation. During the preliminary stage NHTSA obtains certain limited information from the manufacturers and determines whether further analysis is warranted. During an engineering analysis, NHTSA conducts a more detailed and complete analysis of the character and scope of the alleged defect. The engineering analysis builds on information from the PE and may include inspections, physical tests, etc.
- This is an investigation, and NHTSA has not asked Firestone to recall these tires at this time.

###

U.S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

INVESTIGATION: PE00-040 **DATE OPENED:** September 29, 2000
SUBJECT: Tire Tread Separation/Tire Failure
PROMPTED BY: IE00-077
PRINCIPAL ENGINEER: Scott Shadle

MANUFACTURER: Bridgestone/Firestone, Inc. (Firestone)
MODELS: Steeltex R4S, A/T
MODEL YEARS: To Be Determined
TIRE POPULATION: Unknown

PROBLEM DESCRIPTION: Tire failures including, but not limited to, tread separations and/or blowouts.

FAILURE REPORT SUMMARY

	ODI	MANUFACTURER	TOTAL
COMPLAINTS:	169	Unknown	169
CRASHES:	8	Unknown	8
# INJURIES:	12	Unknown	12
FATALITIES:	2	Unknown	2

ACTION: Open a Preliminary Evaluation

ENGINEER: *Scott Shadle* DIV CHF: Richard Boyd OFC DIR:

9/29/00 DATE 9/29/00 DATE 9-29-00 DATE

SUMMARY: A preliminary search of the Office of Defects Investigation (ODI) database revealed that since January 1, 1998, ODI received 169 complaints on Firestone Steeltex tires. Of these, 167 were received in the months of August and September 2000. This search does not include a review of specific vehicle models equipped with Steeltex tires. The majority of the complaints occurred at highway speed and allege a blowout, tread separation, or other major failure.

ODI is aware of two Steeltex models, the R4S and the A/T. Both are light truck (LT) radial tires. The R4S is a mud and snow tire and the A/T is an all-terrain tire with an aggressive tread. Both models are available in 15, 16, and 16.5 inch sizes. Two lists are attached showing the currently available sizes for each model. These tires were original equipment on some light trucks. ODI is aware of tire failure complaints on Ford F250 and F350 pickup trucks, Ford Excursions, and General Motors Suburbans and General Motors G-vans. This list is not complete and there may be other models upon which the tires were original equipment.

ODI will conduct a Preliminary Evaluation to evaluate the magnitude of this problem.

U.S. Department of Transportation
1999 Summary of Major Accomplishments

A visionary and vigilant Department of Transportation leading the way to transportation excellence in the 21st century.

Since 1993, President Clinton and Vice President Gore have led America in preparing for the 21st Century. Under their leadership, the nation is enjoying a balanced budget, the strongest economy in a generation, nearly 22 million new jobs, and the lowest unemployment in 30 years.

This economic strength, Secretary of Transportation Rodney Slater has said, is enabling our nation to invest in America's infrastructure and to improve the safety and efficiency of our nation's transportation system.

With safety as the highest priority, DOT is working together with other public agencies and the private sector to create a transportation system that is accessible, integrated, efficient and flexible for travelers and commuters.

This year – 1999 – was both productive and exciting for the Department for many reasons, and we will continue to build on these successes in the New Millennium.

Safety – Our Highest Priority

Motor Carrier Safety: In May of 1999, Secretary Slater challenged the Department and its allies to attain the goal of reducing motor carrier traffic fatalities by 50 percent over 10 years through a comprehensive effort in partnership with safety groups, industry, and federal, state and local government authorities. On December 10, 1999, President Clinton signed the Motor Carrier Safety Improvement Act of 1999, which Secretary Slater declared an "important moment in safety for American transportation." The new law will get dangerous vehicles off of our highways, save lives and help reach the goal of reducing highway fatalities. To achieve this goal, we have taken a number of positive actions and made great progress, including:

- A 67 Percent increase in Compliance Reviews. A total of 4,376 compliance reviews were conducted throughout the United States from May to October.
- Tripled number of Federal Safety Investigators at the U.S.-Mexico border to 40 (an increase from 13 investigators).
- Enforcement Case Backlog Reduced by more than 2/3, from 1,174 to 235.
- Average fines settled have doubled to an average of $3,440 per enforcement case from May-September.

- On Aug. 2, 1999, the Administration's Motor Carrier Safety Act of 1999 was introduced. The department sent legislation to Congress to propose tough new penalties, stricter regulations, advanced technology and strengthened state enforcement requirements with additional funding.

- Important regulations have been completed, including a proposal that would make violating highway rail crossing warnings a serious CDL (commercial driver license) violation, warranting disqualification.

Seat Belts Save Lives: The nation has witnessed impressive increases in seat belt usage. In May, as part of the kickoff of the fourth wave of the Operation ABC Mobilization: America Buckles Up Children -- also known as the **Presidential Initiative on Safety Belt Use**, the DOT announced that belt use nationally rose to almost 70 percent in 1998, the highest belt usage rate on record in the U.S. Impressive usage gains were recorded for all age groups, including young passengers. Restraint use for toddlers ages 1-4 increased to 87 percent in 1998 from 60 percent in 1996. Restraint use for infants under one year increased to 93 percent in 1998, an 8 percent increase over 1997. Each year **Safety belts** save an estimated 11,000 lives, while child seats save the lives of over 300 children under five years old. Our goals are to increase safety belt use to 85 percent in year 2000 and 90 percent in year 2005.

Air Traffic Control Modernization. The DOT, with the Federal Aviation Administration in the lead, is working to improve and modernize the nation's air traffic control system. The FAA not only finished installing the new HOST computer system at all locations -- which replaced 1980s computers with smaller, faster, more energy efficient machines -- but completed it on time and on budget. We anticipate an estimated savings of $15.6 million in reduced electrical power consumption over a 10-year period and a 65% reduction in maintenance costs as a result of the new system. And we reduced our Y2K uncertainties in the process.

The Department also replaced 30-year-old radar displays at 20 air traffic control centers on schedule while embracing more business-like management methods and, with congressional support, more flexible funding methods. We have installed and integrated more than 700 major system and equipment components and provided more than 5,800 hardware and software upgrades. These efforts produced **immediate payback** to the FAA -- and to the ultimate customers -- the airlines and the traveling public. For instance, last year, the FAA made a $60 million investment in system upgrades at Ronald Reagan Washington National Airport. As a result, we saw a 30 percent reduction in the outages that mess up travel for all of us.

Highway-Rail Grade Crossing Safety: Five years ago the Department launched an initiative to improve highway-rail grade crossings in order to save lives and eliminate injuries. Today we can report that **we have achieved dramatic results: Since 1993, 195 lives have been saved annually**. Estimates for 1999 indicate a decline in crossing fatalities of more than 15% because of grade crossing improvements. As a result of our highway-rail grade crossing initiative, there have been 30% fewer highway-rail crossing collisions and 31% fewer injuries as a result of the program.

In fiscal 1999, the U.S. Department of Transportation provided $154.8 million to states to be used exclusively for highway-rail crossing improvements or hazard elimination. An additional $314.8 million is available for eliminating or improving grade crossings. There are more than 259,000 existing highway-rail grade crossings in the United States. States and localities, working with DOT, have closed more than 33,000 unnecessary grade crossings since 1991.

Initiative to Reduce Accidents Involving Human Error: In August 1999, FRA launched a proactive industry-wide safety initiative to prevent railroad accidents, injuries and fatalities that are caused by human factors. By working in partnership with rail labor and railroad management to focus on prevention of human factor accidents, we harnessed the combined knowledge and experience of the men and women who work on the railroad every day, enlisting them as active advocates for safety. Under the initiative, DOT completed its first-ever, comprehensive set of safety regulations for passenger rail equipment. A final rule, done in collaboration with all stakeholders, was completed on May 12, 1999. The Passenger Equipment Safety Standards Working Group, chaired by FRA, included representatives of passenger rail management and labor organizations, rail equipment manufacturers, rail passenger organizations, and a state; and other federal agencies served as advisors. The new standards will apply to both Amtrak and commuter railroads. ***This rule improves the safety of passenger rail vehicles that transport 440 million people nearly 14.6 billion passenger-miles annually.*** Passenger equipment and passengers will be better able to survive crashes because of the equipment's enhanced structural strength, fire safety, and emergency systems.

Traffic Safety Improvements in 1998: NHTSA and the FHWA jointly established a goal of reducing traffic deaths and injuries 20 percent by year 2008. This would reduce annual traffic deaths to 33,500 and crash injuries to 2.8 million and produce a 35 percent lower traffic fatality rate. As a result of NHTSA's and FHWA's efforts -- such as the "Buckle Up for Safety" and child safety seat campaigns in partnership with other agencies and the private sector -- traffic deaths declined by 1.3 percent last year to the lowest level in the past four years, decreasing to 41,480 deaths in 1998 from 42,013 deaths in 1997. While travel miles were up by 2 percent from 1997, the traffic fatality rate remained steady (at 1.6 deaths per 100 million miles of vehicle travel). In 1998, the number of fatalities in large truck crashes per 100 million miles was 2.7, down from 2.8 in 1997. Crash-related injuries declined by 4.4 percent, falling to 3.251 million in 1998 from 3.399 million injuries in 1997. DOT will continue to stress prevention and safety measures to meet our goals of reducing traffic deaths and injuries.

Hazardous Materials. DOT finalized rules governing the transportation of hazardous materials, including one to improve the safety of unloading cargo tank motor vehicles used to transport liquefied compressed gases. These new regulations reduce the risk of accidental releases of hazardous chemicals.

U.S. Coast Guard Saves Lives. In FY 98, the Coast Guard saved 4041 people. In the aftermath of Hurricane Floyd alone, over 500 people were rescued.

Y2K Readiness: Y2K is both a safety and a global management challenge. Deputy Secretary Mort Downey, who represented DOT as a member of the President's Council on Year 2000 Conversion, led a comprehensive and concerted effort across the Department to ensure that the nation's transportation systems will operate safely and efficiently both during and after January 1, 2000. In order to be ready for the Year 2000 date change, the Department completed a comprehensive four-year, $426 million effort to make all of its 609 mission critical systems fully Y2K ready. This included all DOT modal Administrations and all forms of transportation, including rail, aviation, and maritime. As a result, the nation's transportation system is Y2K ready and will operate safely on New Year's eve and day and in the New Millennium.

Mobility – Moving Goods and People

Job Access. In 1999, FTA's Job Access and Reverse Commute Program awarded $71 million in grants for 179 innovative transit service projects to link people who need jobs and jobs that need workers. The program serves thousands of people in transition from welfare to work.

Livable Communities Initiative (LCI). In 1999, 12 of 22 demonstration projects totaling over $55 million, leveraging $118 million in total project costs, were completed under the Livable Communities Initiative. The LCI demonstrates transportation's contribution to improving the quality of life in communities large and small throughout the nation. LCI supported such White House initiatives as the National Empowerment Zones and Enterprise Communities, New Markets Initiative, Welfare to Work, Brownfields, Delta Initiative, Southwest Border and Appalachian Region, and the STEP Foundation. LCI emphasizes policies to incorporate family friendly facilities such as childcare, police sub-stations, health care, job training and one-stop job shops into transit hubs.

Marine Transportation System. Under Secretary Slater's leadership, the DOT developed a bold and comprehensive plan in 1999 to modernize our nation's Maritime Transportation System (MTS). We began by putting together a Task Force that included maritime leaders and experts from both the public and private sectors to develop a comprehensive blueprint for modernizing our maritime infrastructure entitled, ***An Assessment of the U.S. Marine Transportation System***. The goal and vision for our MTS is to be the world's most technologically advanced, safe, secure, efficient, effective, accessible, globally competitive, dynamic and environmentally responsible system for moving people and goods by 2020. The total volume of domestic and international marine trade could triple over the next 20 years and the number of recreational users is expected to grow by over 65% to more than 130 million annually. Therefore, we need to be prepared, and we are with the MTS Assessment. Over the next decade, DOT will work with all MTS stakeholders to implement their recommendations.

Aviation Access and Competition

Secretary Slater's leadership has opened more markets and created more opportunities for air service than any comparable period in U.S. aviation history while enabling passengers and shippers to enjoy more frequent service and lower fares.

Steps Taken to Increase Airline Competition. In July 1999, the Transportation Research Board's panel on airline competition issued a report, requested by Secretary Slater, finding too little airline competition in many areas and a need for government action to promote competition. Since 1993, DOT has been working to increase airline competition. Some of the actions we took in 1999 include:

- Provided training and guidance to field offices and airports to make sure airports' legal obligation to provide reasonable access is met;
- Approved the use of passenger facility charges and AIP funding only if airport operators and airlines can demonstrate that competition is encouraged;
- Required airport operators to resolve new entrant access complaints within reasonable time periods, to specify and publish requirements for new entrants and for expansion;
- Exempted some new entrants from the slot rule to open slot-restricted airports;
- Proposed legislation that would exempt the new and very quiet regional jets from slot rules in New York and Chicago as of September 2000 and to completely eliminate the slot rule by 2004 for those cities;
- Began a complete review of computer reservation rules with the goal of ensuring that consumer have fair access to unbiased service and price information and that the systems don't restrict airline competition;
- Proposed a rural air service pilot program to stimulate the market for air service by requiring interlining agreements between dominant carriers at connecting hubs and non-affiliated airlines serving small communities to that hub;
- Consulted with the Department of Justice while reviewing domestic and international airline alliances and cooperative working arrangements to make sure that they don't adversely affect competition.

Aviation in the 21st Century – Beyond Open Skies. Secretary Slater invited the world's nations to Chicago for a conference on finding ways to liberalize aviation markets to enhance competition and benefit consumers throughout the world. Transportation and aviation ministers, representatives of industry and government and others from the aviation field from 93 nations met to consider the issues facing the international aviation market, particularly safety and modernization. As a result, Secretary Slater announced that the U.S. is prepared to begin discussions to implement a new international aviation policy architecture. Secretary Slater said that the consensus reached at the conference by the U.S. and its Open Skies partners to explore beyond bilateralism for ways to meet the challenges faced by aviation in the 21st century paved the way for these discussions to begin. The conference adopted a report that acknowledged the need to address the aviation challenges of the 21st Century. A separate report was adopted by the Open Skies countries to work beyond bilateral agreements and toward global liberalization. These discussions likely will be conducted on a regional basis with aviation leaders from Europe, Latin America, Asia-Pacific and other regions of the world. The discussions would also include key regional groupings such as the European Commission and APEC, as well as others that share the vision of a more open and coordinated aviation regime.

The Centennial Year of Aviation and FAA Reauthorization. In 1899, the Wright brothers began the serious pursuit of a sustained heavier-than-air machine that could carry mankind. In 1999, we will commemorate this historic event with a successful year of aviation accomplishments. But, we know that more needs to be done, through efforts like the enactment of the authorization bill for the Federal Aviation Administration. This bill recognizes the critical role that aviation plays in our economy not only today, but in the new millennium.

Slot Exemptions. DOT granted slot exemptions that resulted in better customer service for travelers -- specifically nonstop, regional jet service between Chicago/O'Hare and six cities (Savannah, GA/Hilton Head, SC, Greenville/Spartanburg, SC, Huntsville, AL, Baton Rouge, LA, Mobile, AL, and Charleston, SC). These are markets that previously had no non-stop access to O'Hare. DOT also granted slot exemptions enabling low-fare services between New York/LaGuardia and two new markets, Detroit City Airport and Myrtle Beach, SC.

New Domestic Carriers. During FY 1999, DOT licensed four new air carriers to conduct passenger service with large jet aircraft--over 60 seats [National Airlines, Puerto Rico Airways, Legend Airlines, and JetBlue]. In addition, the Department authorized two new large jet charter air carriers to conduct all-cargo operations [Reliant Air and Asia Pacific]. DOT authorized eight new regional air carriers to conduct scheduled passenger service with small aircraft [Wrangell Mountain Air, Inland Aviation, Ozark Air Lines, Daystar Airways, Redemption/Island Air, Air Ketchum, TIE Aviation, and Rio Grande Air].

JetBlue Airways Corporation. In September 1999, DOT approved JetBlue Airways' request for a total of 75 slot exemptions at New York's John F. Kennedy International Airport (JFK) for non-stop, low-fare jet air service to and from JFK. This action will bring to the New York metropolitan area and many of its short- and medium-haul communities of interest a route system of price-competitive transportation services to about 30 markets it intends to serve.

Safe Skies for Africa Initiative. U.S. Secretary of Transportation Rodney E. Slater led a six-country mission to Africa from July 7 - 15, 1998. This was the first Cabinet-level mission to Africa to follow President Clinton's historic visit there in March and April of 1998. The Secretary visited with leaders in Cape Verde, Ethiopia, Zimbabwe, Angola, Cameroon, and Senegal. The purpose of this Presidential initiative is to promote sustainable improvements in aviation safety and security in Africa and to create the environment necessary to foster the growth of aviation services between Africa and the United States. While in Ethiopia, Secretary Slater signed a $100,000 grant for the U.S. Trade and Development Agency to Ethiopian Airlines for FAA certification of a Boeing flight simulator used for training. Once certified, it will be available to pilots throughout Africa and the Middle East. In Harare, Zimbabwe, the Secretary announced DOT approval of a new code-sharing alliance between Northwest Airlines and Kenya Airways. On November 3, Tanzania became the first African country to sign an Open Skies agreement with the U.S. DOT will lead the initiative, which recognizes that Safe Skies are a prerequisite for increased trade and investment and long-term economic development in Africa. The initiative also complements U.S. Government efforts to conclude "open skies" agreements with key African countries and promote code share agreements between U.S. and African airlines. Specific goals include:

1. Quadrupling the number of sub-Saharan African countries that meet ICAO safety standards (based on FAA assessments).
2. Improving airport security at between 8-12 airports within the region within three years.
3. Improving regional air navigation services.

Economic Growth and Trade

Innovative Financing for Infrastructure. In September, DOT announced the first five projects to benefit from the Transportation Infrastructure Finance and Innovation Act (TIFIA). TIFIA was authorized under the Transportation Equity Act for the 21st Century (TEA-21). The Department of Transportation is providing $1.6 billion of credit assistance to projects of national significance in California, the District of Columbia, Florida, New York and Puerto Rico worth $6.5 billion at a cost of only $61 million to the federal government. Every TIFIA dollar spent will contribute to more than $100 in capital investment for critical infrastructure needs such as border crossing infrastructure, highway trade corridors, and transit and passenger facilities with regional and national benefits. President Clinton has called TIFIA "a catalyst for creating jobs and continuing our nation's record economic growth."

