

TRANSPORTATION RECALL ENHANCEMENT,
ACCOUNTABILITY, AND DOCUMENTATION (TREAD) ACT

OCTOBER 10, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

[To accompany H.R. 5164]

The Committee on Commerce, to whom was referred the bill
(H.R. 5164) to amend title 49, United States Code, to require re-
ports concerning defects in motor vehicles or tires or other motor
vehicle equipment in foreign countries, and for other purposes, hav-
ing considered the same, report favorably thereon with an amend-
ment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	1
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	7
Committee Consideration	8
Committee Votes	8
Committee Oversight Findings	11
Committee on Government Reform Oversight Findings	12
New Budget Authority, Entitlement Authority, and Tax Expenditures	12
Committee Cost Estimate	12
Congressional Budget Office Estimate	12
Federal Mandates Statement	12
Advisory Committee Statement	12
Constitutional Authority Statement	12
Applicability to Legislative Branch	12
Section-by-Section Analysis of the Legislation	13
Changes in Existing Law Made by the Bill, as Reported	17

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. REPORTING REQUIREMENTS.

(a) DEFECTS IN FOREIGN COUNTRIES.—Section 30166 of title 49, United States Code, is amended by adding at the end the following:

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

"(1) REPORTING OF DEFECTS, MANUFACTURER DETERMINATION.—Not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

"(2) REPORTING OF DEFECTS, FOREIGN GOVERNMENT DETERMINATION.—Not later than 5 working 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 or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer of the motor vehicle or motor vehicle equipment shall report the determination to the Secretary.

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

(b) EARLY WARNING REPORTING REQUIREMENTS.—Section 30166, of title 49, United States Code, is amended by adding at the end the following:

"(m) EARLY WARNING REPORTING REQUIREMENTS.—

"(1) RULEMAKING REQUIRED.—Not later than 120 days after the date of enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, the Secretary shall initiate a rulemaking proceeding to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the Secretary's ability to carry out the provisions of this chapter.

"(2) DEADLINE.—The Secretary shall issue a final rule under paragraph (1) not later than June 30, 2002.

"(3) REPORTING ELEMENTS.—

"(A) WARRANTY AND CLAIMS DATA.—As part of the final rule promulgated under paragraph (1), the Secretary shall require manufacturers of motor vehicles and motor vehicle equipment to report, periodically or upon request by the Secretary, information which is received by the manufacturer derived from foreign and domestic sources to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—

"(i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; and

"(ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.

"(B) OTHER DATA.—As part of the final rule promulgated under paragraph (1), the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.

"(C) REPORTING OF POSSIBLE DEFECTS.—The manufacturer of a motor vehicle or motor vehicle equipment shall report to the Secretary, in such manner as the Secretary establishes by regulation, all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States or a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

"(4) HANDLING AND UTILIZATION OF REPORTING ELEMENTS.—

"(A) SECRETARY'S SPECIFICATIONS.—In requiring the reporting of any information requested by the Secretary 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 permit such information to be reviewed and utilized; 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 and 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 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 this subsection, 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 order is restrained or the order is set aside in a civil action to which section 30121(d) applies."

(d) INSURANCE STUDY.—The Secretary of Transportation shall conduct a study to determine the feasibility and utility of obtaining aggregate information on a regular and periodic basis regarding claims made for private passenger automobile accidents from persons in the business of providing private passenger automobile insurance or of adjusting insurance claims for such automobiles. Not later than 120 days after the date of enactment of this Act, the Secretary shall transmit the results of such study to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 3. REMEDIES WITHOUT CHARGE.

Section 30120(g)(1) of title 49, United States Code, is amended by—

- (1) striking "8 calendar years" and inserting "10 calendar years"; and
- (2) striking "3 calendar years" and inserting "5 calendar years".

SEC. 4. PENALTIES.

(a) CIVIL PENALTIES.—Section 30165(a) of title 49, United States Code, is amended to read as follow:

"(a) CIVIL PENALTIES.—

"(1) IN GENERAL.—A person that violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147, or a regulation prescribed thereunder, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. A separate violation occurs

for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is \$15,000,000.

“(2) SECTION 30166.—A person who violates section 30166 or a regulation prescribed under that section is liable to the United States Government 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 \$15,000,000.”.

(b) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Subchapter IV of chapter 301 of title 49, United States Code, is amended by adding at the end the following:

“§ 30170. Criminal Penalties.

“(a) CRIMINAL LIABILITY FOR FALSIFYING OR WITHHOLDING INFORMATION.—

“(1) GENERAL RULE.—A person who violates section 1001 of title 18 with respect to the reporting requirements of section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or grievous bodily harm to an individual, shall be subject to criminal penalties of a fine under title 18, United States Code, or imprisoned for not more than 15 years, or both.

“(2) SAFE HARBOR TO ENCOURAGE REPORTING AND FOR WHISTLE BLOWERS.—

“(A) CORRECTION.—A person described in paragraph (1) shall not be subject to criminal penalties under this subsection if such person corrects any improper reports or failure to report within a reasonable time.

“(B) REASONABLE TIME AND SUFFICIENCY OF CORRECTION.—The Secretary shall establish by regulation what constitutes a reasonable time for the purposes of subparagraph (A) and what manner of correction is sufficient for purposes of subparagraph (A). The Secretary shall issue a final rule under this subparagraph within 90 days of the date of enactment of this section.

“(C) EFFECTIVE DATE.—Subsection (a) shall not take effect before the final rule under subparagraph (B) takes effect.

“(b) COORDINATION WITH DEPARTMENT OF JUSTICE.—The Attorney General may bring an action, or initiate grand jury proceedings, for a violation of subsection (a) only at the request of the Secretary of Transportation.”.

(2) CLERICAL AMENDMENT.—The subchapter analysis for subchapter IV of chapter 301 of title 49, United States Code, is amended by adding at the end the following:

“30170. Criminal penalties.”.

SEC. 5. ACCELERATION OF MANUFACTURER REMEDY PROGRAM.

Section 30120(c) of title 49, United States Code, is amended by inserting at the end thereof the following:

“(3) If the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds—

“(A) that there is a risk of serious injury or death if the remedy program is not accelerated; and

“(B) 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.

The Secretary may prescribe regulations to carry out this paragraph.”.

SEC. 6. SALES OF REPLACED TIRES.

Section 30120(d) of title 49, United States Code, is amended by adding at the end the following: “In the case of a remedy program involving the replacement of tires the manufacturer shall include a plan addressing how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle. The manufacturer shall include information about the implementation of such plan with each quarterly report to the Secretary about the progress about the notification and remedy campaign.”.

SEC. 7. SALES OF REPLACED EQUIPMENT.

Section 30112 of title 49, United States Code, is amended by adding at the end the following:

“(c) PROHIBITION ON SALES OF REPLACED EQUIPMENT.—No person may sell any item of motor vehicle equipment (including a tire) for installation on a motor vehicle that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) or was removed from a motor vehicle as part of an action taken

under section 30120(a) or 30120(b) in a condition that it may be used for its original purpose unless the item of motor vehicle equipment is no longer defective or is otherwise free of the condition that was the subject of the action taken under section 30120(a) or 30120(b)."

SEC. 8. CERTIFICATION LABEL.

Section 30115 of title 49, United States Code, is amended by inserting "(a) IN GENERAL.—" before "A manufacturer" and by adding at the end the following:

"(b) CERTIFICATION LABEL.—In the case of the certification label affixed by an intermediate or final stage manufacturer of a motor vehicle built in more than 1 stage, each intermediate or final stage manufacturer shall certify with respect to each applicable Federal motor vehicle safety standard—

"(1) that it has complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle manufacturer in accordance with regulations prescribed by the Secretary; or

"(2) that it has elected to assume responsibility for compliance with that standard.

If the intermediate or final stage manufacturer elects to assume responsibility for compliance with the standard covered by the documentation provided by an incomplete motor vehicle manufacturer, the intermediate or final stage manufacturer shall notify the incomplete motor vehicle manufacturer in writing within a reasonable time of affixing the certification label. A violation of this subsection shall not be subject to a civil penalty under section 30165."

SEC. 9. ENDURANCE AND RESISTANCE STANDARDS FOR TIRES.

The Secretary of Transportation shall conduct a rulemaking to revise and update the tire standards published at 49 C.F.R. 571.109 and 49 C.F.R. 571.119. The Secretary shall complete the rulemaking under this section not later than June 1, 2002.

SEC. 10. IMPROVED TIRE INFORMATION.

(a) TIRE LABELING.—Within 30 days after the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to improve the labeling of tires required by section 30123 of title 49, United States Code to assist consumers in identifying tires that may be the subject of a recall by the manufacturer. The Secretary shall complete the rulemaking not later than June 1, 2002.