The Delta and New Markets Initiatives. President Clinton on July 23 announced a four-point action plan for rural America that will expand the rural economy through exports and development, improve the farm income safety net, strengthen rural infrastructure and promote health, welfare and a clean environment. Two important initiatives under this action plan are the Delta and the New Markets Initiatives. The Delta Region encompasses portions of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee bound together by their ties to the Mississippi River. Vice President Gore signed an agreement with the Southern Empowerment Zone and Enterprise Community Forum and the Lower Mississippi Delta Development Center forming the Delta Regional Initiative. Its aim is to break the cycle of persistent poverty and high unemployment in rural areas. Secretary Slater and DOT have actively participated in the Delta Initiative both by funding transportation and infrastructure improvements in the region, partnering with other federal and state agencies, and attending listening sessions in the Delta to find out where assistance is most needed. An example of assistance is DOT funding to help renovate a train station in Meridian, Mississippi, which is now an intermodal facility featuring small businesses and food service. DOT will also be working to make the Gulf Coast High-Speed Rail Corridor a reality, which will mean economic growth and jobs for the Delta Region.

The goal of the **New Markets Initiative** is to unlock the potential of our inner cities, small and medium-sized towns, rural areas and Indian reservations. These are the areas that have not participated in the capital investment that has spurred job growth and economic development across the rest of America and in regions around the world. Secretary Slater and the Department will continue to participate in transportation-related projects and actions that will help bring the economic prosperity enjoyed by the rest of the nation to New Markets throughout America.

Disadvantaged Business Program. Last year, DOT awarded more than 55 percent of its direct procurement dollars to small businesses. More than 14 percent went to socially and economically disadvantaged businesses under the authority of the 8 (a) provision, and some 4 percent went to women-owned businesses. We are taking strong steps to increase these percentages. Congress reauthorized the DOT DBE program in the Transportation Equity Act for the 21st Century. Participants in DOT's DBE program qualify for transportation contracting opportunities with some degree of federal financing. These include undertakings by state and local highway, transit, airport and port authorities with an average estimated value of $3 billion per year being awarded to certified DBEs nationwide. In November 1999, Secretary Slater and U.S. Small Business Administration (SBA) Administrator Aida Alvarez signed an agreement to streamline the certification for disadvantaged businesses. This agreement allows most small businesses that have qualified for disadvantaged status through one agency's certification process to qualify for the other's without going through another round of extensive paperwork and examination. In most cases, only a brief supplemental statement confirming the eligibility requirements will be required.

Shipbuilding. MARAD approved $1.761 billion in loan guarantees for the construction of 39 vessels and one shipyard modernization project. This investment will bring jobs and growth to regions throughout the country.

Open-Skies Agreements. In FY 1999, the United States signed five new "Open-Skies" agreements with, Italy, Pakistan, the United Arab Emirates (UAE), Bahrain, and Argentina. The initialing in August of the long-sought Open-Skies agreement with Argentina brought the total number to 38. DOT achieved Open-Skies agreements in nearly every part of the world: Six in the Asia/Pacific area, 14 in Europe, 5 in the Near East/Central Asia, and 11 in this Hemisphere.

Access to Mexico. Mexico is a major U.S. trading partner. In January, DOT reached a new deal with Mexico that greatly improves U.S. air carriers' access to the Mexican market through code sharing and facilitates charters by providing for vastly simplified regulatory procedures.

More Flights to China. China will become the world's largest market early in the next century. In China, the U.S. obtained more routes, more flights, the right to designate another airline in the market, and code-sharing opportunities. DOT expedited authority for the new flight frequencies and code-sharing opportunities that were available immediately under the agreement.

New Nonstop Services To London. The Department has agreed with the United Kingdom to significantly improve international air service from Cleveland and Charlotte to London. By agreeing to switch the bilateral agreement's authority from cities where service was dormant to Cleveland and Charlotte, the Department is able to authorize Continental and US Airways to serve the new routes.

Maritime Agreement with Brazil. Last month during a trade mission in support of President Clinton's commitment to a well-integrated Western Hemisphere transportation system, Secretary Slater signed a major three-year maritime agreement that ensures each country's national-flag shipping lines equal access to commercial cargoes and to cargoes whose shipment is controlled by the other country's government, except defense cargoes and agricultural assistance cargoes. The bilateral agreement calls for liberalization of maritime trade and non- discriminatory treatment with respect to maritime-related services and facilities, including shipping taxes.

Human and Natural Environment

Congestion Mitigation and Air Quality Improvement Program. In FY99, more than $1.1 billion was used by states and localities for projects that reduce congestion and improve air quality by enhancing the efficiency of the transportation network and making it more environmentally friendly. Based on reports from 41 field offices, as of July 1, 1999, non-attainment and maintenance areas met their mobile source emissions limits for ozone (O_3), carbon monoxide (CO), and particulate matter (PM-10).

Public Education. Five years ago, DOT and EPA began a public education campaign to raise awareness about the connection between transportation and air quality. In FY 1999, this effort reached millions with public service announcements (TV, radio and print) promoting vehicle maintenance, trip chaining, and the use of alternatives to driving alone in 14 demonstration communities across the country. A national coalition, including automobile manufacturers, environmental groups, transit advocates, and the health community, will guide future campaigns.

DOT Global Climate Change Center. In 1999, DOT established a Center to study how our nation can reduce greenhouse gas emissions in transportation. The Center serves as the focal point of DOT technical expertise on transportation and climate change. Through strategic research, policy analysis, partnerships and outreach, the Center will create comprehensive and multi-modal approaches to reducing transportation-related greenhouse gas emissions. Four to six research projects are planned for FY 2000.

Environmental Streamlining. A national Memorandum of Understanding (MOU) was signed in July 1999 by seven executive branch agencies containing specific commitments to coordinate regulations and policies to reduce project delays and to protect and enhance environmental quality. Agencies participating in the MOU include the Department of Transportation, Department of the Interior, Department of Commerce, Department of Agriculture, Department of the Army (Corps of Engineers), Environmental Protection Agency, and the Advisory Council on Historic Preservation.

National Security

Drug Interdiction. The Coast Guard had a record year drug interdiction efforts. So far this year the Coast Guard:

- Participated in 118 drug cases;
- Seized 111,689 pounds of cocaine and 28,872 pounds of marijuana;
- Made 302 arrests;
- Initiated Operation New Frontier – New policy and hardware using helicopters to stop drug smuggling.

Maritime Administration's Ready Reserve Force (RRF). During 1999, 11 RRF ships, which provide the military with sealift capacity in case of national emergencies, served in a number of important missions, including four for humanitarian relief in November and December 1998, following Hurricane Mitch.

U.S. DEPARTMENT OF TRANSPORTATION
TALKING POINTS
September 11, 2000
Firestone Tires

- **The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) opened an investigation into the Bridgestone/Firestone matter promptly when data supported an inquiry.**

  - The Department actively promotes its Auto Safety Hotline -- calls to an 800 number -- so as to enable consumers free of charge to register complaints about possible safety defects. There were only 46 complaints about these tires between 1990 and early 2000. On May 2, after the number of complaints had doubled between January and April, NHTSA opened an investigation. (The Hotline number is 1-888-327-4236.)

  - Other information provided at an earlier date, such as data on 21 State Farm insurance claims over eight years, was limited and also showed no trend in a population of 40 million tires.

- **This initiative -- the investigation -- resulted quickly in a recall by Bridgestone/Firestone.**

  - At NHTSA's request and only four months after opening this investigation, Ford Motor Company and Bridgestone/Firestone announced a recall of more than 14 million tires produced between 1991 and this year.

  - NHTSA felt it was critical to not limit the recall to the southwestern United States but to expand it to the entire country, and convinced the manufacturer to move immediately.

- **We are continuing this investigation by reviewing information about the remaining tires in the group under inquiry and will be getting information from other tire manufacturers.**

  - NHTSA moved quickly to issue a consumer advisory last week, warning owners about the increased failure rate we found in this group of tires. We felt there was increased risk and the owners ought to know it even when Bridgestone/Firestone refused to expand this recall at our request.

- **The continuing investigation could result in an order directing Firestone to recall additional tires. NHTSA has over the past several weeks received thousands of pages of documents from Ford and Firestone and is reviewing these documents.**

- **NHTSA is carefully monitoring the Firestone recall to make sure that consumers receive replacement tires in a timely manner.**

- **We are committed to developing new ways of obtaining and discovering safety defect information from all possible sources so that we can identify potential motor vehicle, vehicle equipment and tire safety defects as early as humanly possible.**

- **We are working closely with Congress and will continue to do so as we develop possible future legislative initiatives. These include the following:**

    - Enhanced authority to require manufacturers to provide information to NHTSA about foreign recalls and customer satisfaction campaigns.

    - Authority to cooperate internationally by exchanging with other countries information about motor vehicle safety defects, enforcement of safety standards, safety research, etc.

    - Authority to tighten reporting requirements for manufacturers by fixing loopholes -- in effect, require manufacturers to provide NHTSA all communications available to dealers and require original equipment manufacturers to report to NHTSA on safety defects.

    - Continue to seek the introduction of previously submitted bills, i.e., amendment to increase the civil penalty for violations, remove the ceiling (now $925,000) on civil penalties (a change from the $4 million limit originally sought), extend the period during which vehicles and tires are subject to recall, and require manufacturers to test their products before certifying their compliance with standards.

- **The President's Budget for Fiscal Year 2001 includes an additional $1 million for NHTSA's Safety Defect Investigation Program, and the U.S. Department of Transportation in testimony on Sept. 12 will request an additional $9 million to enhance the Safety Defect Investigation Program. This funding would be within the levels requested in the President's budget.**

- **On Tuesday, Sept. 12, Secretary Slater will present the Administration's request for increased funding and additional authority in testimony before the Senate Commerce, Science and Transportation Committee. As head of the agency directly responsible for the Safety Defect Investigation Program, Dr. Sue Bailey testified before subcommittees last week.**

- **The Office of Defects Investigation will continue to use its current threshold guidelines as criteria in examining complaints about tires to determine when tire investigations are warranted.** (These criteria are confidential.)

- **A NHTSA team will conduct an inspection of Firestone's Decature, Ill., plant as part of NHTSA's on-going investigation. NHTSA will obtain the Ford and Firestone investigation report and documents relating to it as well as other information relating to the operation of the Decatur plant.**

- **Safety is and remains our highest transportation priority.**

BACKGROUND

On May 2, 2000 the National Highway Traffic Safety Administration (NHTSA) opened an investigation into an alleged defect in 47 million Firestone tires covering numerous sizes and models produced over 10 years. That investigation is continuing.

On August 9, 2000 Firestone announced a recall of an estimated 14.4 million ATX, ATXII and Wilderness tires that were covered under the NHTSA investigation. The tires were predominantly installed as original equipment on Ford Explorer sport utility vehicles.

On September 1, 2000 the National Highway Traffic Safety Administration issued a consumer advisory affecting an additional 1.4 million tires not included in Firestone's Aug. 9 recall. The tires affected by the Sept. 1 advisory were found to have tread separation rates that, in many cases, exceeded the rates for the tires already recalled, based on NHTSA's analysis of documents provided by Firestone.

As a result of the defect investigation and attendant publicity, NHTSA has received reports of over 1,400 incidents of tire failure resulting in at least 88 fatalities and over 250 injuries. In most instances, the tread separated from the tire. These numbers continue to grow on a daily basis.

###

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

March 24, 2000

The Honorable Tom Bliley
Chairman, Committee on Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am enclosing a proposed bill, which I have transmitted to the Speaker of the House and which I anticipate he will refer to your committee

> To amend title 49, United States Code, to require manufacturers of motor vehicles and items of motor vehicle equipment to test or perform other engineering analyses that demonstrate compliance of their products with all applicable federal motor vehicle safety standards, and for other purposes.

The bill includes two titles. Title I, "Motor Vehicle Safety," contains five sections that would amend chapter 301 of title 49, United States Code, the motor vehicle safety statute administered by the Department's National Highway Traffic Safety Administration (NHTSA). Title II, "Odometers," contains two sections that would amend chapter 327 of title 49, United States Code, the odometer requirements statute administered by NHTSA.

Title I ("Motor Vehicle Safety") consists of five sections. The first section would require manufacturers of motor vehicles or items of motor vehicle equipment to test their products for compliance with all applicable federal motor vehicle safety standards or to perform engineering analyses that demonstrate compliance, before they certify that their products comply with these standards. The agency would employ existing authority to require the manufacturers to have and maintain records of this testing or other engineering analyses.

The second section would: (1) extend to ten years the current eight-year limit on the obligation of manufacturers of motor vehicles or items of motor vehicle equipment to remedy, without charge, safety-related defects and noncompliances with federal motor vehicle safety standards; and (2) increase from three years to five years the limit on the obligation of tire manufacturers to provide such a remedy. Congress established both limits in 1974.

The third section would prohibit dealers of used motor vehicles from selling or leasing used vehicles for purposes other than resale until the dealer informs the purchaser or lessee of any notifications by a manufacturer of a defect or noncompliance with respect to the vehicle that have not been remedied, and requires the dealer either to offer to have the defects or noncompliances remedied or give the purchaser or lessee a written description of the defects or noncompliances.

The fourth section would prohibit an owner or lessor of a school bus or of a motor vehicle used to transport passengers for compensation, who receives notice of a safety-related defect or noncompliance regarding the vehicle, from operating the vehicle until the defect or noncompliance is remedied.

The fifth section would increase the safety statute's maximum civil penalty from $1,000 (set by statute in 1966) to $5,000 for each violation of certain provisions, and increase the maximum penalty from $800,000 (set by statute in 1974) to $4,000,000 for any related series of violations. These increases would make the civil penalty limits for violations of the safety statute comparable to the civil penalty limits provided for other federal regulatory agencies. The section would also establish the current prohibition for violations of reporting and other informational requirements as a separate provision, and set a new penalty structure for violations. The maximum penalty under this separate provision would be $5,000 per violation per day, and the maximum penalty for a related series of violations would be $500,000.

Title II ("Odometers") would increase the maximum civil penalty under the odometer fraud statute from $2,000 (set by statute in 1986) to $5,000 for each violation and increase the maximum penalty from $100,000 (set by statute in 1976) to $1,000,000 for any related series of violations. These increases would make the civil penalty limits for violations of the odometer requirements statute comparable to the civil penalty limits provided for other federal regulatory agencies. Title II also would increase the limit on damages that the victims of odometer fraud can recover from violators of the statute, from the current three times actual damages or $1,500, whichever is greater, and reasonable attorney fees (set by statute in 1972), to three times actual damages or $10,000, whichever is greater, and reasonable attorney fees.

This proposed legislation could affect receipts; therefore, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act. The Office of Management and Budget estimates that the net effect of this proposal on receipts during fiscal year 2001 would be an increase of less than one million dollars.

The Office of Management and Budget advises that it has no objection, from the standpoint of the Administration's program, to the submission of this proposed legislation to Congress.

Sincerely,

Rodney E. Slater

2 Enclosures

U.S. DEPARTMENT OF TRANSPORTATION
TALKING POINTS

September 19, 2000

Firestone Tire Investigation - Release of Updated Complaint Database

- **NHTSA today released an update to its working database of complaints received regarding the Firestone Tire investigation. As expected, the investigation and resulting publicity has increased the complaints being received -- consequently, the numbers in each category have increased.**

- **The number of fatalities is now 103 - up from 88 known fatalities on August 31. The total number of complaints in the data base is 2226 - up from 1524 on August 31.**

- **None of these fatalities in this working database have occurred since the recall was announced by Firestone on August 9.**

- **Reports to NHTSA of serious crashes - certainly fatalities - is often delayed for many weeks. Thus, this investigative database does not include reports of recent fatalities.**

- ***If asked:* Do you expect the number of fatalities to increase?**
  Answer: As the investigation continues and we continue to review and analyze data, there unfortunately will be additional complaints, fatalities and injuries recorded. This is to be expected with an on-going investigation. Also, to reduce the potential for additional deaths, NHTSA will continue to diligently work with Firestone, Ford and other manufacturers to help ensure that these tires are replaced as soon as humanly possible.

- **The Firestone investigation is NHTSA's highest priority.**

- **NHTSA has asked Congress for additional information-gathering authority.**

- **NHTSA is reallocating funds and employees to support the investigation and help monitor the recall.**

BACKGROUND

The NHTSA complaints database is a cumulative working database to assist in the investigation into automotive defects. It does not purport to be a census of all incidents involving the tires in question.

This database includes all complaints received by NHTSA that pertain to the investigation of Firestone tires as of Friday, September 15. The previous update was made on August 31. .

	August 31	September 15
Complaints	1,524	2,226
Fatalities	88	103
Reported Injuries*	250+	413
Reported Crashes*	306	377
Reported Rollovers*	193	237
Report Tread Separation*	1,023	1,506

* May include duplicates of the same event

Sources of the Data
As of September 15, there are 103 fatalities in the database - 95 of those fatalities were reported directly to NHTSA. Firestone has provided NHTSA with information about 44 incidents with fatalities - 8 of those had not been reported directly to NHTSA.

Firestone's Claim of Confidentiality for Information Provided to NHTSA
Bridgestone/Firestone invoked claims of confidentiality on the information it submitted about tire claims. Thus, the Firestone data are not individually listed in the database. On September 1, NHTSA denied Firestone's request for confidentiality, and notified Firestone of that decision. Bridgestone/Firestone has until approximately September 22 to request reconsideration of the agency's denial of their confidentiality.

THE WHITE HOUSE

9/20

TO: Jake Sciewert
Jenni Engebretsen
Jose Cerda
Matt Bennett

FR: Sean O'Shea
67074

RE: This is the latest on the Firestone tire issue; the numbers will continue to be updated every 2 weeks. Sec Slater will testify on the issue on Thursday in front of the House Commerce Committee.

U.S. DEPARTMENT OF TRANSPORTATION
TALKING POINTS
September 19, 2000

Firestone Tire Investigation - Release of Updated Complaint Database

- **NHTSA today released an update to its working database of complaints received regarding the Firestone Tire investigation. As expected, the investigation and resulting publicity has increased the complaints being received -- consequently, the numbers in each category have increased.**

- **The number of fatalities is now 103 - up from 88 known fatalities on August 31. The total number of complaints in the data base is 2226 - up from 1524 on August 31.**

- **None of these fatalities in this working database have occurred since the recall was announced by Firestone on August 9.**

- **Reports to NHTSA of serious crashes - certainly fatalities - is often delayed for many weeks. Thus, this investigative database does not include reports of recent fatalities.**

- ***If asked:* Do you expect the number of fatalities to increase?**
  Answer: As the investigation continues and we continue to review and analyze data, there unfortunately will be additional complaints, fatalities and injuries recorded. This is to be expected with an on-going investigation. Also, to reduce the potential for additional deaths, NHTSA will continue to diligently work with Firestone, Ford and other manufacturers to help ensure that these tires are replaced as soon as humanly possible.

- **The Firestone investigation is NHTSA's highest priority.**

- **NHTSA has asked Congress for additional information-gathering authority.**

- **NHTSA is reallocating funds and employees to support the investigation and help monitor the recall.**

BACKGROUND

The NHTSA complaints database is a cumulative working database to assist in the investigation into automotive defects. It does not purport to be a census of all incidents involving the tires in question.