(b) INFLATION LEVELS AND LOAD LIMITS.—In the rulemaking initiated under subsection (a), the Secretary may take whatever additional action is appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels to the safe operation of a motor vehicle. Such additional action may include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on tire inflation levels and load limits if the Secretary determines that requiring such manufacturers to provide such information is the most appropriate way such information can be provided.

SEC. 11. ROLLOVER TESTS.

Section 30117 of title 49, United States Code, is amended by adding at the end the following:

"(c) ROLLOVER TESTS.—

"(1) DEVELOPMENT.—Not later than 2 years from the date of enactment of this subsection, the Secretary of Transportation, acting through the National Highway Traffic Safety Administration, shall—

"(A) develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program; and

"(B) carry out a program of conducting such tests.

"(2) TEST RESULTS.—As the Secretary develops a test under paragraph (1)(A), the Secretary, acting through the National Highway Traffic Safety Administration, shall conduct a rulemaking to determine how best to disseminate test results to the public.

"(3) MOTOR VEHICLES COVERED.—This subsection applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 10,000 pounds or less. A motor vehicle designed to provide temporary residential accommodations is not covered."

SEC. 12. TIRE PRESSURE WARNING.

Not later than one year after the date of enactment of this Act, the Secretary of Transportation, acting through the National Highway Traffic Safety Administration, shall complete a rulemaking for a regulation to require a warning system in a motor vehicle to indicate to the operator when a tire is significantly under inflated. Such requirement shall become effective not later than 2 years after the date of the completion of such rulemaking.

SEC. 13. IMPROVING CRITERIA USED IN A RECALL.

(a) **REVIEW OF STANDARDS AND CRITERIA USED IN OPENING A DEFECT INVESTIGATION.**—The Secretary shall, not later than 30 days after the date of enactment of this Act, undertake a comprehensive review of all standards, criteria, procedures, and methods, including data management and analytical capabilities, used by the National Highway Traffic Safety Administration in determining whether to open a defect investigation pursuant to subchapter II or IV of chapter 301 of title 49, United States Code, and shall undertake such steps as may be necessary to update and improve such standards, criteria, procedures, or methods, including data management and analytical capabilities.

(b) **REPORT TO CONGRESS.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Secretary's findings and actions under subsection (a).

SEC. 14. FOLLOW-UP REPORT.

One year after the date of enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall report to the Congress on the implementation of the amendments made by this Act and any recommendations for additional amendments for consumer safety.

SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

In addition to any sums authorized to be appropriated by sections 30104 or 32102 of title 49, United States Code, there is authorized to be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration for fiscal year 2001 \$9,100,000 to carry out this Act and the amendments made by this Act. Such funds shall not be available for the general administrative expenses of the Secretary or the Administration.

PURPOSE AND SUMMARY

H.R. 5164, the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, is a bill to require reports concerning defects in motor vehicles or tires or other motor vehicle equipment, both domestically and in foreign countries.

The bill requires that manufacturers report to the Secretary of Transportation regarding defects in foreign country, and certain other data. The legislation also lengthens the period in which a motor vehicle equipment or tire manufacturer must provide a defect remedy at no charge, strengthens the statute's civil penalty structure, imposes a criminal penalty for falsifying or withholding information, and requires the Secretary to update the motor vehicle safety standards applicable to tires and improve tire labeling standards. Further, the legislation addresses the availability of parts during a recall, reimbursement for parts replaced immediately prior to a recall, and the resale of replaced equipment. Finally, the legislation authorizes appropriations for the activities authorized by the bill and addresses a number of public information and standard setting rulemakings.

BACKGROUND AND NEED FOR LEGISLATION

In 1990, Firestone began production of a specially-designed 15-inch ATX tire to be used as original equipment on the Ford Explorer, introduced by Ford in model year 1991. This tire was also sold directly to consumers as replacement equipment, and was used as original equipment on several other Ford models. A redesigned version of the tire was introduced both in 1995 and 1996, when the tire was renamed as the ATX II and the Wilderness.

Beginning in 1996, Firestone began receiving large numbers of claims relating to the 15-inch version of these tires, most involving claims of alleged tread separation—where the tread and one steel

belt separate from the other steel belt—a condition considered to be major tire failure. Beginning in mid-1997, Ford dealers in the Middle East began to report similar problems with the 16-inch tires. Testing conducted by Ford and Firestone led to limited recall actions in the Middle East, Venezuela, Malaysia, and Thailand in 1999 and the spring of 2000.

In March 2000, the National Highway Traffic Safety Administration (NHTSA) opened an initial inquiry into this matter, based upon 25 complaints received in 1999 and 2000. A formal investigation was opened in May 2000, and is ongoing. In August, Firestone agreed to a voluntary recall of all 15-inch ATX and ATX II tires, and those Wilderness tires produced at a Firestone plant in Decatur, Illinois. NHTSA also recently encouraged Firestone to expand its voluntary recall to include Wilderness tires produced at other plants, although Firestone has only agreed to examine and replace those tires on a case-by-case basis. For more information about the subcommittees' investigation and the chronology of events, please see the Committee Counsel's memorandum dated September 5, 2000 in preparation for the September 6, 2000 hearing on this matter.

On September 6 and 21, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection held a joint hearing with the Subcommittee on Oversight and Investigations into the Firestone recall actions. From these hearings, it was apparent that NHTSA's reaction to these matters was lacking in several respects.

First, it is clear that the data available to NHTSA regarding the problems with the Firestone tires was insufficient. While testimony showed that the agency had received some complaints about the tires, both from consumers and from an automobile insurance company, they did not receive data about Ford's foreign recall actions or the internal company data on claims related to this data. Second, it is clear that NHTSA did not effectively use the data it did have in its possession to spot the trends related to the failure of these tires. NHTSA faced repeated questioning regarding its failure to act on information provided by a major automobile insurance carrier and admitted that it needs to review its own policies for evaluating its own data.

The Committee believes that the provisions of this legislation are an initial step toward correcting these problems. The bill maintains the existing relationship between NHTSA and the regulated community, but the Committee believes that this measure will create important incentives for manufacturers and others with important information about possible defects to come forward early.

HEARINGS

While the Committee on Commerce has not held hearings on the legislation, the Subcommittee on Telecommunications, Trade, and Consumer Protection and the Subcommittee on Oversight and Investigations heard the testimony of the Honorable Rodney T. Slater, Secretary of Transportation, regarding the Administration's legislative request at their joint hearing on the Ford/Firestone matter.

COMMITTEE CONSIDERATION

On September 21 and 26, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 5164 for Full Committee consideration, as amended by a record vote of 23 yeas and no nays. On October 5, 2000, the Full Committee met in open markup session and ordered H.R. 5164 favorably reported to the House, with an amendment, by a record vote of 42 yeas and no nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Bliely to report the bill, with an amendment, was agreed to by a record vote of 42 yeas and no nays. The names of Members voting for and against follow.

The following amendments were agreed to by a voice vote:

An amendment in the nature of a substitute by Mr. Tauzin, No. 1, making technical changes to the bill;

An amendment to the amendment in the nature of a substitute by Mr. Markey, No. 1a, requiring that the Secretary develop and carry out a program for the dynamic testing motor vehicles for rollovers for purposes of a consumer information program;

An amendment to the amendment in the nature of a substitute by Mr. Bryant, No. 1b, regulating the sale or lease of defective or noncompliant tires;

An amendment to the amendment in the nature of a substitute by Mr. Green, No. 1c, addressing certain motor vehicle safety standard certifications by intermediate or final stage manufacturers;

An amendment to the amendment in the nature of a substitute by Mr. Markey, No. 1e, addressing the reporting of possible defects;

An amendment to the amendment in the nature of a substitute by Mr. Upton, No. 1f, making technical changes;

An amendment to the amendment in the nature of a substitute by Mr. Bilbray, No. 1h, requiring that the Secretary report to Congress on the effectiveness of the bill;

An amendment to the amendment in the nature of a substitute by Mr. Markey, No. 1i, requiring the Secretary to complete a rulemaking for a regulation to require a warning system in a motor vehicle to indicate to the operator when the tire is significantly underinflated; and

An amendment to the amendment in the nature of a substitute by Mr. Bryant, No. 1j, requiring manufacturers to include a plan as part of a remedy program to prevent replaced tires from being resold.

The following amendments were withdrawn:

An amendment to the amendment in the nature of a substitute by Mr. Shimkus, No. 1d, directing the Secretary to improve child restraints; and

An amendment to the amendment in the nature of a substitute by Mr. Pallone, No. 1k, addressing the disposal of replaced tires.