This database includes all complaints received by NHTSA that pertain to the investigation of Firestone tires as of Friday, September 15. The previous update was made on August 31..

	August 31	September 15
Complaints	1,524	2,226
Fatalities	88	103
Reported Injuries*	250+	413
Reported Crashes*	306	377
Reported Rollovers*	193	237
Report Tread Separation*	1,023	1,506

* May include duplicates of the same event

Sources of the Data

As of September 15, there are 103 fatalities in the database - 95 of those fatalities were reported directly to NHTSA. Firestone has provided NHTSA with information about 44 incidents with fatalities - 8 of those had not been reported directly to NHTSA.

Firestone's Claim of Confidentiality for Information Provided to NHTSA

Bridgestone/Firestone invoked claims of confidentiality on the information it submitted about tire claims. Thus, the Firestone data are not individually listed in the database. On September 1, NHTSA denied Firestone's request for confidentiality, and notified Firestone of that decision. Bridgestone/Firestone has until approximately September 22 to request reconsideration of the agency's denial of their confidentiality.

THE WHITE HOUSE

10/26/00

TO: Nancy McFadden
Mary Smith
Jose Cerda 218

FR: Sean O'Shea
67074

Here is the DRAFT document from DOT. It is in the Secretary's office now.

Se

Early Rulemaking under TREAD

The TREAD bill directs the Secretary to undertake a significant number of rulemaking proceedings and studies. Three of the rulemaking proceedings have early deadlines. These proceedings, and the actions that NHTSA will take to meet the deadlines, are as follows:

- Section 11 of TREAD, Improved tire information. This section directs the Secretary to initiate rulemaking within 30 days to improve the labeling of tires to assist consumers in identifying defective or noncompliant tires. NHTSA will issue an advance notice of proposed rulemaking within 30 days that will set forth the questions it believes relevant to improved tire labeling and consumer information. The Associate Administrator for Safety Performance Standards and the Chief Counsel will jointly prepare the notice.

- Section 3(c)of TREAD, Sale or lease of defective or noncompliant tire. This section directs the Secretary to issue a final rule within 90 days requiring any person who knowingly sells a defective or noncompliant tire to report the sale to the Secretary. NHTSA will issue an interim final rule on this section within 90 days. The Chief Counsel has begun preparing the rule.

- Section 30170(a)(2) of title 49, United States Code, Safe harbor to encourage reporting and for whistle blowers. This section, added by TREAD, requires the Secretary to issue a final rule within 90 days to establish a reasonable time for correcting false information and the manner of correction. NHTSA will issue an interim final rule on this section within 90 days. The Chief Counsel has begun preparing the rule.

DRAFT

CONSUMER ROLLOVER RATING SYSTEM

NHTSA has been developing a rollover rating system since 1996. Our proposed approach correlates strongly with the real world risk of rollover in 185,000 actual crashes we have analyzed.

NHTSA published a proposed rollover rating system in June of this year, and has received many comments. We have analyzed these comments and are doing some further research and data analysis to address issues raised.

We will announce a final plan for communicating the rollover rating system to the public by December 2000. This plan will explain how the information will be provided in NHTSA's standard public information format. We will also have ratings assigned to approximately twenty-five 2001 model year vehicles by December 2000.

The completed rollover rating system for 2001 model year vehicles should be available to the public no later than April 2001.

*Additional NHTSA Rollover Activities

NHTSA is also:

(1) funding a study by the National Academy of Sciences to compare our approach with dynamic tests. This study will be done by July 2001.

(2) initiating research to develop a rollover rating system based on dynamic testing. Congress has required this rating system to be in place by October 2002.

DRAFT

DEFECT INVESTIGATION ENHANCEMENT PLAN

IMPROVING PUBLIC ACCESS TO DEFECT INVESTIGATION DATA
Internet access to ODI's public files will be made available.

STAFFING OF DEFECT INVESTIGATIONS
The timeliness of ODI's investigations will be improved by hiring 30 additional staff to process the increased number of complaints received in ODI, to monitor the early warning information provided on potential safety defects, to provide supplemental expertise in investigating the increasingly complex issues before the agency, and to ensure that the ever-increasing number of recalls, involving a larger number of vehicles each year, are conducted in a timely manner and that the scope and remedy are adequate.

UPDATING THE DEFECT DATABASE
The agency will modernize and overhaul the ODI database incorporating analytical intelligence and integrating complaint and new database systems with the optical image retrieval system. Linkages between the ODI database and other agency databases will be improved to enhance the ability to identify safety defects and trends.

ENHANCED DEFECT TESTING
The Vehicle Research and Test Center will be improved and the agency will also contract with facilities that have state-of-the art equipment enhancing its ability to effectively and efficiently pursue safety-related defects.

ONSITE INVESTIGATIONS
ODI staff will gather evidence first hand to support its investigations.

IMPROVING TIRE SAFETY
The agency will research and develop modern safety standards regulating tire performance. Tire labeling will be improved and a regulation requiring a tire inflation warning system will be completed.

REVIEW OF DEFECT INVESTIGATION PROCEDURES
The agency will complete a comprehensive review of all standards, criteria, procedures and methods used in determining whether to open a defect or noncompliance investigation with the objective of improving this process.

REPROGRAMMING
As necessary, the Department will reprogram $1.8 million of NHTSA FY2001 resources to significantly expedite the completion of the Firestone ATX/Wilderness tire defect investigation.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

FY 2001 Resources provided in FY 2001 Appropriations to enhance the Defects Investigation Process and Upgrade the Safety Standard for Tires

Upgrade the Defect Investigation Program $ 6.0 Million

$2.5M These funds will be used to conduct tests on vehicles and equipment. These tests allow the government to understand if there is, in fact a problem with the design or manufacture of vehicles that are reported to us as being unsafe due to in-use problems.

$1.5M A significant upgrade will be made to the defects database. The upgrade will significantly improve the ability of the defects program to spot emerging safety problems.

$.65M Public availability of information on ongoing defect investigations will be improved through the internet.

$1.25M Thirty (30) professional staff (including engineers and analysts) will be hired to deal with the increased workload.

$.1M This money will be used by defect investigation staff to travel to crash sites and manufacturers to obtain detailed information on crash causation.

Upgrade the Tire Testing Standard

$2M The Agency will initiate a research program to improve procedures for tire testing. Based on this research, the Agency will issue a rulemaking with improved performance tests which reflect current tire technology as well as current use patterns and vehicle designs.

STATEMENT BY THE PRESIDENT

I have today approved H.R. 5164, the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

The TREAD Act will enable the Secretary of Transportation to move ahead vigorously to strengthen safety defects programs and better protect the American public from the danger of defective vehicles and equipment.

The Act provides longer recall periods, enhanced ability to obtain relevant information about potential safety defects, and higher civil penalties, measures which the Administration has been seeking. It also provides additional funds that the Administration sought to improve the defects investigation program.

By placing an affirmative obligation on manufacturers to notify the Secretary of Transportation about any safety recalls or campaigns in foreign countries that may be relevant to vehicles or equipment sold in the United States, the Act responds directly to one of the key shortcomings in identifying the Firestone tire problem.The Act also authorizes the Secretary to obtain information from vehicle manufacturers that can provide an early warning of safety problems.

In addition, the Act requires the Secretary to move quickly to implement plans to upgrade the safety standards for tires and child safety seats.

I encourage the Secretary to use the new authority under the TREAD Act to assure the public that any safety defects in motor vehicles or motor vehicle equipment will be disclosed at the earliest possible time.

DRAFT

Public Citizen

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Jose Cerda

FAX TRANSMISSION COVER

DATE 10/11/00

TO Nancy McFadden

FROM Joan Claybrook
Public Citizen
Ph: (202) 588-1000
Fax: (202) 588-7799

FAX # 456-6212

COMMENTS Would appreciate your calling me back & let me know what you decide to do.

Thanks

NO. OF PAGES, INCLUDING COVER SHEET 8

Public Citizen

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

October 11, 2000

Dear Senators McCain and Hollings:

We are distressed that various senators have not allowed you to bring your bill to reform the enforcement program at the National Highway Traffic Safety Administration, S. 3059, to the floor of the Senate for a vote. Your legislation is an excellent effort to address the failures uncovered in the Ford/Firestone tragedy. Your courageous efforts to pass this bill make you heroes in the eyes of consumer groups and the many families who have suffered grievous harm from crashes involving Ford vehicles and Firestone tires.

Now we are faced with a terrible dilemma. We very much want enactment of strong legislation and would not oppose even a modest a bill that does not undercut the agency's authority under present law. Unfortunately, H.R. 5164, the bill passed late last night by the House of Representatives, would seriously undermine current statutory authority in three sections, making the bill completely unacceptable. These three sections are:

- **Secrecy: A requirement** for secrecy at the National Highway Traffic Safety Administration. The bill forbids NHTSA disclosure of defect and "early warning" information such as warranty, adjustment, death, injury, component failure, etc unless the agency makes a case-by-case determination -- which would be subject to legal challenge -- that disclosure is allowed. Making matters worse, the bill would shield defect and early warning information from disclosure under the Freedom of Information Act (FOIA), thereby severely limiting public access to important safety information.

  This section is included in the House bill at the request of the auto industry lobbyists who do not want enforcement information placed automatically in NHTSA's public docket. Of course under present law the auto companies routinely request confidentiality for trade secret and commercial and financial information as is allowed under FOIA, and the agency carefully evaluates these requests and does not disclose such information. Thus, this section is unnecessary to protect company data.

  The perniciousness of this section is clear. It would overwhelm the agency with document analysis before any information could be placed in the public docket. Even under present law the agency is slow to make information available. Requiring citizens who are at risk of death and injury from vehicle safety defects to file FOIA requests for every piece of paper about a particular problem is unnecessary and totally unreasonable. Fulfillment of FOIA requests often takes the agency 6 months and sometimes a year. This kind of backdoor secrecy is totally unacceptable for the public, particularly in view of the secrecy and coverup by Ford and Firestone in the tire/SUV case.

- **Possession of Records:** A section letting manufacturers make the rules concerning what information they must submit to the NHTSA. H.R. 5164 says that the agency may **NOT** require a manufacturer "to maintain and submit records respecting information not in the possession of the manufacturer." This is an enormous loophole. Any manufacturer that chooses not to maintain records could avoid reporting requirements. And this provision would encourage manufacturers to dispose of records under very short time schedules, and encorage them not to collect certain sensitive information or allow other allies to control the information. In the Ford/Firestone case, the absence of records has been a glaring problem. Under this provision, the manufacturers would have a legal justification for avoiding turning information over the agency-- exactly the opposite of the original purpose of this legislation.

- **Criminal Immunity:** This section must be clarified to reflect that 18 U.S.C. 1001 and section 30170 are independent - and that the "safe harbor" for section 30170 does not provide any immunity for violations of section 1001. Otherwise, it undercuts - not strengthens - current law. The new changes to the House version do not correct this problem. H.R. 5164 does not make this clear and it must be.

We have concluded that these provisions are so harmful to the agency's ability to stop future fiascos like the Ford/Firestone case that we must ask you to oppose the bill if it cannot be amended. This legislation is not a compromise. It does little for the families who have suffered so much and will for the rest of their lives. Unfortunately, it will assist the industry when it wants to deceive NHTSA or the public.

Thank you again for all your efforts on this legislation. We all deeply appreciate your support.

Sincerely,

/S/

Joan Claybrook

Urgent: Auto Safety Bill

October 11, 2000

Dear Senator,

We urge you to make urgently-needed amendments to the so-called T.R.E.A.D. Bill (H.R. 5164) if this House bill is taken up by the Senate. The Senate's Motor Vehicle and Motor Vehicle Equipment Defect Notification Improvement Act (S. 3059) would have made significant improvements to motor vehicle safety and is supported by major national consumer, health and safety groups as well as Firestone victims and their families.

Unfortunately, the deceptive and dangerous House bill will actually erect new hazards for consumers by creating new zones of secrecy for the auto industry and by providing immunity to executives who intentionally deceive the government -- executives who otherwise could be prosecuted under existing law, but would be given sweeping new immunity under the bill. These provisions cut back enforcement and disclosure under present law. As long as any of these poison pills remain, the Senate must not pass this bill because it is positively harmful to consumers and does not serve its intended purpose.

H.R. 5164 contains three poison pills:

- The bill forbids NHTSA disclosure of defect and early warning information unless the secretary makes a case-by-case determination -- which would be subject to legal challenge -- that disclosure is allowed. Making matters worse, the bill would shield defect and early warning information from disclosure under the Freedom of Information act (FOIA), thereby severely limiting public access to important safety information. This is completely unacceptable.

- Under the bill, manufacturers could not be required to submit records unless they are in their "possession." This dangerous provision would encourage manufacturers not to maintain records, to destroy records, and to refuse to collect data and run needed tests.

- The broad immunity provision leaves the criminal penalties provision worse than useless. A person charged under the statute's criminal statute who recants his or her intentional lies could claim immunity from prosecution under both the new criminal provision *and existing law* (18 U.S.C. 1001, which prohibits false statements to the government). The new statute might well be interpreted by courts as supplanting the general statute on false statements that exists now.

The auto industry has unfortunately succeeded in planting these poison pills under the ruse of compromise. However, these provisions actually undermine NHTSA's current statutory enforcement authority.

We urge you not to pass H.R. 5164 unless this legislation is amended in the Senate.

Sincerely,

Joan Claybrook
President
Public Citizen

Janette Fennell
Founder
Trunk Releases Urgently Needed Coalition (TRUNC)

Rosemary Shahan
President
Consumers for Auto Safety and Reliability

Michele Struttman
Co-Founder
Kids N' Cars

Clarence Ditlow
Executive Director
Center for Auto Safety

Phyllis G. Rowe
President
Arizona Consumers Council

Andrew McGuire
Executive Director
Trauma Foundation

Michael Scippa
Executive Director
CRASH

Rob Sanders
Executive Director
Parents for Safer Airbags

Jack Gillis
Public Information Officer
Consumer Federation of America

Gene Karpinski
Executive Director
U.S. Public Interest Research Group

And on behalf of the families who came to Washington to lobby for strong and effective legislation:

Bob and Laura Bishop
Bartlesville, OH

Geoffrey Coffin
Shelton, CT

Janette Fennell
San Francisco, CA

Shawna Fruecht
Naples, FL

Pam Hegener
Lake Charles, LA

Spence Hegener
Baylor University, Waco, TX

Vickie and Joe Hendricks
Corpus Christi, TX

Shannon Johnson-Query
Jacksonville, FL

B.J. Kincade
Catoosa, OK

Julie Lockwood-Steinberg
Houston, TX

Sondra Runfeldt
West Palm Beach, FL

Robert C. Sanders
Upper Marlboro, MD

Juanita Sawyer
Tahlequah, OK

Spencer and Elizabeth Taintor
Miami, FL

Geneva Chapman
Atlanta, GA

Stephanie and Greg Morosin
Albuquerque, NM

Amber Woody
Springfield, MA

Keva Vanslyke
Richmond, TX

Margaret Dickerson
Houston, TX

Protect Consumers: Fix the House Firestone Bill (H.R. 5164)

Some parts of the bill are bad, but three sections of the House bill are unacceptable:

I. Imposing Secrecy on Safety Defect Information:

This section thwarts the original purpose of the legislation by imposing secrecy upon NHTSA.

Under Sec. 3(b)(4)(C) of the bill:

- The bill provides that the Secretary *shall not* disclose defect and early warning industry information such as lawsuits, consumer complaints, and consumer satisfaction campaigns *unless* DOT makes a case-by-case decision to disclose.

This section overrides the current law requiring disclosure under the NHTSA statute and FOIA. The purpose of this legislation was to make more information available. But the new language even cuts back on FOIA— because any information obtained this way first would remain protected under FOIA's exemption 3. Industry lobbied for this language by arguing that commercially sensitive documents needed protection, but they are already protected under the NHTSA statute, and this new law is over-kill, reducing the public's access to timely, crucial safety information.

II. Letting Manufacturers Make the Rules on Document Submission:

Industry's choice of which records to keep will limit the Secretary's power to get information.

Under Sec. 3(b)(4)(B) of the bill:

- Manufacturers would have to maintain and submit records only if that information is already in their possession.

This is an enormous loophole. Any manufacturer that chooses not to maintain records could avoid reporting requirements. This provision encourages manufacturers to destroy records, dispose of them under short timetables, have contractors or other companies maintain them, or refuse to collect data or run needed tests. In the Ford/Firestone case, the lack of records is a glaring problem— and this gives auto companies legal cover for not sharing crucial information.

III. Providing a Get-Out-of-Jail-Free Card:

A person charged under both 18 U.S.C. 1001 and proposed section 30170 could claim that section 30170's so-called "safe harbor" applies to both.

Section 5(b)(1)(a) of the bill adds sec. 30170 to existing law and provides:

- A person who intentionally lies to the government about safety-related defects can get off the hook if they "correct" the information and did not *know* that someone would be seriously injured or killed.

House legal counsel on the bill said that the penalties available under 18 U.S.C. 1001 for knowingly and willfully lying to the government and the bill's section 30170 *are independent*. It must be clarified in the language of the bill that the immunity provision in section 30170 does not also apply to violations of section 1001. Otherwise, the bill provides a duck-and-cover that would subtract from the penalties available under 1001, instead of getting tough with auto executives who knowingly deceive federal regulators about life-threatening defects.

Legal Analysis of the Effects of H.R. 5164's Secrecy Provision Upon the Disclosure of Safety-Defect or Noncompliance Documents Submitted to NHTSA

Summary
Section 3(b)(4)(C) of the proposed House bill creates a presumption of secrecy for any information collected by DOT under the bill's early warning reporting requirements. Because the early warning section is so broad, and encompasses all of the information currently collected in a NHTSA enforcement investigation, the conditions placed upon the collection of information there would subsume NHTSA's current information collection practices.

Analysis*I. NHTSA currently discloses documents submitted in an defect or noncompliance investigation unless they are requested to retain them as confidential.*

Under current law, section 30167(b) provides two alternative routes to the disclosure of information by the Secretary. Under the first part of the provision, the Secretary is empowered to disclose *any* information — even trade secret information covered by the Trade Secrets Act (18 U.S.C. § 1905) and confidential business information — where the Secretary determines that disclosure will assist in carrying out the Department's functions under the Act or where disclosure is required under section 30118(a).

The second part of section 30167(b) provides a second route to disclosure, and preserves the disclosure requirements of FOIA, which apply without a law creating a specific exemption..

II. The proposed House bill "disclosure" sections supplant the current law and create a new exemption under FOIA.

The proposed new law (section 2(b)(4)(C) of H.R. 5164) would limit the instances in which disclosure of information could be effected. The proposed new law defines a category of records — those subject to the Act's "early warning reporting requirements" — and sets forth a presumption that "none of the information . . . shall be disclosed."