The following amendment was not agreed to by a record vote of 14 yeas and 30 nays:

An amendment to the amendment in the nature of a substitute by Mr. Waxman, No. 1g, providing the Secretary with administrative penalty authority.

The names of Members voting for and against follow:

Committee on Commerce

One Hundred Sixth Congress

Record Vote No. 34

Bill: H.R. 5164, TREAD Act
Amendment or Motion: Amendment by Mr. Waxman, No. 1g
Disposition: NOT AGREED TO, by a record vote of 14 yeas and 30 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis				Mr. Hall		X	
Mr. Barton		X		Mr. Boucher			
Mr. Upton		X		Mr. Towns		X	
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood				Mr. Gordon		X	
Mr. Cox		X		Mr. Deutsch			
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Mrs. Eshoo			
Mr. Burr		X		Mr. Klink			
Mr. Bilbray		X		Mr. Stupak		X	
Mr. Whitfield				Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green		X	
Mr. Lazio				Mrs. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan		X		Mrs. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Mrs. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt							
Mr. Bryant		X					
Mr. Ehrlich		X					

Committee on Commerce

One Hundred Sixth Congress

Record Vote No. 35

Bill: H.R. 5164, TREAD Act
Amendment or Motion: Reporting to the House with a favorable recommendation
Disposition: AGREED TO, by a record vote of 42 yeas and no nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley	X			Mr. Dingell	X		
Mr. Tauzin	X			Mr. Waxman			
Mr. Oxley	X			Mr. Markey	X		
Mr. Bilirakis				Mr. Hall			
Mr. Barton	X			Mr. Boucher	X		
Mr. Upton	X			Mr. Towns	X		
Mr. Stearns	X			Mr. Pallone	X		
Mr. Gillmor	X			Mr. Brown			
Mr. Greenwood	X			Mr. Gordon	X		
Mr. Cox	X			Mr. Deutsch	X		
Mr. Deal	X			Mr. Rush	X		
Mr. Largent	X			Mrs. Eshoo			
Mr. Burr	X			Mr. Klink			
Mr. Bilbray	X			Mr. Stupak			
Mr. Whitfield				Mr. Engel	X		
Mr. Ganske	X			Mr. Sawyer	X		
Mr. Norwood	X			Mr. Wynn	X		
Mr. Coburn				Mr. Green	X		
Mr. Lazio				Mrs. McCarthy	X		
Mrs. Cubin	X			Mr. Strickland	X		
Mr. Rogan	X			Mrs. DeGette	X		
Mr. Shimkus	X			Mr. Barrett	X		
Mrs. Wilson	X			Mr. Luther	X		
Mr. Shadegg	X			Mrs. Capps	X		
Mr. Pickering	X						
Mr. Fossella	X						
Mr. Blunt							
Mr. Bryant	X						
Mr. Ehrlich	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5164, the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not timely received by the Committee. The Committee will submit such cost estimate to the House when it is received.

FEDERAL MANDATES STATEMENT

The estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not timely received by the Committee. The Committee will transmit such estimate to the House when it is received by the Committee.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of the bill, the "Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act".

Section 2. Reporting requirements

Subsection (a) requires a manufacturer to notify NHTSA within five working days whenever the manufacturer determines to conduct a safety recall or other safety campaign in a foreign country with respect to motor vehicles and motor vehicle equipment that are identical or substantially similar to vehicles or equipment the manufacturer offers for sale in the United States. If a foreign government has officially made a determination that a safety recall or other safety campaign must be conducted within the country on a motor vehicle or motor vehicle equipment, then the manufacturer must notify NHTSA of such determination within five working days, where the manufacturer sells identical or similar vehicles or equipment in the United States. The Secretary is given regulatory authority to prescribe what information the manufacturer must provide in notifying NHTSA of the safety recall or campaign.

Subsection (b) directs NHTSA to initiate a rulemaking within 120 days to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to assist NHTSA in reducing traffic accidents and deaths and injuries resulting from traffic accidents. NHTSA must finalize its rule by June 20, 2002. The rule must include requirements for such manufacturers to report, periodically or upon request by NHTSA, information that the manufacturer has in its possession that would help identify defects in motor vehicle and motor vehicle equipment safety in the United States. Such reports are to be limited to claims data submitted to the manufacturer for serious injuries, aggregate statistical data possessed by the manufacturer on property damage from alleged vehicle or equipment defects, and information on the manufacturer's customer satisfaction campaigns, consumer advisories, recalls, and other programs for the repair or replacement of defective vehicles or equipment. NHTSA may include additional reporting requirements for manufacturers that it determines are necessary to identify defects related to vehicle and equipment safety in the United States.