The only route to disclosure is in those instances in which the Secretary "determines the disclosure of such information will assist" in carrying out the Department's responsibilities under the Act, case-by-case. That determination would, of course, be subject to judicial review and could take months, if not years.

But the key change here is that the overarching rule of disclosure under FOIA would likely not apply. The proposed House bill says that none of the early warning information shall be disclosed absent a determination by the Secretary; it does not explicitly preserve FOIA rights. Under FOIA's third exemption, 5 U.S.C. § 552(b)(3), FOIA's disclosure mandate does not apply where a statute "refers to particular types of matters to be withheld." Consequently, unless the Secretary makes a formal determination that records must be released, these documents would not be available under FOIA, and would be withheld by the agency in perpetuity.

TREAD

under this subsection, the Secretary shall specify in the final rule promulgated under paragraph (1)—

"(i) how such information will be reviewed and utilized to assist in the identification of defects related to motor vehicle safety;

"(ii) the systems and processes the Secretary will employ or establish to review and utilize such information; and

"(iii) the manner and form of reporting such information, including in electronic form.

"(B) INFORMATION IN POSSESSION OF MANUFACTURER.—The regulations promulgated by the Secretary under paragraph (1) may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.

"(C) DISCLOSURE.—None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

"(D) BURDENSOME REQUIREMENTS.—In promulgating the final rule under paragraph (1), the Secretary shall not impose requirements unduly burdensome to a manufacturer of a motor vehicle or motor vehicle equipment, taking into account the manufacturer's cost of complying with such requirements and the Secretary's ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

"(5) PERIODIC REVIEW.—As part of the final rule promulgated pursuant to paragraph (1), the Secretary shall specify procedures for the periodic review and update of such rule.".

(c) SALE OR LEASE OF DEFECTIVE OR NONCOMPLIANT TIRE.—Section 30166 of title 49, United States Code, as amended by subsection (b), is amended by adding at the end the following:

"(n) SALE OR LEASE OF DEFECTIVE OR NONCOMPLIANT TIRE.—

"(1) IN GENERAL.—The Secretary shall, within 90 days of the date of the enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, issue a final rule requiring any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard with actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance as required under section 30118(c) or as required by an order under section 30118(b) to report such sale or lease to the Secretary.

"(2) DEFECT OR NONCOMPLIANCE REMEDIED OR ORDER NOT IN EFFECT.—Regulations under paragraph (1) shall not require the reporting described in paragraph (1) where before delivery under a sale or lease of a tire—

"(A) the defect or noncompliance of the tire is remedied as required by section 30120; or

"(B) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the

49 U.S.C.

(j) Cooperation of Secretary. The Secretary of Transportation may advise, assist, and cooperate with departments, agencies, and instrumentalities of the Government, States, and other public and private agencies in developing a method for inspecting and testing to determine compliance with a motor vehicle safety standard.

(k) Providing information. The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter [*49 USCS §§ 30101* et seq.] or a regulation prescribed or order issued under this chapter [*49 USCS §§ 30101* et seq.].

§ 30167. Disclosure of information by the Secretary of Transportation

(a) Confidentiality of information. Information obtained under this chapter [*49 USCS §§ 30101* et seq.] related to a confidential matter referred to in section 1905 of title 18 may be disclosed only in the following ways:

(1) to other officers and employees carrying out this chapter [*49 USCS §§ 30101* et seq.].

(2) when relevant to a proceeding under this chapter [*49 USCS §§ 30101* et seq.].

(3) to the public if the confidentiality of the information is preserved.

(4) to the public when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101 of this title.

(b) Defect and noncompliance information. Subject to subsection (a) of this section, the Secretary shall disclose information obtained under this chapter [*49 USCS §§ 30101* et seq.] related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118-30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5.

(c) Information about manufacturer's increased costs. A manufacturer opposing an action of the Secretary under this chapter [*49 USCS §§ 30101* et seq.] because of increased cost shall submit to the Secretary information about the increased cost, including the manufacturer's cost and the cost to retail purchasers, that allows the public and the Secretary to evaluate the manufacturer's statement. The Secretary shall evaluate the information promptly and, subject to subsection (a) of this section, shall make the information and evaluation available to the public. The Secretary shall publish a notice in the Federal Register that the information is available.

(d) Withholding information from Congress. This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

Proposed Signing of H.R. 5164 (The TREAD Act)

In the coming days, Congress will forward to the President for his signature H.R. 5164, the Tire Recall Enhancement, Accountability, and Documentation Act (TREAD). This legislation responds to the vehicle safety issues associated with the National Highway Traffic Safety Administration's (NHTSA) investigation into faulty Firestone tires that, to date, have been linked to at least 119 deaths and over 500 injuries. Some of H.R. 5164's major provisions are:

1. A New Early Warning System. The bill authorizes NHTSA to require car manufacturers to report any information, including from their foreign branches, that may assist in the identification of safety defects (i.e., data on claims submitted for serious injury, customer satisfaction campaigns, consumer advisories, recalls, etc.). Car manufacturers would also be required to report safety defects in foreign countries with in 5 days.

2. More Time for Free Repairs/Replacement Parts. The bill extends to 10 years, from the current 8 years, the period of time that car manufacturers are obligated to replace for free defective parts. And the bill extends to 5 years, from the current 3 years, the period of time that tire manufacturers are obligated to replace for free defective tires.

3. Increased Penalties. The bill increases various civil penalties for violations of the motor vehicle safety statute, including raising the maximum penalty for a series of violations from $800,000 to $15 million. The bill also provides a new criminal penalty of up to 15 years imprisonment for persons who intentionally falsify and withhold information related to safety defects that later result in deaths or serious injury.

4. Other New Safety Standards. The bill also requires DOT to study and/or issue new safety regulations and standards on tire endurance, vehicle rollovers, and child safety restraints.

Although H.R. 5164 is not whole-heartedly supported by the consumer groups (who preferred a much stronger bill), it is the first legislation since 1974 to strengthen enforcement of the nation's motor vehicle safety laws – and it deserves to be accompanied by a strong public statement and/or event from the President. Nonetheless, to address some of the consumer groups concerns, we are working with DOT to try and develop a Presidential directive that alleviates some of their concerns by: (1) promising to publicly disclose of certain early warning data submitted to NHTSA; (2) providing accelerated timelines for the development of some of the safety regulations most important to consumer groups; and (3) dedicating some of NHTSA's new resources ($9 million) for these or related purposes.

TALKING POINTS
GOOD YEAR WRANGLER TIRES
OCTOBER 24, 2000

BACKGROUND: *The Los Angeles Times is expected to run a story on 10/25/00 about problems with Goodyear Wrangler tires. The tires in question are predominantly used on light trucks. The story is expected to document a series of fatal crashes as a result of tire failure. At least one of those fatal crashes involved a 1997 incident in Saudi Arabia involving an Air Force Chevrolet Suburban. An Air Force memo obtained by the Times made reference to a contact with NHTSA; it also said one of the failed tires was to be shipped to NHTSA for evaluation. Other cases of tire failure in the U.S. were obtained through court documents.*

- The Office of Defects Investigation currently has 58 reports alleging failure of 98 Goodyear Wrangler tires. Four of these resulted in crashes with one injury and one fatality.

- ODI has thus far been unable to locate any correspondence with the Air Force regarding the 1997 incident. The staff will continue to investigate. Among other things, ODI has contacted both the GSA and the Department of Defense and will follow up over the next several days.

- Currently, ODI is monitoring Wrangler tire complaints. ODI has not yet decided whether an investigation is warranted.

##################

Disclosure of early warning information under TREAD

An issue has arisen whether a provision in TREAD will significantly restrict the public availability of the information obtained by the Secretary under the new law. The provision is a part of the new section that enables the Secretary to obtain information that might provide an early warning of safety defects.

The current law provides that confidential information submitted to the Secretary may be disclosed only in specified ways. The Secretary may decide to release information when it is relevant to a proceeding or when the Secretary decides that disclosure is necessary to carry out the general purposes of the vehicle safety law.

The manufacturers of motor vehicles and motor vehicle equipment frequently submit information under claims of confidentiality. These claims are often granted, but can be overridden if the Secretary, in his discretion, decides that disclosure is necessary.

Under current law, information relating to defective or noncomplying vehicles and equipment is on a somewhat different footing. If the Secretary decides that disclosing information would assist in carrying out the notification and remedy provisions of the vehicle safety law, section 30167(b) of the current law requires the Secretary to release the information.

The disclosure provision in TREAD states that the Secretary cannot disclose early warning information under section 30167(b) unless he decides that the disclosure will assist in carrying out the notification and remedy sections of the vehicle safety law. The decision to be made by the Secretary is the same under the early warning section as under section 30167(b).

The difference between the sections is that when the Secretary makes a decision under 30167(b), he has an affirmative obligation to release the information. Under early warning, he may release the information but is not required to do so.

The concerns about TREAD's disclosure provision arise from a fear that it will not only restrict the availability of early warning information but also information that is currently made available. However, by its own terms, the disclosure provision applies only to disclosures under 30167(b), and not to disclosures under other sections of the law.

To address any concern that the Secretary might decide to maintain the confidentiality of early warning information, even if its disclosure would assist in carrying out the notification and remedy provisions, the President could direct the Secretary to release the information, thereby making the treatment of confidential information under TREAD identical to that under current law.

DRAFT

November _, 2000

MEMORANDUM FOR THE SECRETARY OF TRANSPORTATION

SUBJECT: Information disclosure under the TREAD Act.

Today I am signing the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, legislation that improves your ability to investigate and remedy safety defects in motor vehicles and motor vehicle equipment.

This memorandum will confirm my directive to you to implement the information disclosure requirements of the TREAD Act in a manner that assures maximum public availability of information.

I direct you to exercise your legal authority to take the following steps to implement the Act:

(1) review all information submitted pursuant to the Act consistent with the Freedom of Information Act and the Attorney General's guidance, and promptly disclose any information that is not confidential; and

(2) in addition, disclose any information determined to be confidential if you decide that disclosure will assist you in carrying our the notification and remedy provisions of Chapter 301.

You have advised me that you have legal authority to take these actions under sections 30166 and 30167 of title 49, United States Code.

Your implementation of this Act will help assure the public that any safety defects in motor vehicles or motor vehicle equipment will be disclosed at the earliest possible time.

WILLIAM J. CLINTON

###

Public Access to information collected under the TREAD Act

- The Administration requested an early warning provision, and this Act provides one that significantly enhances our ability to monitor trends and to obtain information about possible foreign and domestic motor vehicle safety defects.

- With this new authority comes the responsibility to quickly notify the public regarding investigative efforts resulting from the early warning information. I am directing the Secretary to ensure that the rulemaking on this provision delineates how and when the public will have access to important defect investigative information.

- This early warning provision allows us to achieve our goal of the swift collection and analysis of potential trend data resulting in the timely investigation and recall of defective motor vehicles and equipment.

- Our authority to release information to the public under other provisions of the vehicle safety law is undiminished.

DRAFT

U.S. Department of Transportation
National Highway Traffic Safety Administration

Memorandum

Subject: Disclosure of Information under the TREAD Act

Date: OCT 2 6 2000

John Womack

From: Frank Seales, Jr.
Chief Counsel

Reply to Attn. of:

To: Rosalind A. Knapp
Acting General Counsel

The President is expected to sign the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, H.R. 5164. An issue has arisen whether a provision in TREAD will significantly restrict the public availability of the information obtained by the Secretary under the new law. My review of the new provision leads me to conclude that it will have a negligible effect, if any, on the disclosure of documents received by NHTSA. I seek your concurrence in this view.

TREAD will add a new subsection (m), Early Warning Reporting Requirements, to section 30166 of title 49, United States Code. The new section will enable the Secretary to obtain information from manufacturers of motor vehicles and motor vehicle equipment that might provide an early warning of safety defects.

Safety advocacy groups have questioned the inclusion in the early warning requirements of paragraph (4)(C), Disclosure. The paragraph reads as follows:

> (C) DISCLOSURE.–None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

Paragraph (4)(C) resembles the current section 30167(b) of title 49, to which it refers. That provision is as follows:

> (b) Defect and noncompliance information.–Subject to subsection (a) of this section [which limits the Secretary's ability to disclose information entitled to confidential treatment pursuant to the Trade Secrets Act, 18 U.S.C. 1905], the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118-30121 of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5.

As we understand the issue raised by the advocacy groups, their concern is that paragraph (4)(C) states that "None of the information collected . . . shall be disclosed pursuant to section 30167(b) unless the Secretary determines that disclosure of the information will assist in carrying out sections 30117(b) and 30118 through 30121 . . ." (underlining supplied). The groups contrast this formulation with the corresponding language in 30167(b), which states that "the Secretary shall disclose information . . . that the Secretary decides will assist in carrying out" those sections (underlining supplied). In their view, this "inverts" the existing law, which they view as favoring disclosure "over and above the disclosure requirements of the Freedom of Information Act." (Letter from Joan Claybrook to Secretary Slater, October 19, 2000.)

Upon comparing the two provisions, we conclude that the differences between them do not support the advocacy groups' claim.

Ms. Claybrook's letter seems to suggest that the variation in language could be interpreted to prevent the disclosure of any early warning information submitted to the agency in the absence of a decision by the Secretary that disclosure of the information "will assist in carrying out" the purposes of the Act. However, the legislation clearly requires that such a decision be made prior to disclosure only when the disclosure is being made under section 30167(b), which by its terms is invoked only when the disclosure involves information that has been determined to be entitled to confidential treatment.

Moreover, section 30167(b) provides specifically that "A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5 [the Freedom of Information Act]." Accordingly, neither section 30167(b) nor paragraph (4)(C) would affect the agency's initial decision whether information submitted to the agency is entitled to confidential treatment. Such decisions will continue to be made in accordance with Exemption 4 of the Freedom of Information Act, the Trade Secrets Act and the agency's regulations concerning the treatment of confidential business information, 49 CFR Part 512.

Information determined to be entitled to confidential treatment, such as on the basis that its release would cause substantial competitive harm to the submitter of the information, would continue to be protected from disclosure, unless a decision is made to release the information under section 30167(b). Information determined not to be entitled to confidential treatment would continue, as before, to be released to the public. A determination that the information "will assist in carrying out" the Act would not need to be made first under section 30167(b), prior to such release.

In addition, even under the limited circumstances when section 30167(b) or paragraph (4)(C) might be exercised, there are only minor differences between these two provisions. Under either provision, the question to be decided by the Secretary is whether the disclosure would "assist in carrying out" the specified sections. The only discernible difference between section 30167(b) and paragraph (4)(C) is that, if the Secretary makes a decision under section 30167(b), the agency has an affirmative obligation to release the information, whereas if the Secretary makes a decision under paragraph (4)(C) the agency may release the information but is not required to do so. This difference appears so slight as to be inconsequential. It would be unlikely that the Secretary would go to the effort of deciding that disclosure would assist in carrying out the specified sections without taking the step of disclosing it.

The only reference to paragraph (4)(C) in the legislative history of TREAD occurred in a colloquy between Chairman Tauzin and Representative Markey, in which Chairman Tauzin agreed with Mr. Markey's statement that the "special disclosure provision for new early stage information is not intended to protect [information] from disclosure that is currently disclosed under existing law . . . ." 146 Cong.Rec H9629 (daily ed. Oct. 10, 2000). The most sensible reading of paragraph (4)(C) is that it was intended to replicate the effects of section 30167(b) for information obtained under the early warning section. This reading is consistent with the colloquy between Chairman Tauzin and Mr. Markey.

##

Concur____________________

Non-concur_________________

Date______________________

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
1. International Cooperation: Provides express authority to cooperate internationally to enhance motor vehicle and traffic safety by exchanging information related to safety defects, noncompliances with motor vehicle safety standards and regulations, and other matters related to motor vehicle safety, conducting vehicle safety research, and updating, developing and promoting improved motor vehicle safety standards and enforcement procedures.	No provision
2. Testing Required for Certification: Requires manufacturers of motor vehicles or items of motor vehicle equipment to test their products for compliance with all applicable federal motor vehicle safety standards or perform engineering analyses that demonstrate compliance, *before* they certify that their products comply with these standards.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
3. **Notification of Defects & Noncompliance:** Provides that a manufacturer of a motor vehicle, original equipment, or replacement equipment shall have a duty to review and consider information, including from any foreign source, to learn whether the vehicle or equipment contains a defect or does not comply with an applicable Federal vehicle safety standard, and to advise the Secretary if the manufacturer has reason to believe that a defect or noncompliance may exist.	**Preservation of Section 30118.** (Sec. 2) **Early Warning Reporting Requirements.** Directs Secretary to begin rulemaking within 120 days and issue a rule by June 30, 2002, to require a mfgr to report, periodically or upon request, information received by the mfgr from domestic or foreign sources that may assist in the identification of safety defects, including: (1) data on claims submitted for serious injury and aggregate statistical data on property damage from alleged defects, **or** (2) customer satisfaction campaigns, consumer advisories, recalls, or other activities involving the repair or replacement of vehicles or items of vehicle equipment. The rule may require a mfgr to report other information that may assist in identifying defects. (Sec. 3(b)) **Reporting of Possible Defects.** The mfgr of a vehicle or item of equipment must report to the Secretary, in a matter set by the Secretary by regulation, all incidents of which the mfgr receives actual notice which involve serious injuries or fatalities which are alleged or proven to have been caused by a possible defect in the mfgr's vehicle or vehicle equipment in the USA or a foreign country when the possible defect is in a vehicle or

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
4. Extension of Time for Remedies Without Charge: Extends to ten years the current eight-year limit on the obligation of manufacturers of motor vehicles or items of motor vehicle equipment to remedy, without charge, safety-related defects and noncompliances with federal motor vehicle safety standards.	Adopts DOT proposal (Sec. 4)
Extends to five years the current three-year limit on the obligation of tire manufacturers to provide such a remedy. (Congress established both limits in 1974.)	Adopts DOT proposal. (Sec. 4)
5. Limitation on Sale or Lease of Used Motor Vehicles: Prohibits dealers of used motor vehicles from selling or leasing used vehicles for purposes other than resale until the dealer informs the purchaser or lessee of any notifications by a manufacturer of a defect or noncompliance with respect to the vehicle that have not been remedied, and requires the dealer either to offer to have the defects or noncompliances remedied or give the purchaser or lessee a written description of the defects or noncompliances, the written acknowledgment of which must be received by the dealer from the purchaser or lessee.	No provision
6. Limitation on Operation by Owners & Lessors of School Buses and Vehicles Used to Transport Passengers for Compensation: Prohibits an owner or lessor of a school bus or of a motor vehicle used to transport passengers for compensation, who receives notice of a safety-related defect or noncompliance regarding the vehicle, from operating the vehicle until the defect or noncompliance is remedied.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
7. Increase in Motor Vehicle and Motor Vehicle Equipment Penalties: Increases the motor vehicle safety statute's maximum civil penalty from $1,000 to $5,000 for each violation of any of the statute's general provisions,	Adopts DOT proposal. (Sec. 5 (a))
Removes the $800,000 ceiling on civil penalties for any related series of violations (a change from the $4 million limit originally sought in March 2000).	Increases the maximum for any related series of violations to $15,000,000. (Sec. 5 (a)).
Establishes the current prohibition for violations of reporting and other informational requirements as a separate provision, setting a new penalty structure for violations of this provision of $5,000 for each violation per day, and the maximum penalty for any related series of daily violations of $500,000.	Establishes the current prohibition for violations of reporting and other informational requirements as a separate provision, setting a new penalty structure for violations of this provision of $5,000 for each violation per day, and the maximum penalty for any related series of daily violations of $15,000,000. (Sec. 5 (a))