Manufacturers of motor vehicles and motor vehicle equipment are required to report to NHTSA any incidents of which the manufacturer receives actual notice involving serious injuries which are alleged to have been caused by a defect in the manufacturer's vehicle or equipment. If such injuries occur in a foreign country, then the manufacturer is required to report to NHTSA if the alleged defect is in a vehicle or equipment that is identical or substantially similar to that offered by the manufacturer for sale in the United States.

Before requiring any reporting of the information addressed in this subsection, NHTSA must specify in its final rule how it will review and utilize such reports to help identify defects related to motor vehicle safety, what systems and processes it will employ or establish to review and utilize such information, and the manner

and form in which manufacturers are required to report, including by electronic reporting. NHTSA may not require manufacturers of motor vehicles or motor vehicle equipment to maintain or submit records not in the manufacturer's possession. In addition, NHTSA may not impose requirements that are unduly burdensome to a manufacturer, taking into account the manufacturer's cost of complying with such requirements and NHTSA's ability to use the information it seeks in a meaningful manner to help identify motor vehicle safety defects. NHTSA must specify procedures for periodically reviewing and updating its information reporting requirements under this subsection.

Subsection (c) directs NHTSA, within 90 days, to issue a rule requiring any person who knowingly and willfully sells or leases a defective or noncompliant tire for use on a motor vehicle to report such sale or lease to the Secretary if the person has actual knowledge that the manufacturer has notified its dealers of such defect or noncompliance as required under the recall provisions of subsections 30118(b) and (c) of title 49 of the United States Code. The Committee intends the phrase "knowingly and willfully", in all uses throughout this Act, to represent the common and traditional meaning of those words involving actual knowledge and willful action, as opposed to including any facet of reckless disregard. A person will not be required to report such sale if the defect or noncompliance is remedied before the sale or lease, or if the recall order is restrained or set aside in a civil action described in section 30121(d) of Title 49 of the United States Code.

Subsection (d) directs NHTSA to conduct a study within 120 days to determine whether it is feasible and useful for Congress to authorize NHTSA to obtain aggregate information from automobile insurers regarding motor vehicle accident claims.

Section 3. Remedies without charge

This section lengthens the time period that consumers are able to have a defective or noncompliant motor vehicle or motor vehicle equipment remedied free of charge, measured from the time of the first sale to the determination by the manufacturer or NHTSA of such noncompliance or defect. For motor vehicles and replacement equipment other than tires, the time period from the first purchaser has been extended from eight to ten years, and for tires the period has been extended from three years to five years.

Section 4. Penalties

Subsection (a) increases the civil penalties that NHTSA may assess for violations of certain provisions of title 49 of the United States Code from \$1,000 for each violation to \$5,000 for each violation, and from a maximum of \$800,000 for a related series of violations to \$15,000,000. New civil penalties are imposed for violating any of NHTSA's reporting requirements under section 30166 of title 49 of the United States Code, with maximum penalties of \$5,000 per violation per day, with a maximum of \$15,000,000 for a related series of daily violations.

Subsection (b) imposes additional criminal penalties for egregious violations of the reporting requirements of section 30166. Under current law, section 1001 of title 18 of the United States Code, it is a crime punishable by up to five years in jail and by fines (up

to \$250,000 for individuals and \$500,000 for corporations) for any person to knowingly and willfully falsify, conceal, cover up by any trick, scheme, or device a material fact, make any materially false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry. If a person in fact so acts, with the specific intention of misleading NHTSA with respect to motor vehicle or motor vehicle safety related defects that have caused death or grievous bodily harm to an individual, then that person is subject to criminal penalties as set forth under title 18, or imprisonment for not more than 15 years (10 years more than the maximum under section 1001 of title 18), or both. The Committee does not believe that the knowingly and willful requirement of section 1001 of title 18 could or should be construed to include reckless disregard. A safe harbor is provided from the additional criminal penalties where a person corrects any improper reports or failure to report within a reasonable time. NHTSA is directed to establish by regulation within 90 days what constitutes a reasonable time and what form of correction or reporting is sufficient to come within the coverage of the safe harbor. The Committee expects that NHTSA will construe a reasonable time to be at some point after the person is aware that a defect or noncompliance related to the falsified or concealed information exists and that the defect or noncompliance has caused serious bodily injury. The additional criminal penalties established by this subsection will not take effect until after NHTSA issues a final rule (within 90 days) establishing what constitutes a reasonable time and a reasonable manner for correction of misreported information. The additional criminal penalties will be charged against a person by the Attorney General only after a request by NHTSA.