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
8. Administrative Penalties: Provides an administrative penalty provision, in addition to the current civil penalty provision, to allow the Secretary to assess a civil penalty, for violations of the motor vehicle safety chapter or a regulation issued thereunder, by order after opportunity for a formal (sections 554 and 556 of the APA) administrative hearing. Penalty amounts would be set at $5,000 for each violation, with a maximum for a related series of violations of $1 million.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Criminal Penalties.** Falsifying or Withholding Information: Provides that a person who commits acts with respect to the reporting requirements of 30166 which are prohibited by 18 U.S.C. 1001, with the intent to mislead the Secretary about safety defects that have caused death or grievous bodily harm, shall be subject to a fine under title 18, imprisonment for not more than 15 years, or both. (Sec. 5 (b)) Safe Harbor to Encourage Reporting & for Whistle Blowers: A person described above may avoid criminal penalties if (1) at the time of the violation the person does not know that the violation would result in an accident causing death or serious bodily injury and (2) the person corrects any improper reports or failure to report within a reasonable time. (Sec. 5 (b)) The Secretary shall set by final rule within 90 days of enactment what constitutes a reasonable time and what manner of correction is sufficient. The effective date of the provision of criminal liability for falsifying or withholding information shall not be before that of the final rule on what

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
9. **Records and Reports:** Directs the Secretary to issue rules to require a motor vehicle or equipment mfgr to keep records and make reports periodically or to an order, based on information it obtains concerning: (1) crashes or incidents in vehicles or equipment where fatalities, serious injuries, or fires have occurred; and (2) warranty or adjustment information related to actual or potential defects. This proposal also would permit the Secretary to require: (1) a motor vehicle or equipment mfgr to give the Secretary access to its communications on defects and recalls to the same extent and manner as such communications are accessed by the mfgr's dealers; and (2) auto insurers and claims adjustors to keep records or report periodically or on request, about information they obtain concerning crashes or incidents in vehicles or equipment where fatalities, serious injuries, or fires have occurred, including information to identify vehicles and individuals, which shall be treated as confidential.	**Reporting of Defects in Motor Vehicles in Foreign Countries:** Requires that mfgr must report defects (within 5 working days) to NHTSA in motor vehicles or tires in foreign countries due to: (1) a mfgr's determination to conduct a safety recall or "other safety campaign" in a foreign country on a motor vehicle or item of vehicle equipment that is identical or substantially similar to a vehicle or item of vehicle equipment offered for sale in USA; and (2) notification to mfgr by a foreign government that a safety recall or other safety campaign must be conducted in that country on a motor vehicle, tire, or vehicle equipment that is identical or substantially similar to a vehicle or item of vehicle equipment offered for sale in USA. (Sec. 3) **Insurance Study.** Directs the Secretary to study the feasibility and utility of obtaining aggregate information on insurance claims from insurers or adjusters, on a regular and periodic basis, and, in 120 days, submit results of the study to Congress. (Sec. 3(d))

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
10. Definitions: Records and Reports: Provides new definitions for the terms 'dealer', 'distributor', 'manufacturer', 'owner', 'purchaser', and 'person' in the context of the statute's section on records and reports (section 30166) in order to extend the statute's reach outside of the United States.	No provision
11. Effective Date: Makes effective 180 days after enactment the following proposals: 3 (Notification of Defects & Noncompliance), 8 (Administrative Penalties), 9 (Records and Reports), and 10 (Definitions: Records and Reports).	No provision
12. Increase in Odometer Penalties: Increases the civil penalty under the odometer fraud statute from \$2,000 (set by statute in 1986) to \$5,000 for each violation, and increases the maximum penalty from \$100,000 (set by statute in 1976) to \$1,000,000 for any related series of violations. Increases the limit on damages that the victims of odometer fraud can recover from violators of the statute, from the current three times actual damages or \$1,500, whichever is greater, and reasonable attorney fees (set by statute in 1972), to three times actual damages or \$10,000, whichever is greater, and reasonable attorney fees.	No provision

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Acceleration of Mfgr Remedy Program.** Amends Section 30120(c)–Adequacy of Repairs–to provide that if the Secretary determines that a mfgr's remedy program is not likely to be capable of completion in a reasonable time, the Sec. may require the mfgr to accelerate the remedy program if the Sec. finds–(1) there is a risk of serious injury or death if the remedy program is not accelerated; and (2) that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both. (Sec.6)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Sales of Replaced Tires.** Amends Section 30120(d): In a remedy program involving the replacement of tires, the mfgr shall include a plan addressing how to prevent, to the extent reasonably within the mfgr's control, replaced tires from being resold for installation on a motor vehicle, and how to limit, to the extent reasonably within the control of the mfgr, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses. The mfgr must include information about the implementation of the plan with each quarterly report to the Secretary about the progress of any notification and remedy campaigns. (Sec. 7)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Sales of Replaced Equipment.** Amends Section 30120: Prohibits sale or lease of any item of vehicle equipment (including a tire) for installation on a motor vehicle, that is subject of a decision or notice to be defective or not to comply with a FMVSS unless (1) the defect or noncompliance is remedied as required by law before delivery under the sale or lease; or (2) notification of the defect or noncompliance is required by law but enforcement of the order is set aside in a civil action to which section 30121(d) [Venue] applies. (Sec. 8)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision.	**Certification Label.** Amends Section 30115: Requires that for a certification label affixed by an intermediate or final state mfgr of a motor vehicle built in more than 1 stage, each intermediate or final stage mfgr must certify to each applicable FMVSS that it has: (1) complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle mfgr in accord with regulations prescribed by the Secretary; or (2) elected to assume responsibility for compliance with that FMVSS. If the intermediate or final stage mfgr elects to assume responsibility for compliance with the FMVSS covered by the documentation provided by an incomplete motor vehicle mfgr, the intermediate or final stage mfgr must notify the incomplete motor vehicle mfgr in writing within a reasonable time of affixing the certification label. However, a violation of this certification label provision shall not be subject to the civil penalty provision of the motor vehicle safety statute. (Sec. 9)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Endurance and Resistance Standards for Tires:** Directs NHTSA to complete rulemaking by June 1, 2002, to update the tire safety standards published at 49 CFR 571.109 and 571.119 (Sec. 10).
No provision	**Improved Tire Information.** Directs the Secretary to initiate rulemaking within 30 days and complete the rulemaking by June 1, 2002, to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall and to ensure public awareness of tire load limits and proper inflation levels. The rule may require information from the vehicle mfgr. (Sec. 11)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Rollover Tests.** Not later than 2 yrs from enactment, the Secretary shall: (1) develop a dynamic test on rollovers of motor vehicles (defined as covering passenger cars, mpvs, and trucks with a gvwr of 10,000 lbs. or less, & excluding a vehicle designed to provide temporary residential accommodations) for the purposes of a consumer information program; and (2) carry out a programof conducting such tests. As the Secretary develops a rollover test, the Secretary must conduct a rulemaking to determine how best to disseminate test results to the public. (Sec. 12)
No provision	**Tire Pressure Warning.** A yr after enactment, the Secretary, must compete a rulemaking to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under-inflated. The rule must be effective within 2 yrs of completing the rulemaking. (Sec. 13)

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Improving the Safety of Child Restraints.** The section directs the Secretary to initiate a rulemaking, within 12 months of enactment, to improve the safety of child restraints, including minimizing head injuries from side impact crashes, and to complete that rulemaking 12 months later. In carrying out this rulemaking, the Secretary must consider a number of specific elements, such as requiring more comprehensive tests for child restraints than are presently required by Federal Motor Vehicle Safety Standard (FMVSS) 213, including dynamic tests that replicate side- and rear-impact crashes and that reflect the designs of current passenger motor vehicles. If the Secretary does not incorporate any of these elements in the final rule, the Secretary must explain its omission in reports to Congress. For each fiscal year, of the funds made available to the Secretary for activities relating to safety, not less than $750,000 must be made available to carry out crash testing of child restraints. The section also directs the Secretary to issue a notice of proposed rulemaking (NPRM), within 12 months of enactment, to establish a child restraint safety rating consumer

PROPOSED MOTOR VEHICLE SAFETY AMENDMENTS	
DOT Proposal	**H.R. 5164 (as passed, 10/11/00)**
No provision	**Improving Criteria Used in a Recall**. Directs the Secretary to undertake a comprehensive review of all "standards, criteria, procedures, and methods" used in determining whether to open a defect or noncompliance investigation and to take such steps as may be necessary to improve these measures. The review is to begin within 30 days and conclude with a report to Congress within one year. (Sec. 15)
No provision	**Follow-Up Report.** One yr after enactment, the Secretary must report to Congress on the implementation of the amendments made by this Act and on any recommendations for additional amendments for consumer safety. (Sec. 16)
No provision in the bill submitted September 11, 2000, but a bill submitted on February 29, 2000, seeks $115,954,000 for vehicle safety programs for FY 2001., an increase of $17,640,000 over the previously authorized level.	**Appropriation of Appropriations.** In addition to any sums authorized to be appropriated [for the motor vehicle safety chapter or for the motor vehicle information and cost savings chapters], the section authorizes an additional $9,100,000 for FY 2001 to carry out this Act and the amendments made by this Act. (Sec. 17)

Legal Analysis of the Effects of H.R. 5164's Secrecy Provision Upon the Disclosure of Early Warning Safety-Defect or Noncompliance Documents Submitted to NHTSA

Updated Oct. 24, 2000

Summary

Section 3(b)(4)(C) of H.R. 5164 creates a presumption of secrecy for any information collected by the Department of Transportation (DOT) under the bill's early warning reporting requirements. Because the early warning section is so broad, and encompasses all of the information currently collected in a National Highway Traffic Safety Administration (NHTSA) enforcement investigation, the conditions restricting dissemination of that information may also subsume NHTSA's current disclosure practices. The provision also lacks a savings clause for the Freedom of Information Act (FOIA), and thus may create an exemption under FOIA's exemption 3 that would result in the secrecy of defect information in perpetuity, unless DOT finds otherwise.

Analysis

I. NHTSA currently discloses documents submitted in a defect or noncompliance investigation unless they are requested to retain them as confidential.

Under current law, section 30167(b) provides for the disclosure of information by the Secretary of DOT. Under the first part of the section, the Secretary is empowered to disclose information related to a defect or noncompliance with a safety standard where the Secretary determines that disclosure will assist in carrying out DOT's functions under the defect/noncompliance notification and reporting mandates or where disclosure is required under section 30118(a), which requires agency decisions that a defect or noncompliance exists to be publicly available.

The second part of section 30167(b) expressly states that such disclosure is "in addition" to the disclosure requirements of FOIA. Thus, the existing law preserves FOIA, which grants the public broad access to virtually any agency record. Safety advocates have long relied upon FOIA to monitor NHTSA's handling of recalls and defect investigations.

Additionally, disclosure under this section is "subject to subsection (a)." Under that subsection, any confidential industry information such as trade secrets is kept confidential unless the Secretary decides that disclosure is necessary to carry out DOT's functions under the enabling act. This is a higher standard than a finding that disclosure will "assist" with certain DOT functions that applies to the disclosure of defect or noncompliance information only.

II. The bill's "disclosure" sections may supplant the current law and create a new exemption under FOIA.

Section 2(b)(4)(C) of H.R. 5164 limits the instances in which early warning defect and noncompliance information can be disclosed, setting forth a presumption that "none of the information [on early warning] . . . shall be disclosed."

Under this section, disclosure to the public occurs only in cases where the Secretary "determines the disclosure of such information will assist" in carrying out DOT's responsibilities under the NHTSA Act. That determination could take months and would then be subject to judicial review that might take years to resolve. Alternatively, the Secretary could undertake formal or informal rulemaking on the question of which documents routinely assist in carrying out the functions of DOT, and thus those would be routinely disclosed. The risk is that formal rulemaking will give industry another platform to insist upon the interpretation most favorable to their interests.

But the key change here is that the overarching rule of FOIA that all information be disclosed would likely not apply to early warning information collected under the Secretary's new powers. H.R. 5164, unlike existing law, does not expressly preserve FOIA rights. Under FOIA's third exemption, 5 U.S.C. § 552(b)(3), FOIA's disclosure mandate does not apply where a statute "refers to particular types of matters to be withheld." Consequently, unless the Secretary determines that records must be released, these documents would likely not be available under FOIA, and could be withheld by the agency in perpetuity.

Because the types of early warning information that will be submitted under the new rulemaking include most of the information that currently comes into NHTSA in a defect or noncompliance investigation, it is possible that information that is routinely disclosed now will be considered as having come in under the new provision and thus be kept secret from the public, at least until a decision is made by the Secretary that noncompliance or a defect actually exists and the notification and information underlying this decision are released under 49 U.S.C. § 30118(a). The lag time between the submission of defect information and a formal finding of a defect by DOT puts consumers at risk— the whole point of this legislation was to make such information available to the public early and completely.

Moreover, the information released under section 30118(a) is very limited, and is available under present law. The bill therefore makes no improvement on the availability of information, and may even detract from NHTSA's authority to share this crucial data with the public.

THE WHITE HOUSE

To: Mary Smith
Jose Cerda
Nancy McFadden
Joanna Slaney

From: Sean O'Shea

Info on the TREAD Bill Signing. You might already have these documents.

U.S. Department of Transportation
Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

FAX TRANSMISSION COVER SHEET

DATE: 11/27/00

TO: Sean O'shea

FAX:

From: Captain Manson K. Brown
Military Assistant to the Secretary

Office: (202) 366-5742
Fax: (202) 366-7952

Number of Pages Including Cover: 5

Comments: Re: TREAD Bill Signing
Here's some "initial" information in response to DOT's meeting with ODP earlier this week. The draft POTUS statement is a work-in-progress. I will send the opinion memo from General Counsel later. DOT contact is Charlotte Hrncir at 366-6741. Since I am ~~at~~ entering the middle of this process, call me with any concerns.

Regards, Manson

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Resources provided in FY 2001 Appropriations to enhance the Defects Investigation Process and Upgrade the Safety Standard for Tires

Upgrade the Defect Investigation Program $ 6.0 Million

$2.5M	These funds will be used to conduct tests on vehicles and equipment. These tests allow the government to understand if there is, in fact a problem with the design or manufacture of vehicles that are reported to us as being unsafe due to in-use problems.
$1.5M	A significant upgrade will be made to the defects database. The upgrade will significantly improve the ability of the defects program to spot emerging safety problems.
$.65M	Public availability of information on ongoing defect investigations will be improved through the internet.
$1.25M	Thirty (30) professional staff (including engineers and analysts) will be hired to deal with the increased workload.
$.1M	This money will be used by defect investigation staff to travel to crash sites and manufacturers to obtain detailed information on crash causation.

Upgrade the Tire Testing Standard

$2M	The Agency will initiate a research program to improve procedures for tire testing. Based on this research, the Agency will issue a rulemaking with improved performance tests which reflect current tire technology as well as current use patterns and vehicle designs.

DRAFT STATEMENT BY THE PRESIDENT

Today I have approved H.R. 5164, the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

The TREAD Act will enable the Secretary of Transportation to move ahead vigorously to strengthen safety defects programs and better protect the American public from the danger of defective vehicles and equipment.

The Act provides longer recall periods, enhanced ability to obtain relevant information about potential safety defects, and higher civil penalties, measures which the Administration has been seeking. It also provides additional funds that the Administration sought to improve the defects investigation program.

By placing an affirmative obligation on manufacturers to notify the Secretary of Transportation about any safety recalls or campaigns in foreign countries that may be relevant to vehicles or equipment sold in the United States, the Act responds directly to one of the key shortcomings in identifying the Firestone tire problem. The Act also authorizes the Secretary to obtain information from vehicle manufacturers that can provide an early warning of safety problems.

In addition, the Act requires the Secretary to move quickly to implement plans to upgrade the safety standards for tires and child safety seats.

I encourage the Secretary to use the new authority under the TREAD Act to assure the public that any safety defects in motor vehicles or motor vehicle equipment will be disclosed at the earliest possible time.

CONSUMER ROLLOVER RATING SYSTEM

DOT's National Highway Traffic Safety Administration (NHTSA) has been developing a rollover rating system since 1996. Our proposed approach correlates strongly with the real world risk of rollover in 185,000 actual crashes we have analyzed.

NHTSA published a proposed rollover rating system in June of this year, and has received many comments. We have analyzed these comments and are doing some further research and data analysis to address issues raised.

We will announce a final plan for communicating the rollover rating system to the public by December 2000. This plan will explain how the information will be provided in NHTSA's standard public information format. We will also have ratings assigned to approximately twenty-five 2001 model year vehicles by December 2000.

The completed rollover rating system for 2001 model year vehicles should be available to the public no later than April 2001.

*<u>Additional NHTSA Rollover Activities</u>

NHTSA is also:

(1) funding a study by the National Academy of Sciences to compare our approach with dynamic tests. This study will be done by July 2001.

(2) initiating research to develop a rollover rating system based on dynamic testing. Congress has required this rating system to be in place by October 2002.

NHTSA's OFFICE of DEFECT INVESTIGATION (ODI) ENHANCEMENT PLAN

IMPROVING PUBLIC ACCESS TO DEFECT INVESTIGATION DATA
Internet access to ODI's public files will be made available.

STAFFING OF DEFECT INVESTIGATIONS
The timeliness of ODI's investigations will be improved by hiring 30 additional staff to process the increased number of complaints received in ODI, to monitor the early warning information provided on potential safety defects, to provide supplemental expertise in investigating the increasingly complex issues before the agency, and to ensure that the ever-increasing number of recalls, involving a larger number of vehicles each year, are conducted in a timely manner and that the scope and remedy are adequate.

UPDATING THE DEFECT DATABASE
The agency will modernize and overhaul the ODI database incorporating analytical intelligence and integrating complaint and new database systems with the optical image retrieval system. Linkages between the ODI database and other agency databases will be improved to enhance the ability to identify safety defects and trends.

ENHANCED DEFECT TESTING
The Vehicle Research and Test Center will be improved and the agency will also contract with facilities that have state-of-the art equipment enhancing its ability to effectively and efficiently pursue safety-related defects.

ONSITE INVESTIGATIONS
ODI staff will gather evidence first hand to support its investigations.

IMPROVING TIRE SAFETY
The agency will research and develop modern safety standards regulating tire performance. Tire labeling will be improved and a regulation requiring a tire inflation warning system will be completed.

REVIEW OF DEFECT INVESTIGATION PROCEDURES
The agency will complete a comprehensive review of all standards, criteria, procedures and methods used in determining whether to open a defect or noncompliance investigation with the objective of improving this process.

REPROGRAMMING
As necessary, DOT will reprogram $1.8 million of NHTSA FY2001 resources to significantly expedite the completion of the Firestone ATX/Wilderness tire defect investigation.

U.S. Department of Transportation
Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

FAX TRANSMISSION COVER SHEET

DATE: 10/27/00

TO: Sean O'shea

FAX:

From: Captain Manson K. Brown
Military Assistant to the Secretary

Office: (202) 366-5742
Fax: (202) 366-7952

Number of Pages Including Cover: 4

Comments: TREAD ACT – This is the General Counsel's legal opinion. DOT General Counsel recommends holding this document until after the signing and releasing it in response to press questions.

v/r, Manson

U.S. Department of Transportation
National Highway Traffic Safety Administration

Memorandum

Subject: Disclosure of Information under the TREAD Act

Date: OCT 27 2000

John Womack

From: Frank Seales, Jr.
Chief Counsel

Reply to Attn. of:

To: Rosalind A. Knapp
Acting General Counsel

The President is expected to sign the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, H.R. 5164. An issue has arisen regarding whether a provision in TREAD will significantly restrict the public availability of the information obtained by the Secretary under the new law. My review of the new provision leads me to conclude that it will have no effect on the disclosure of documents received by NHTSA. I seek your concurrence in this view.

TREAD will add a new subsection (m), Early Warning Reporting Requirements, to section 30166 of title 49, United States Code. The new section will enable the Secretary to obtain information from manufacturers of motor vehicles and motor vehicle equipment that might provide an early warning of safety defects.

Safety advocacy groups have questioned the inclusion in the early warning requirements of paragraph (4)(C), Disclosure. The paragraph reads as follows:

> (C) DISCLOSURE.–None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121 of this title.

Paragraph (4)(C) supplements the current section 30167(b) of title 49, to which it refers. That provision reads as follows:

> (b) Defect and noncompliance information.–Subject to subsection (a) of this section [which limits the Secretary's ability to disclose information entitled to confidential treatment pursuant to the Trade Secrets Act, 18 U.S.C. 1905], the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118-30121 of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5 or that is required to be disclosed under section 30118(a) of this title.

As we understand the issue raised by the advocacy groups, their concern is that paragraph (4)(C) states that "None of the information collected . . . shall be disclosed pursuant to section 30167(b) unless the Secretary determines that disclosure of the information will assist in carrying out sections 30117(b) and 30118 through 30121 . . ." (underlining supplied). The groups contrast this formulation with the corresponding language in 30167(b), which states that "the Secretary shall disclose information . . . that the Secretary decides will assist in carrying out" those sections (underlining supplied). In their view, this "inverts" the existing law, which they view as favoring disclosure "over and above the disclosure requirements of the Freedom of Information Act." (Letter from Joan Claybrook to Secretary Slater, October 19, 2000.)

Upon comparing the two provisions, we conclude that the differences between them do not support the advocacy groups' claim.

Ms. Claybrook's letter seems to suggest that the variation in language could be interpreted to prevent the disclosure of any early warning information submitted to the agency in the absence of a decision by the Secretary that disclosure of the information "will assist in carrying out" the purposes of the Act. However, the legislation clearly requires that such a decision be made prior to disclosure only when the disclosure is being made under section 30167(b), which by its terms is invoked only when the disclosure involves information that has been determined to be entitled to confidential treatment.

Moreover, section 30167(b) provides specifically that "A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5 [the Freedom of Information Act]." Accordingly, neither section 30167(b) nor paragraph (4)(C) would affect the agency's initial decision regarding whether information submitted to the agency is entitled to confidential treatment. Such decisions will continue to be made in accordance with Exemption 4 of the Freedom of Information Act, the Trade Secrets Act and the agency's regulations concerning the treatment of confidential business information, 49 CFR Part 512.

Information determined to be entitled to confidential treatment, such as on the basis that its release would cause substantial competitive harm to the submitter of the information, would continue to be protected from disclosure, unless a decision is made to release the information under section 30167(b). Information determined not to be entitled to confidential treatment would continue, as before, to be released to the public. A determination that the information "will assist in carrying out" the Act would not need to be made first under section 30167(b), prior to the release of non-confidential information.

In addition, even under the limited circumstances when section 30167(b) or paragraph (4)(C) might be exercised, the differences between these two provisions would not lead to different results. Under either provision, if there is to be a disclosure, the disclosure must be made pursuant to section 30167(b), and the disclosure is dependent upon a decision by the Secretary that the disclosure "will assist in carrying out" the specified sections of the Act. As provided in section 30167(b), the Secretary is required to disclose information determined to be entitled to confidential treatment if the Secretary makes the decision that the disclosure will "assist in carrying out" the Act. Paragraph (4)(C) simply clarifies that information submitted under TREAD that is determined to be entitled to confidential treatment cannot be disclosed in the absence of such finding.

The only reference to paragraph (4)(C) in the legislative history of TREAD occurred in a colloquy between Chairman Tauzin and Representative Markey, in which Chairman Tauzin agreed with Mr. Markey's statement that the "special disclosure provision for new early stage information is not intended to protect [information] from disclosure that is currently disclosed under existing law . . . ." 146 Cong.Rec H9629 (daily ed. Oct. 10, 2000). The most sensible reading of paragraph (4)(C) is that it was intended to replicate the effects of section 30167(b) for information obtained under the early warning section. This reading is consistent with the colloquy between Chairman Tauzin and Mr. Markey.

##

Concur Rosalind A Knapp

Non-concur__________

Date Oct 27, 2000

U.S. HOUSE OF REPRESENTATIVES

LEGISLATIVE BRIEF

T.R.E.A.D. ACT

Introduced By Representative Fred Upton (R-MI)
Chairman, House Commerce Subcommittee on Oversight and Investigations
September 12, 2000

— SAME AS OURS ?

- Requires the reporting to NHTSA of significant defects on autos or tires in foreign countries. *In the Firestone situation, the Subcommittee found that Firestone was concerned about recalling tires for fear of having to notify federal traffic safety regulators (i.e., NHTSA). NHTSA is unclear what obligation domestic manufacturers have to report to NHTSA recalls in foreign countries.* — CLAIMS DATA ? SAME ?

- Directs National Highway Traffic Safety Administration (NHTSA) to promulgate a rule which would require all manufacturers of tires sold in the United States to periodically report to NHTSA, for a period to be determined by NHTSA, claims data. Claims means legal claims against a tire manufacturer for personal injury (including death) and property damage due to alleged tire defects. *In the Firestone situation, the Subcommittee found that Firestone was not reviewing claims data to determine whether there were defect trends in their tires (although they were reviewing such data for profit/loss purposes). Yet, upon examination of such data at the commencement of the NHTSA investigation, a significant defect trend was realized and Firestone used such data as the basis for their 6.5 million tire recall.* — SAME

- Increases from 3 to 5 years the limit on the obligation of tire manufacturers to remedy, without charge, safety-related defects and noncompliances with federal motor vehicle safety standards. *This is one of NHTSA's recommendations. This provision would provide the consumer with greater protect during a tire recall.*

- Increases the safety act's maximum civil penalty from $1000 to $5000 for each violation of any of the safety act's general provisions, and increases the maximum penalty from $800,000 to $4,000,000 for any related series of violations. Establish the current prohibition for violations of reporting and other informational requirements as a separate provision, and set a new penalty structure for violations. The maximum penalty under this separate provision would be $5000 per violation, per day, and the maximum penalty for a related series of violations would be $500,000. *This is one of NHTSA's recommendations.* *

- Directs NHTSA to update its tire safety compliance standard ("Safety Standard 109"). *Safety Standard 109 specifies tire dimensions and laboratory test requirements for strength, endurance, and high speed performance. This standard has not been updated since 1968, prior to the widespread use of steel-belted radials, which are today's norm.* *

- Authorizes appropriations of $500,000 for NHTSA's Office of Defects Investigations. *This will help provide the resources necessary to carry out thorough and effective investigations.* *

(Original Signature of Member)

106TH CONGRESS
2D SESSION

H. R. 5164

Sept. 13, 2000

IN THE HOUSE OF REPRESENTATIVES

Mr. UPTON introduced the following bill; which was referred to the Committee on

A BILL

To amend title 49, United States Code, to require reports concerning defects in motor vehicles or tires or other motor vehicle equipment in foreign countries and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Transportation Recall Enhancement, Accountability, and Documentation Act".

SEC. 2. REPORTING OF DEFECTS IN MOTOR VEHICLES IN FOREIGN COUNTRIES.

Section 30118 of title 49, United States Code, is amended by adding at the end the following:

"(f) REPORTING OF DEFECTS IN MOTOR VEHICLES AND PRODUCTS IN FOREIGN COUNTRIES.—

"(1) REPORTING OF DEFECTS.—

"(A) MANUFACTURER DETERMINATION.—Not later than 5 days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle, tire, or motor vehicle equipment that is also offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

"(B) FOREIGN GOVERNMENT DETERMINATION.—Not later than 5 days after receiving notification that the government of a foreign country has determined that a safety recall or other safety campaign must be conducted in the foreign country on a motor vehicle, tire, or motor vehicle equipment that is also offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

"(C) REPORTING REQUIREMENTS.—The Secretary shall prescribe the contents of the notification required by this paragraph.

"(2) REPORTING OF POSSIBLE DEFECTS.—Upon making a determination that there have been a significant number of serious injuries or fatalities in a foreign country caused by a defect in a motor vehicle, tire, or motor vehicle equipment that is also offered for sale in the United States that could be related to motor vehicle safety (as determined in accordance with regulations promulgated by the Secretary), the manufacturer of the United States motor vehicle, tire, or motor vehicle equipment shall report the determination to the Secretary in such manner as the Secretary establishes by regulation.".

SEC. 3. TIRE MANUFACTURER REPORTING.

The Administrator of the National Highway Traffic Safety Administration shall promulgate a rule requiring manufacturers of tires to report periodically to the Administration data on claims submitted to the manufacturer for personal injury (including death) and property damage from alleged defects in the manufacturer's tires. The rule shall prescribe the rate at which such reports shall be made.

SEC. 4. REMEDIES WITHOUT CHARGE.

Section 30120(g)(1) of title 49, United States Code, is amended by striking "3 calendar years" and inserting "5 calendar years".

SEC. 5. CIVIL PENALTIES.

Section 30165 of title 49, United States Code, is amended—

(1) in the first sentence by—

(A) inserting "(1)" after "PENALTY.—";

(B) inserting "or" after "30127,"

(C) striking "or 30166"; and

(D) striking "$1,000" and inserting "$5,000";

(2) in the third sentence, by striking "subsection" and inserting "paragraph" and by striking "$800,000" and inserting "$4,000,000"; and

(3) by adding at the end the following:

"(2) A person who violates section 30166 or a regulation prescribed under that section is liable to the United States for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is $5,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is $500,000.".

SEC. 6. ENDURANCE AND RESISTANCE STANDARDS FOR TIRES.

The Administrator of the National Highway Traffic Safety Administration shall conduct a rulemaking to revise and update the tire standard published at 49 C.F.R. 571.109 and 49 C.F.R. 571.119

SEC. 7. APPROPRIATION FOR OFFICE OF DEFECTS AND INVESTIGATION.

There is authorized to be appropriated to the Office of Defects and Investigation of the National Highway Traffic Safety Administration $500,000 for fiscal year 2001.

PRESS RELEASE

Congressman Fred Upton
Michigan 6th District

For Immediate Release
September 13, 2000

Contact: Mike Waldron
(202) 225-3761

BI-PARTISAN AUTO SAFETY LEGISLATION INTRODUCED IN WAKE OF TIRE HEARINGS

Washington, DC ... A bi-partisan group of House Commerce Committee members today introduced the Transportation Reporting Enhancement, Accountability and Documentation Act, or, the **TREAD** act; a bill aimed at improving communication and consumer protection measures between the auto industry, tire manufacturers, and the federal government. The legislation was authored by Rep. Fred Upton (R-MI), Chairman of the House Commerce Subcommittee on Oversight and Investigations who co-chaired last week's hearings with Rep. Billy Tauzin (R-LA), Chairman of the House Commerce subcommittee on Telecommunications, Trade and Consumer Protection, which investigated 88 deaths associated with the use of Firestone tires.

"The sand has almost run out of our hour glass in terms of this Congressional activity," said Upton. "We've worked to craft a bill with the input of Republicans and Democrats that can be on the President's desk before the end of the year. This is an issue of life and death, and is too important not to get something done this session."

More specifically, the bill requires auto and tire manufacturers to report any defects on American tires or automobiles sold in foreign countries. During the hearing last week, the Subcommittee found that Firestone was concerned about recalling tires sold overseas for fear of having to notify federal regulators. In addition, Upton's bill requires tire manufacturers to periodically report claims data to the National Highway Traffic Safety Administration (NHTSA), increase the time period under which tire manufacturers must repair or replace faulty products, substantially increases penalties for noncompliance, and directs NHTSA to update its tire safety standards which has not been updated since 1968. The bill also authorizes additional funds for NHTSA's Office of Defects and Investigations to handle the potential increased workload.

"This is one of the most important, far-reaching bills designed to improve highway safety in more than 30 years," added **Congressman Billy Tauzin (R-LA; Contact: Ken Johnson 225-4031)**, Chairman of the House Commerce Subcommittee on Telecommunications, Trade, and Consumer Protection. "I'm confident that this legislation, if approved, will help us to head off another national tragedy on our highways. Simply put, it will save lives."

- MORE -

PAGE 2
BI-PARTISAN AUTO SAFETY LEGISLATION
SEPTEMBER 13, 2000

"We owe it to the families who lost loved ones to change the system," said **Rep. Heather Wilson (R-NM; Contact: Kevin McDermott 225-6316)** who represents New Mexico, which had 10 accidents allegedly caused by the tires that resulted in at least 13 injuries and 9 fatalities. "Two of the people who died over the Memorial Day weekend, and their unborn baby, were my constituents. Firestone knew they had a problem and they did nothing about it. This legislation will give the government the power they need to ensure that a tragedy like this doesn't happen in the future."

BI-PARTISAN CO-SPONSORS
(As of 1:15 pm, Wednesday, September 13, 2000)

(1) Rep. Billy Tauzin
(2) Rep. Ed Markey
(3) Rep. Heather Wilson
(4) Rep. Rick Boucher
(5) Rep. Ed Whitfield
(6) Rep. Gene Green
(7) Rep. Jim Rogan
(8) Rep. Henry Waxman
(9) Rep. Brian Bilbray
(10) Rep. Vito Fosella
(11) Rep. Bart Gordon
(12) Rep. Diana DeGette
(13) Rep. Bill Luther
(14) Rep. Anna Eshoo
(15) Rep. Karen McCarthy (MO)

\# # #

``CNN MORNING NEWS"
SEPTEMBER 13, 2000

SPEAKERS: DARYN KAGAN, CNN ANCHOR
RODNEY SLATER, U.S. TRANSPORTATION SECRETARY

KAGAN: Joining us now to talk more about the fallout from the Firestone tire recall is Transportation Secretary Rodney Slater. He is joining us from our Washington D.C. bureau.

Mr. Secretary, good morning. Thanks for joining us this morning.

SLATER: Good morning. It's good to be with you. Thank you.

KAGAN: I know you had a chance to testified yesterday before the Senate Commerce Committee. And you are asking for some help for your agency. What kind of help would you like to get?

SLATER: Well, you are right. Yesterday we had a very good meeting before the committee, and I will tell that I really appreciate Chairman McCain and Ranking Member Hollings, as they, along with the other members of the committee, really worked with us in discussing how we move forward, how we are tough and moving forward on the investigation at hand, but also how we enhance the authority and provide additional resource for NHTSA, the National Transportation Safety Administration,which is within the department, having direct responsibility for highway safety matters. How we strengthen...

KAGAN: Because it's clear, Mr. Secretary, at least in the Firestone situation, that the system did not work?

SLATER: Well, the system did not work as it could have. Clearly, had we had the authority to require, or had manufacturers had the responsibility to submit to us information regarding recalls overseas, then we would have had additional information and could have moved forward faster.

But when we did move in May that resulted in a recall in August, and we've also come back with a consumer advisory dealing with additional tires. So we are moving forward now. But, clearly, the additional authority would have helped, had we had it earlier.

KAGAN: What about the limitations right now you have on fines?

SLATER: Well, we are actually proposed, as we had in a communication with the Congress back in Congress, to actually lift the ceiling completely on the civil penalties that can be leveled in a case like this. Also, extending the period, the time period for recalls on vehicles and tires, things of that nature. And a number of other things that are a part of that particular proposal.

KAGAN: Do you think, bottom line, that these hearings have actually been productive. It seems like there is a lot of finger-pointing and for the, you know, the Mary and Joey Smith, who just want to go ahead and get their tires changed on their Ford Explorer, it can be kind of frustrating to watch these big corporate powers and government powers just kind of duke it out. All they want to do is get their tires changed.

SLATER: Well, that is true. But I tell you that these hearings have been necessary to bring to the table the facts about, you know, the situation surrounding the recall. And we've been able to actually expedite the process of educating the public and also moving forward with the investigation, as a result of the hearings. They've been helpful.

And then, yesterday, to actually have a very productive hearing about how we move forward, how we enhance the authority and provide additional resources for a very important organization like NHTSA, that was very, very good.

Chairman McCain is talking about marking up a measure next week with the hopes of getting it passed before Congress ends its business in a few weeks. That is good, that's movement, that's the process working.

KAGAN: You heard a slight admission by the Firestone people yesterday that perhaps there was a design problem with these tires. But does it surprise you that we are this far down the line, this many deaths, this many accidents, and we still don't know exactly why these tires failed?

SLATER: Well, a lot of times, these investigations take time. Now, clearly, there were things that we could have done here, had we had information, and had we been able to move more quickly that would have at least educated the public about the challenges and the possibility for injuries resulting from a defect in the tires.

But, you know, that being the case, meaning the facts as they were, I think that we are on top of the issue now, I think that we are moving forward. Again, it's good that the parties are really required to come forward, to state their case, and to bring some public airing to the issues. That is a good process and, and from that process, we must move forward to ensure that this does not happen again. And that is what the hearing was about yesterday as well.

KAGAN: And just real quickly, as we wrap, your best advice to folks who still have these tires on their cars?