Section 5. Acceleration of manufacturer remedy program

This section allows NHTSA to require a manufacturer to accelerate a remedy program if NHTSA determines that a manufacturer's remedy program will not be completed within a reasonable time, that a serious injury is likely to result if the program is not accelerated, and that acceleration of the program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

Section 6. Sale of replaced tires

The manufacturer of a tire that is the subject of a recall for a defect or noncompliance will include in its remedy program a plan for ensuring that any replaced tires are not resold for installation on a motor vehicle (unless remedied), to the extent that the manufacturer can reasonably control such resales. The manufacturer must, in its regular reports to NHTSA, include information in the reports about its implementation of such plan.

Section 7. Sales of replaced equipment

This section makes it illegal to sell for installation on a motor vehicle any motor vehicle equipment (including a tire) that is the continued subject of a recall program. Such sale is allowed only if the equipment is not sold in a condition that it may be used for its original purpose, unless the equipment is made no longer defective

or noncompliant, such as by modification, repair, or an injunction of the recall.

Section 8. Certification label

Current law requires a manufacturer or distributor of a motor vehicle or motor vehicle equipment to certify with a label fixed to a vehicle or attached to a container of motor vehicle equipment that the vehicle or equipment complies with applicable Federal vehicle safety standards. This section requires an intermediate or final stage manufacturer of a motor vehicle built in more than 1 stage to certify with respect to such standards that it has either assumed responsibility for compliance with the standards, or that it has complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle manufacturer. If the intermediate or final stage manufacturer chooses to assume responsibility for compliance with the standard covered by the documentation provided by an incomplete manufacturer, then the manufacturer must notify such incomplete manufacturer within a reasonable time of affixing the certification label. This provision will not be subject to civil penalties by NHTSA.

Section 9. Endurance and resistance standards for tires

NHTSA is directed to complete a rulemaking to revise and update its tire standards by June 1, 2002.

Section 10. Improved tire information

Within 30 days, NHTSA will begin a rulemaking to improve the labeling of tires to help consumers identify whether such tires are the subject of a recall. NHTSA is directed to complete its rulemaking by June 1, 2002. The rulemaking will also include whatever action the Secretary determines is necessary to make the public aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels to ensure the safe operation of motor vehicles. Such action may include a requirement that the manufacturer provide consumers with information on appropriate tire inflation levels and load limits if the Secretary determines that requiring the manufacturers to provide such information is the most efficient way to educate consumers.

Section 11. Rollover tests

Within two years, NHTSA must develop a dynamic test on motor vehicle rollovers for the purposes of a consumer information program and must carry out a program of conducting such tests. NHTSA must also conduct a rulemaking to determine how to best disseminate the results of such tests to the public. The rollover tests must be designed for new motor vehicles, including passenger cars and multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating of 10,000 pounds or less. The tests will not be applied to motor-homes.

Section 12. Tire pressure warning

Within one year, NHTSA must complete a rule to require within two years that newly manufactured motor vehicles to contain a warning system that signals to the vehicle operator when a tire is significantly under-inflated.

Section 13. Improving criteria used in a recall

Within 30 days, the Secretary of Transportation is directed to undertake a comprehensive review of, and undertake any necessary steps to improve, all standards, criteria, procedures, and methods, including data management and analysis, used by NHTSA in determining whether to open a defect or noncompliance investigation. The Secretary must report to Congress on its findings and actions undertaken after such review.

Section 14. Follow-up report

NHTSA must report to Congress within one year on the implementation of this Act, as well as any additional recommendations for consumer safety.