SLATER: Well, continue to monitor the tires, but also go to the Ford and Firestone dealerships and seek to get the tires replaced. That is, now, possible because of the recall, because of the investigation, and because of the responsibility that we all share in ensuring that the products that people use, they should be able to rely on those products performing as they should.

So, go to the dealerships, go to the various manufacturing locations, have the tires changed. And if they aren't available, you know, check other locations and make sure that you get information about the time period, when the tires will be available for replacement.

KAGAN: Rodney Slater, transportation secretary, thank you for your time, sir.

SLATER: Thank you.

END

FOR IMMEDIATE RELEASE:
Wednesday, September 13, 2000

Contact: Kori Bernards
(202) 225-3365

OBEY TO SENATE: DON'T BLOCK S.U.V. SAFETY EFFORTS

Senate Appropriations Bill could delay release of information on SUV rollovers

Washington, D.C. - -Wisconsin Congressman Dave Obey today warned that action by the U.S. Senate could block efforts to prevent additional highway deaths due to Sports Utility Vehicle (S.U.V) rollovers.

"Congress is getting a lot of press these days holding hearings about the defective Firestone tires that caused 88 deaths," Obey said. "But at the same time the Senate is posing for political holy pictures by investigating Firestone and Ford, it is threatening to block an effort by the National Highway Traffic Safety Administration (NHTSA) to inform consumers about the dangers of various S.U.V.'s in rollover situations."

Firestone recently recalled 6.5 million tires after tread separations and other abnormalities caused 88 people to die in automobile crashes involving Ford Explorers with certain Firestone tires. Congress began holding hearings last week to investigate a possible effort by Firestone and Ford to cover up the problems with the recalled tires.

Obey said that in May, Transportation Secretary Rodney Slater proposed a rating system that would provide consumers with a measure of a vehicle's likelihood to rollover as part of the New Car Assessment Program (NCAP). But during Senate consideration of the Transportation Appropriations Bill, the Senate included a rider that would delay the NHTSA's ability to publish that information as part of NCAP.

"When the House-Senate Conference Committee takes up the transportation budget, I will make every effort possible to stop the final bill from blocking the public's ability to know the rollover risk of various S.U.V.'s."

Obey is the top ranking Democrat on the House Appropriations Committee and in that capacity will be one of the key negotiators on the final transportation budget.

###

THE WHITE HOUSE

9/20

TO: Julie Sievert
Jenni Engebretsen
Jose Cerda
Maria Echaveste
Matt Bennett
Kay Casstevens

FR: Sean O'Shea
67074

RE: Current side-by-side from DOT on Firestone issue.

DOT PROPOSAL	UPTON BILL (H.R. 5164)
DOT's Proposal	
1. **International Cooperation:** Provides express authority to cooperate internationally to enhance motor vehicle and traffic safety by exchanging information related to safety defects, noncompliances with motor vehicle safety standards and regulations, and other matters related to motor vehicle safety, conducting vehicle safety research, and updating, developing and promoting improved motor vehicle safety standards and enforcement procedures.	No provision
2. **Compliance Required for Certification:** Requires manufacturers of motor vehicles or items of motor vehicle equipment to test their products for compliance with all applicable federal motor vehicle safety standards or perform engineering analyses that demonstrate compliance, *before* they certify that their products comply with these standards.	No provision

DOT PROPOSAL	UPTON BILL (H.R. 5164)
3. Notification of Defects & Noncompliance: Provides that manufacturers of a motor vehicle, original equipment, or replacement equipment shall have a duty to review and consider information, including from any foreign source, to learn whether the vehicle or equipment contains a defect or does not comply with an applicable Federal vehicle safety standard.	**Reporting of Defects in Motor Vehicles in Foreign Countries:** Requires that mfgr must report: (1) defects (within 5 days) to NHTSA in motor vehicles or tires in foreign countries due to: (A) a mfgr's determination to conduct a safety recall or "other safety campaign" in a foreign country on a motor vehicle, tire, or vehicle equipment that also is offered for sale in USA; and (B) notification to mfgr by a foreign government that a safety recall or other safety campaign must be conducted in that country on a motor vehicle, tire, or vehicle equipment that also is offered for sale in USA; and (2) possible defects to NHTSA in motor vehicles or tires in foreign countries upon determining there have been a significant number of serious injuries or fatalities in that country caused by a defect in the product also offered for sale in the USA that could be related to motor vehicle safety (sec.2).

DOT PROPOSAL	UPTON BILL (H.R. 5164)
4. Extension of Time for Remedies Without Charge: Extends to ten years the current eight-year limit on the obligation of manufacturers of motor vehicles or items of motor vehicle equipment to remedy, without charge, safety-related defects and noncompliances with federal motor vehicle safety standards. Increases from three years to five years the limit on the obligation of tire manufacturers to provide such a remedy. (Congress established both limits in 1974.)	No provision on motor vehicles. Adopts DOT's proposal to extend time for tires to 5 years (sec. 4).
5. Limitation on Sale or Lease of Used Motor Vehicles: Prohibits dealers of used motor vehicles from selling or leasing used vehicles for purposes other than resale until the dealer informs the purchaser or lessee of any notifications by a manufacturer of a defect or noncompliance with respect to the vehicle that have not been remedied, and requires the dealer either to offer to have the defects or noncompliances remedied or give the purchaser or lessee a written description of the defects or noncompliances, the written acknowledgment of which must be received by the dealer from the purchaser or lessee.	No provision

→ Tire resale;
sale of recalled vehicles/parts

 • criminal sanctions

DOT PROPOSAL	UPTON BILL (H.R. 5164)
6. Limitation on Operation by Owners & Lessors of School Buses and Vehicles Used to Transport Passengers for Compensation: Prohibits an owner or lessor of a school bus or of a motor vehicle used to transport passengers for compensation, who receives notice of a safety-related defect or noncompliance regarding the vehicle, from operating the vehicle until the defect or noncompliance is remedied.	No provision
7. Increase in Motor Vehicle and Motor Vehicle Equipment Penalties: Increases the motor vehicle safety statute's maximum civil penalty from $1,000 to $5,000 for each violation of any of the statute's general provisions, -- and removes the $800,000 ceiling on civil penalties for any related series of violations (a change from the $4 million limit originally sought in March 2000). Establishes the current prohibition for violations of reporting and other informational requirements as a separate provision, setting a new penalty structure for violations of this provision of $5,000 for each violation per day, and the maximum penalty for any related series of daily violations of $500,000.	Increases the maximum civil penalty from $1,000 to $5,000 for each violation of any of the statute's general provisions, but increases the maximum from $800,000 to $4 million for any related series of violations (sec. 5). Adopts DOT's proposal (sec. 5).

DOT PROPOSAL	UPTON BILL (H.R. 5164)
8. Administrative Penalties: Provides an administrative penalty provision, in addition to the current civil penalty provision, to allow the Secretary to assess a civil penalty, for violations of the motor vehicle safety chapter or a regulation issued thereunder, by order after opportunity for a formal (sections 554 and 556 of the APA) administrative hearing. Penalty amounts would be set at $5,000 for each violation, with a maximum for a related series of violations of $1 million.	No provision

DOT PROPOSAL	UPTON BILL (H.R. 5164)
9. Records and Reports: Directs the Secretary to issue rules to require a motor vehicle or equipment mfgr to keep records and make reports periodically or to an order, based on information it obtains concerning: (1) crashes or incidents in vehicles or equipment where fatalities, serious injuries, or fires have occurred; and (2) warranty or adjustment information related to actual or potential defects. This proposal also would permit the Secretary to require: (1) a motor vehicle or equipment mfgr to give the Secretary access to its communications on defects and recalls to the same extent and manner as such communications are accessed by the mfgr's dealers; and (2) auto insurance and auto insurance claims adjustor businesses to keep records or make reports periodically or to an order, based on information they obtain concerning crashes or incidents in vehicles or equipment where fatalities, serious injuries, or fires have occurred, including vehicle ID numbers and insured's names, addresses, and phone numbers–all of which personal information must be treated as confidential.	**Reporting of Defects in Motor Vehicles in Foreign Countries:** Requires that mfgr must report: (1) defects (within 5 days) to NHTSA in motor vehicles or tires in foreign countries due to: (A) a mfgr's determination to conduct a safety recall or "other safety campaign" in a foreign country on a motor vehicle, tire, or vehicle equipment that also is offered for sale in USA; and (B) notification to mfgr by a foreign government that a safety recall or other safety campaign must be conducted in that country on a motor vehicle, tire, or vehicle equipment that also is offered for sale in USA; and (2) possible defects to NHTSA in motor vehicles or tires in foreign countries upon determining there have been a significant number of serious injuries or fatalities in that country caused by a defect in the product also offered for sale in the USA that could be related to motor vehicle safety (sec 2). **Tire Manufacturer Reporting:** NHTSA to issue rule requiring tire mfgrs to report periodically on claims data on personal injury & property damage from alleged defects in tires (sec. 3).
10. Definitions: Records and Reports: Provides new definitions for the terms 'dealer', 'distributor', 'manufacturer', 'owner', 'purchaser', and 'person' in the context of the statute's section on records and reports (section 30166) in order to extend the statute's reach outside of the United States.	No provision

- info manuf. turns over to attorneys or courts in litigation

DOT PROPOSAL	UPTON BILL (H.R. 5164)
11. Effective Date: Makes effective 180 days after enactment the following proposals: 3 (Notification of Defects & Noncompliance), 8 (Administrative Penalties), 9 (Records and Reports), and 10 (Definitions: Records and Reports).	No provision
12. Increase in Odometer Penalties: Increases the civil penalty under the odometer fraud statute from $2,000 (set by statute in 1986) to $5,000 for each violation, and increases the maximum penalty from $100,000 (set by statute in 1976) to $1,000,000 for any related series of violations. Increases the limit on damages that the victims of odometer fraud can recover from violators of the statute, from the current three times actual damages or $1,500, whichever is greater, and reasonable attorney fees (set by statute in 1972), to three times actual damages or $10,000, whichever is greater, and reasonable attorney fees.	No provision
No provision	**Endurance and Resistance Standards for Tires:** Directs NHTSA to update the tire safety standard published at 49 CFR 571.109 and 571.119 (sec. 6).
No provision	No provision
No provision	**Appropriation for NHTSA's Office of Defects and Investigation:** Authorizes appropriations of $500,000 for FY 2001 for NHTSA's Office of Defects and Investigation (sec.7).

Consumers for Auto Reliability and Safety

To - Leanne Shimabukuro

FYI

FAX TRANSMISSION

DATE: 9/15/00

TO: Dorothy Robyn

FROM: Rosemary Shahan

Number of Pages (including this one): 4

Here are two sources that should not be overlooked, to add to NHTSA's authority—to improve earlier detection of safety defects.

They are to:

- Capture data from state lemon law complaints (the vast majority are safety-related)
- Strengthen the notice requirement for manufacturers to inform consumers about NHTSA in owners manuals

The following letter to Charlotte Hmcir at NHTSA gives the specifics.

If you have questions about these suggestions, please do not hesitate to contact me at 530-759-9440 or via e-mail at autosafety@earthlink.net. Thank you!

926 J Street, Suite 523 • Sacramento, CA 95814 • Tel: 530-759-9440 • Fax: 530-759-9442
Website: www.carconsumers.com

Consumers for Auto Reliability and Safety

September 13, 2000

Charlotte Hrncir
Director of Intergovernmental and Congressional Affairs
Room 5220, NOA-04
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

RE: Important sources of consumer complaints about auto safety defects

Dear Director Hrncir:

As the Administration and Congress consider legislation to augment NHTSA's authority to obtain data that will lead to earlier identification of vehicle safety defect trends, CARS suggests that you look at the following key sources of valuable information about vehicle safety defects:

1. Consumer complaints leading to refunds pursuant to state lemon laws

Since 1982, all 50 states have enacted "lemon laws" to allow owners of vehicles with chronic defects to obtain refunds or replacements. A very high percentage of defects that trigger lemon law relief are safety related. For example, when California's Department of Motor Vehicles prosecuted Chrysler for illegally reselling lemons without fixing them or providing the mandated disclosures, the DMV found that over 90% of the repurchased vehicles had a warranty history reflecting safety defects.

Those defects included bad brakes, transmissions that slipped into lower gear in freeway traffic, intermittent stalling in traffic, and other serious malfunctions that affect vehicle safety.

According to the California Department of Motor Vehicles, in 1999, over 11,000 new vehicles had their titles branded "lemon law buyback" after they were repurchased by auto manufacturers in 1998 due to defects. Nationwide, it is

926 J Street, Suite 523 • Sacramento, CA 95814 • Tel: 530-759-9440 • Fax: 530-759-9442
Website: www.carconsumers.com

estimated that at least 110,000 vehicles are repurchased annually pursuant to state lemon laws.

2. Consumer complaints filed with state agencies, pursuant to state lemon laws

Many states provide programs for resolving lemon disputes, administered by state attorneys general or offices of consumer affairs. For example, New York, Florida, Texas, New Jersey, Washington, Hawaii, Georgia, Massachusetts, Connecticut, and other states administer lemon law programs. Consumers file for arbitration of lemon law disputes, and specify defects in their applications for arbitration. Those states' programs are all potential gold mines for data showing defect trends in new vehicles.

3. Auto manufacturer-funded programs for resolving lemon disputes

Many other states, including California, provide oversight over dispute resolution programs funded by the auto manufacturers. For example, General Motors offers a program under contract with the Better Business Bureau. Lemon owners contact the BBB and apply for arbitration, stating the problems they are experiencing with their vehicles. AM General, Honda/Acura, Hyundai, Isuzu, Nissan/Infiniti, Porsche, Land Rover, Saab, Saturn, and Volkswagen/Audi also have contracts with the BBB to resolve auto lemon disputes.

Chrysler and Ford have contracts with other entities in Wisconsin, Texas, and Michigan to handle their lemon disputes, filed by customers across the country.

4. Consumer complaints sent to auto manufacturers pursuant to state lemon laws

The majority of states require consumers to contact auto manufacturers directly before they may invoke state lemon law remedies. Some states require a letter to be sent via certified mail. Those communications, where consumers often complain to the manufacturer that they believe their vehicle is unsafe to operate, are early warning signs of vehicle defects.

5. Increasing public awareness of NHTSA and defect reporting via vehicle owners manuals

The CARS Foundation, our affiliated sister organization (formerly named Motor Voters), petitioned NHTSA in 1987 to require auto manufacturers to provide notice to consumers about NHTSA in vehicle owners' manuals. NHTSA granted the petition, and (despite opposition from auto manufacturers) issued a rule requiring certain language, which greatly increased reporting of vehicle safety defects.

The rule is in the Code of Federal Regulations, 49 CFR 575 Consumer Information Regulations, 575.6 (a) (2).

However, the rule does not require the notice to be placed in a prominent position, or to be provided in an eye-catching type font. Some manufacturers comply in letter, but not in spirit, stashing the notice away in the far reaches of the owners manual and failing to mention it at all in the initial table of contents.

CARS suggests that NHTSA review compliance with that rule, and consider fine-tuning the requirement to specify ways to make the notice more clear and conspicuous, to enhance early reporting of defects to the agency.

For example, it would be helpful to require prominent disclosure in the front of the owner's manual where to find specifics about where to report a safety defect, including NHTSA's Website address, as well as the toll-free hotline number.

Thank you for your consideration of these views. I hope that they are helpful. Should you or your staff wish to obtain further details, please do not hesitate to contact me via phone at 530-759-9440 or via e-mail at autosafety@earthlink.net.

Sincerely,

Rosemary Shahan

Rosemary Shahan
President

October 9, 2000

Dear Representative,

We are writing to urge the passage of H.R. 5461, despite its serious deficiencies. We believe that Congress should not return to face the voters this November without decisive action on behalf of a public outraged by the deliberate deception of the auto industry and the needless highway fatalities and injuries caused by the Ford/Firestone tragedy.

We are deeply concerned, however, that several sections of the bill actually cut back on the authority of the National Highway Traffic Safety Administration (NHTSA) to respond to a public safety crisis. The legislation was first proposed to increase NHTSA's enforcement power, provide early warning information and decrease the government's reaction time when public safety is at stake. These elements are supposed to be the heart and soul of this legislation. The Senate bill, as a whole, stays true to this purpose.

The House bill, on the other hand, reflects growing pressure from industry by erecting numerous hurdles for NHTSA to leap over *before* it may even issue a rule describing the information the industry must submit. For example, NHTSA may require manufacturers to submit records only if those records are in the "possession" of the automakers. There is no such limitation in NHTSA's authority under present law. Because this section contains no time or other guidelines outlining the records that manufacturers could reasonably be expected to keep, this is a serious constraint, the boundaries of which are controlled by the industry's own choice of practices. This provision will encourage companies to dispose of their records.

Notably, the bill also changes a provision that, under existing law, emphasizes openness (49 U.S.C. sec. 30167(b)) into a secrecy and withholding provision. Consumers already are distressed about the lack of publicly available information on the lethal combination of defective Firestone tires and the Ford Explorer's susceptibility to rollover. It is unacceptable that legislation designed to assure the early warning of future defects would reverse the presumption of openness under the NHTSA statute. Only the industry is interested in secrecy. Public oversight is just as important as congressional oversight, and the public must have access to safety information.

The criminal penalties provision mimics an existing prohibition on giving false information to the government, but, due to the immunity and other provisions, is actually weaker. It also does not address a situation in which an automaker knowingly fails to recall a dangerous vehicle or part, a critical issue raised by the Ford/Firestone trauma.

The House bill also contains some valuable provisions, such as a requirement that manufacturers report to the government if they have actual notice that a defect has caused an injury or fatality, a new requirement for dynamic rollover testing and publication of consumer information on the results, a mandate to upgrade 30-year-old tire safety standards as well as issue a dashboard warning standard for low tire inflation, and two provisions that protect consumers from the resale of defective tires. The civil penalty provisions, as in the Senate bill, are appropriately increased after twenty-five years.

Nearly every day, the news contains another revelation about deceptive auto industry practices, closed NHTSA investigations, tire defects and auto company cover-ups that have cost consumers their lives and peace of mind. Automobile crash survivors and families who lost loved ones told some of these stories to some of you over the past two weeks, when they visited your offices to ask for your support on this legislation.

As Representative Bill Luther noted at the full committee mark-up on the bill, it is a shame that congressional action is required to mandate that automakers merely follow ethical business practices, and notify the government and the public when they become aware that a life-threatening defect is present in cars driven every day. Ford and Firestone knew for years about this problem and took no action to warn the public or to recall the deadly vehicles and tires. That is why strong legislation is being demanded by the families who lost loved ones in the many accidents caused solely by these and other known safety defects.

We urge you to vote to send this bill forward, to encourage the House managers to work with the Senate managers to improve the legislation, and to make sure that the authority of NHTSA to protect the public safety is not degraded.

Sincerely,

Joan Claybrook
President, Public Citizen

Janette Fennell
Founder
Trunk Releases Urgently Needed Coalition (TRUNC)

Rosemary Shahan
President
Consumers for Auto Safety and Reliability

Michele Struttman
Co-Founder
Kids N' Cars

Clarence Ditlow
Executive Director
Center for Auto Safety

Phyllis G. Rowe
President
Arizona Consumers Council

TOTAL P.03

Consumers Union
Nonprofit Publisher of Consumer Reports

Press Release

October 12, 2000

Contact:
Sally Greenberg
202-462-6262
Consumers Union Washington DC Office

CONSUMERS UNION "TROUBLED BY PROCESS" IN PASSAGE OF AUTO SAFETY BILL

Consumers Union expressed disappointment that Senate efforts to improve the House-passed auto safety bill, H.R. 5164, legislation responding to the Ford-Firestone product safety problems, were unsuccessful. The Senate adopted the House bill this evening without amendments. CU had noted its preference for the stronger provisions in the Senate version of the auto safety bill, S. 3059.

"We were troubled by the process by which this legislation was enacted, with Senators who expressed concerns about specific provisions of the bill having no opportunity to offer amendments to improve the legislation," said Sally Greenberg, CU's Senior Product Safety Counsel. "This shortened process is an unfortunate byproduct of the end of the session and the rush to get legislation passed."

CU noted its appreciation for the efforts of Congress to address this issue, and especially the leadership of Senate Commerce Committee Chairman John McCain and Congressman Edward Markey in the House, both of whom sought stronger provisions in the bill. CU will support Senator McCain in his efforts to hold Commerce Committee hearings quickly after Congress reconvenes next year to fill in the gaps in what was enacted in such a hurried fashion in the 106th Congress.

CU has the following serious concerns about the bill adopted by Congress:

- A "safe harbor" provision in the criminal penalty section may have the effect of protecting those who have the "specific intent of misleading the Secretary with respect to motor vehicle or motor vehicle safety related defects."

- The bill makes public disclosure of "early warning" information on product defects far too onerous, shifting the burden to the public to get this information released.

- The bill limits manufacturers' duty to supply information in their "possession," which could be interpreted to exclude the files of their lawyers or accountants, or allow manufacturers to refuse an agency request to prepare a report or compilation of data from their existing files, since that report or compilation doesn't currently exist but would have to be prepared. The agency currently has the power to ask for the preparation of such information.

While CU has these serious concerns, we also note that there are a number of important and positive provisions in the bill passed by Congress. We strongly support the provision directing National Highway Traffic Safety Administration (NHTSA) to develop a dynamic test for rollover and use the results of that test for a consumer information program. We support providing the NHTSA with enhanced ability to gather data about product recalls domestically and overseas;

to collect information about product safety concerns from insurance companies and manufacturers, and to increase civil penalties for manufacturers' failure to report information about known or suspected product safety defects or problems. The legislation also directs NHTSA to upgrade its decades-old tire standard.

"It is absolutely critical that Congress address the concerns cited above when it reconvenes to assure that this legislation doesn't backfire and undermine the very goals it seeks to achieve."

###

Consumers Union, publisher of Consumer Reports, is an independent, nonprofit testing and information organization, serving only the consumer. We are a comprehensive source of unbiased advice about products and services, personal finance, health, nutrition, and other consumer concerns. Since 1936, our mission has been to test products, inform the public, and protect the consumers.

Please contact us at: http://www.consumersunion.org/contact.htm

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION

TRANSPORTATION
NEWS DAILY 2000

10

Los Angeles Times
10/16/00
A14

A Step, at Least, in Auto Safety

Congress didn't go as far as it should have last week in hammering out a compromise on new auto safety legislation. A gaping loophole remains in the Transportation Recall Enhancement, Accountability and Documentation Act, with its too-cute acronym of TREAD, which sets criminal penalties of up to 15 years for company executives who knowingly hide information about product defects. Nevertheless, the legislation takes a big step beyond the current toothless enforcement regimen.

Moreover, new court pressures from California and five other states may increase the heat on Congress and the next administration to do more to protect American consumers.

TREAD, passed by unanimous consent in both houses, is expected to be signed by President Clinton this week. It is important to note, however, that Congress had a shot at a tougher bill sponsored by Sen. John W. McCain (R-Ariz.). McCain was unable to get his legislation to the floor for a vote despite being chair of the powerful Senate Commerce Committee. Some of McCain's Senate colleagues blamed time pressure from the impending election recess. More likely, tire and auto industry lobbying pressure helped block it.

The bill that did pass contains a so-called "safe harbor provision" allowing executives to avoid jail if they later come forward and disclose defects. Detractors say this allows manufacturers to hide problems right up to the time when a flaw is likely to be discovered by regulators. Nevertheless, TREAD makes important strides. It compels auto and tire manufacturers to report overseas product recalls to U.S. regulators within five days. It also raises the maximum civil penalty against manufacturers at fault to $15 million from the current $925,000. The bill further requires manufacturers to report to federal regulators any claims submitted to the manufacturer for personal injury, including death, and property damage from alleged defects in tires or other equipment.

There's more. The act gives the National Highway Traffic Safety Administration greater powers to obtain information from foreign and domestic sources. It directs the federal government to conduct motor vehicle rollover tests and to inform the public of the results. Additionally, the law requires the NHTSA to improve the safety standards of child safety seats and to set a standard for vehicle booster seats for children ages 4 to 8 and weighing between 40 and 80 pounds.

Last week's landmark ruling by an Alameda County Superior Court judge also adds pressure on manufacturers, requiring Ford Motor Co. to recall up to 1.7 million Ford, Lincoln and Mercury vehicles with an alleged ignition problem that reportedly has caused vehicles to stall. Ford insists its vehicles are safe, but the company has settled about 15 injury and death claims related to the problem.

The ruling by Alameda County Judge Michael Ballachey, which Ford will appeal, applies to vehicles sold in California. But similar lawsuits are pending in Tennessee, Illinois, Alabama, Maryland and Washington.

Ford and other auto manufacturers have a strong argument in saying that state judges should not be allowed to set different recall policies in each any state. In that case, Ford and other manufacturers ought to be willing to accept tougher federal scrutiny, and the Congress should give regulators more of the powers they need to do the job.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 11, 2000

The Honorable John McCain
Chairman
Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you know, the House acted early today to pass H.R. 5164, the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. This is another important step toward resolving issues raised by the National Highway Traffic Safety Administration's (NHTSA) ongoing Firestone tire investigation.

We strongly support enactment of H.R. 5164. The bill provides increased penalties for safety defects and noncompliances in motor vehicles and motor vehicle equipment; lengthens the period for free remedy of defects and noncompliances; enhances the ability of NHTSA to obtain information from foreign as well as domestic sources; and authorizes increased appropriations to enable NHTSA to carry out its additional responsibilities. These provisions were sought by the Administration in its proposed legislation. H.R. 5164 also directs NHTSA to review and report on its procedures for opening defect investigations, a review which the agency has already begun, and directs NHTSA to conduct rulemaking to amend the safety standards on tires, an action which is consistent with the agency's rulemaking plans.

The early warning section in H.R. 5164 enables NHTSA to obtain information about potential defects earlier than under current law. The agency will use the information in deciding whether to open an investigation and will be able to release information in the context of its investigation, as it does today. Information that is not made a part of an investigation could be released if NHTSA determines it would assist in carrying out the agency's investigative responsibilities. The bill contains a new section 30170 that augments the penalties under section 1001 of title 18, United States Code, if a person intentionally misleads the Secretary concerning a safety defect that results in death or serious injury. A "Safe Harbor" provision would excuse the person from the augmented penalties, but would not excuse the person from other penalties under section 1001. The Department of Justice will communicate separately its views on the criminal provisions.

The focus now turns to the Senate, where you have been working diligently on passage of similar legislation, S. 3059, the Motor Vehicle and Motor Vehicle Equipment Defect Notification Improvement Act. Both of the bills contain several key provisions proposed by the Clinton-Gore Administration. We are committed to ensuring that NHTSA has the authority to seek and receive information on potential defects; receives sufficient funding to carry out its expanded responsibilities; and has the authority to impose stiffer penalties to ensure compliance with U.S. motor vehicle safety laws.

Also, Senate confirmation of the President's nominee for Administrator of NHTSA would help implementation of this legislation immeasurably.

In the final days of the 106th Congress, we must not lose the opportunity to save lives and prevent injuries. I urge the full Senate to pass H.R. 5164 before the end of this session. It is critically needed legislation.

Sincerely,

Rodney E. Slater

October 9, 2000

Dear Representative,

We are writing to urge the passage of H.R. 5461, despite its serious deficiencies. We believe that Congress should not return to face the voters this November without decisive action on behalf of a public outraged by the deliberate deception of the auto industry and the needless highway fatalities and injuries caused by the Ford/Firestone tragedy.

We are deeply concerned, however, that several sections of the bill actually cut back on the authority of the National Highway Traffic Safety Administration (NHTSA) to respond to a public safety crisis. The legislation was first proposed to increase NHTSA's enforcement power, provide early warning information and decrease the government's reaction time when public safety is at stake. These elements are supposed to be the heart and soul of this legislation. The Senate bill, as a whole, stays true to this purpose.

The House bill, on the other hand, reflects growing pressure from industry by erecting numerous hurdles for NHTSA to leap over *before* it may even issue a rule describing the information the industry must submit. For example, NHTSA may require manufacturers to submit records only if those records are in the "possession" of the automakers. There is no such limitation in NHTSA's authority under present law. Because this section contains no time or other guidelines outlining the records that manufacturers could reasonably be expected to keep, this is a serious constraint, the boundaries of which are controlled by the industry's own choice of practices. This provision will encourage companies to dispose of their records.

Notably, the bill also changes a provision that, under existing law, emphasizes openness (49 U.S.C. sec. 30167(b)) into a secrecy and withholding provision. Consumers already are distressed about the lack of publicly available information on the lethal combination of defective Firestone tires and the Ford Explorer's susceptibility to rollover. It is unacceptable that legislation designed to assure the early warning of future defects would reverse the presumption of openness under the NHTSA statute. Only the industry is interested in secrecy. Public oversight is just as important as congressional oversight, and the public must have access to safety information.

The criminal penalties provision mimics an existing prohibition on giving false information to the government, but, due to the immunity and other provisions, is actually weaker. It also does not address a situation in which an automaker knowingly fails to recall a dangerous vehicle or part, a critical issue raised by the Ford/Firestone trauma.

The House bill also contains some valuable provisions, such as a requirement that manufacturers report to the government if they have actual notice that a defect has caused an injury or fatality, a new requirement for dynamic rollover testing and publication of consumer information on the results, a mandate to upgrade 30-year-old tire safety standards as well as issue a dashboard warning standard for low tire inflation, and two provisions that protect consumers from the resale of defective tires. The civil penalty provisions, as in the Senate bill, are appropriately increased after twenty-five years.

Nearly every day, the news contains another revelation about deceptive auto industry practices, closed NHTSA investigations, tire defects and auto company cover-ups that have cost consumers their lives and peace of mind. Automobile crash survivors and families who lost loved ones told some of these stories to some of you over the past two weeks, when they visited your offices to ask for your support on this legislation.

As Representative Bill Luther noted at the full committee mark-up on the bill, it is a shame that congressional action is required to mandate that automakers merely follow ethical business practices, and notify the government and the public when they become aware that a life-threatening defect is present in cars driven every day. Ford and Firestone knew for years about this problem and took no action to warn the public or to recall the deadly vehicles and tires. That is why strong legislation is being demanded by the families who lost loved ones in the many accidents caused solely by these and other known safety defects.

We urge you to vote to send this bill forward, to encourage the House managers to work with the Senate managers to improve the legislation, and to make sure that the authority of NHTSA to protect the public safety is not degraded.

Sincerely,

Joan Claybrook
President, Public Citizen

Janette Fennell
Founder
Trunk Releases Urgently Needed Coalition (TRUNC)

Rosemary Shahan
President
Consumers for Auto Safety and Reliability

Michele Struttman
Co-Founder
Kids N' Cars

Clarence Ditlow
Executive Director
Center for Auto Safety

Phyllis G. Rowe
President
Arizona Consumers Council

Public Citizen

The Ford/Firestone T.R.E.A.D. Bill (H.R. 5164)

Reduces Public Access to Crucial Safety Defect Information

Last week, the auto industry's lobbyists succeeded in bottling up and eventually stopping Sen. John McCain's pro-consumer Senate version of the Ford/Firestone legislation that increased the enforcement authority of federal auto safety regulators. This left the Senate with just one option: passage of a damaging counterpart measure developed solely by the House of Representatives.

The House version of the bill was not widely available when the Senate voted on it, a mere 18 hours after the bill's passage in the House at 12:30 a.m. Wednesday morning. The Majority leader pushed the immediate Senate consideration of the House bill, which did not allow senators to fully consider the effects of the law being approved.

In the end, it was a bait-and-switch— bad legislation for good. Despite its consumer-friendly extras, the new law sells out the original vision for the legislation, which was to increase the government's authority to gather crucial safety information from manufacturers, get early warnings on deadly safety defects to the public, and criminally punish the knowing sale of defective vehicles that have caused death or serious injury.

The damage:

Secrecy: The bill thwarts the legislation's original purpose by imposing secrecy upon the National Highway Traffic Safety Administration (NHTSA). Under sec. 3(b)(4)(C), NHTSA *shall not* make public any early warning defect information such as lawsuits, or consumer complaints and satisfaction campaigns, *unless* the agency decides to disclose it. This overrides the present law favoring disclosure under the NHTSA statute and the Freedom of Information Act. While the auto industry argued that commercially sensitive documents needed secrecy, these are already protected. This new law is calculated over-kill and reduces the public's access to timely, crucial safety data.

Manufacturers retain their information advantage over the public and NHTSA:

Section 2 of the new law repeals a recently enacted provision of the FY 2001 Department of Transportation Appropriations Bill that created a duty for manufacturers to review and consider domestic and foreign information about their products to learn whether a defect exists. This provision was crucial because industry lobbyists had already succeeded in removing any language from the T.R.E.A.D. bill that would require companies to *analyze* their data. As the latest Ford/ Firestone tragedy has dramatically shown, manufacturers have an enormous information advantage over NHTSA and the public. If NHTSA must do *all* the hard work of finding defects by itself, many more lives will be lost unnecessarily, and many more people seriously injured.

Legislators lost an opportunity to develop appropriate criminal penalties: The bill does not authorize criminal penalties for the knowing failure to recall a dangerous product, but merely copies an existing federal law that already punishes false statements to the government.

The scorecard:

The T.R.E.A.D. bill may stop federal regulators from sitting on their hands on a few issues, but at a high price for the public and government. Here is a tally of gains and losses for consumers:

1. Large losses: The bill's large print promises many things the government could have done anyway, while the small print whittles away at regulators' authority to make new rules or share manufacturers' safety and defect information with the public. The bill:

> **Repeals** a recently enacted provision creating a duty for manufacturers to review in-house information to learn whether a product is defective and to report the defect to regulators.
>
> **Allows companies to keep the information advantage.** Unlike the original Senate bill, the bill sent to the president creates no duty for auto manufacturers to investigate or analyze problems in the use of their products, leaving federal regulators alone in looking for defects.
>
> **Restricts early warning information.** The bill contains four *new* limits on federal power to make rules about the information on safety defects handed over by auto manufacturers:

1) The government cannot make public any information it gets about safety defects *unless* it specifically decides it can (the same data is automatically made public now, but is reviewed before it is released if the auto manufacturer requests confidentiality);

2) The government must specify in great detail exactly how the information will be used before it may even request it, thus giving industry a way of protesting requests;

3) The government may not ask for information that is not in the "possession" of the manufacturer, which may encourage companies to destroy or hide records;

4) The government may not create reporting requirements that are too costly for companies. How NHTSA is to get this industry cost data is not specified.

2. Treading water: In at least one area, the bill's language is clearly designed to provide political cover while actually creating no new criminal authority. The bill:

> **Enacts toothless criminal penalties.** As Sen. John McCain acknowledged on the floor of the Senate, the much-touted new criminal penalties provision will rarely, if ever, be used by prosecutors due to its immunity provision, which allows intentional liars to go free if they correct the lie within a reasonable time. This section mimics an existing law, 18 U.S.C. 1001, which already prohibits false statements to government agencies, including NHTSA.

3. New authority: The bill expands NHTSA's power to act in several noncontroversial areas. The bill:

> **Extends the defect recall statute of limitations** for NHTSA to order industry to pay for replacement parts from eight to ten years for vehicles and three to five years for tires.
>
> **Increases the maximum civil fine** for a series of regulatory violations to $15 million from the previous ceiling of $925,000.
>
> **Allows a $5,000 maximum daily penalty for withholding documents**, up to $15 million.
>
> **Increases funds** for NHTSA by $9.2 million over the amount already appropriated for DOT.

Requires notification of foreign recalls: Auto manufacturers must alert NHTSA of a recall or consumer satisfaction campaign abroad if the recalled product is sold in the U.S.

4. Demanding the obvious: The bill also instructs NHTSA to carry out tasks it already has the power to do. The new law directs the agency to:

Issue early warning reporting requirements: The government must require manufacturers to submit information that assists in the early identification of safety defects.

Develop a dynamic rollover test for a government-run consumer information program to tell consumers of vehicles' propensity to roll over under real-world conditions.

Update 30-year-old tire safety standards, improve tire labeling, and notify consumers of the importance of tire inflation and load limitations.

Require a tire pressure warning system to tell drivers if any of the tires are under-inflated.

Take steps to accelerate manufacturer replacement of recalled parts or vehicles, and to repay consumers who replace defective parts before a recall officially begins.

Require intermediate and final stage manufacturers to assume responsibility for the compliance of their products with federal safety standards.

Prevent the resale and provide for the disposal of defective or noncompliant tires.

Improve the testing of vehicle child safety restraints for a consumer information program based upon a restraint safety rating system and undertake a booster seat safety study.

Review standards and procedures for government recalls and report to Congress.

Study the feasibility of requiring aggregate insurance data to be given to NHTSA.

5. Left out: Some key provisions from the Senate version of the bill and the administration's proposal were omitted from the final version. Any other legislation in this area should:

Allow administrative imposition of some types of civil fines by NHTSA through an administrative law judge to enable the agency to enforce the law effectively and quickly.

Establish requirements for the repair of defective school bus and commercial vehicles to protect children and passengers.

Require used car dealers to notify potential purchasers of uncorrected defects or noncompliance with federal or state safety standards.

Require manufacturers to keep records for ten years rather than the current law's five- year limit to give defects time to surface and to maintain consumer access to information.

Authorize new criminal penalties for knowingly selling or failing to recall a dangerous vehicle or part that causes death or injury.

And, as Rep. Edward J. Markey noted on the House floor, any legislation should also include:

Roof crush safety standards and an effective consumer information program.

Date: October 18, 2000

Return to Public Citizen Home Page

Firestone Recall Page

Newsroom