Section 15. Authorization of appropriations

An additional \$9.1 million is authorized to be appropriated for the Secretary and NHTSA to carry out this Act, although such funds are not to be used for general administrative expenses of the Secretary or NHTSA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * *

PART A—GENERAL

CHAPTER 301—MOTOR VEHICLE SAFETY

* * * * *

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

30161. Judicial review of standards.

* * * * *

30170. *Criminal penalties.*

* * * * *

SUBCHAPTER II—STANDARDS AND COMPLIANCE

* * * * *

§ 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) * * *

* * * * *

(c) *PROHIBITION ON SALES OF REPLACED EQUIPMENT.*—No person may sell any item of motor vehicle equipment (including a tire) for installation on a motor vehicle that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) or was removed from a motor vehicle as part of an action taken under section 30120(a) or 30120(b) in a condition that it may be used for its original purpose unless the item of motor vehicle equipment is no longer defective or is otherwise free of the condition that was the subject of the action taken under section 30120(a) or 30120(b).

* * * * *

§ 30115. Certification of compliance

(a) *IN GENERAL.*—A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered.

(b) *CERTIFICATION LABEL.*—In the case of the certification label affixed by an intermediate or final stage manufacturer of a motor vehicle built in more than 1 stage, each intermediate or final stage manufacturer shall certify with respect to each applicable Federal motor vehicle safety standard—

(1) *that it has complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle manufacturer in accordance with regulations prescribed by the Secretary; or*

(2) *that it has elected to assume responsibility for compliance with that standard.*

If the intermediate or final stage manufacturer elects to assume responsibility for compliance with the standard covered by the documentation provided by an incomplete motor vehicle manufacturer, the intermediate or final stage manufacturer shall notify the incomplete motor vehicle manufacturer in writing within a reasonable time of affixing the certification label. A violation of this subsection shall not be subject to a civil penalty under section 30165.

* * * * *

§ 30117. Providing information to, and maintaining records on, purchasers

(a) * * *

* * * * *

(c) **ROLLOVER TESTS.**—

(1) **DEVELOPMENT.**—Not later than 2 years from the date of enactment of this subsection, the Secretary of Transportation, acting through the National Highway Traffic Safety Administration, shall—

(A) develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program; and

(B) carry out a program of conducting such tests.

(2) **TEST RESULTS.**—As the Secretary develops a test under paragraph (1)(A), the Secretary, acting through the National Highway Traffic Safety Administration, shall conduct a rule-making to determine how best to disseminate test results to the public.

(3) **MOTOR VEHICLES COVERED.**—This subsection applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 10,000 pounds or less. A motor vehicle designed to provide temporary residential accommodations is not covered.

* * * * *

§ 30120. Remedies for defects and noncompliance

(a) * * *

* * * * *

(c) **ADEQUACY OF REPAIRS.**—(1) * * *

* * * * *

(3) If the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds—

(A) that there is a risk of serious injury or death if the remedy program is not accelerated; and

(B) 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.

The Secretary may prescribe regulations to carry out this paragraph.

(d) **FILING MANUFACTURER'S REMEDY PROGRAM.**—A manufacturer shall file with the Secretary a copy of the manufacturer's program under this section for remedying a defect or noncompliance. The Secretary shall make the program available to the public and publish a notice of availability in the Federal Register. In the case of a remedy program involving the replacement of tires the manufacturer shall include a plan addressing how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle. The manufacturer shall include information about the implementation of such plan with each quarterly report to the Secretary about the progress about the notification and remedy campaign.

* * * * *

(g) **NONAPPLICATION.**—(1) The requirement that a remedy be provided without charge does not apply if the motor vehicle or replacement equipment was bought by the first purchaser more than [8] 10 calendar years, or the tire, including an original equipment tire,

was bought by the first purchaser more than [3] 5 calendar years, before notice is given under section 30118(c) of this title or an order is issued under section 30118(b) of this title, whichever is earlier.

* * * * *

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

* * * * *

§ 30165. Civil penalty

[(a) PENALTY.—A person that violates any of sections 30112, 30115, 30117–30122, 30123(d), 30125(c), 30127, 30141–30147, or 30166 of this title or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is \$800,000.]

(a) CIVIL PENALTIES.—

(1) *IN GENERAL.*—A person that violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147, or a regulation prescribed thereunder, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is \$15,000,000.

(2) *SECTION 30166.*—A person who violates section 30166 or a regulation prescribed under that section is liable to the United States Government 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 \$15,000,000.

* * * * *

§ 30166. Inspections, investigations, and records

(a) * * *

* * * * *

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

(1) *REPORTING OF DEFECTS, MANUFACTURER DETERMINATION.*—Not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

(2) *REPORTING OF DEFECTS, FOREIGN GOVERNMENT DETERMINATION.*—Not later than 5 working 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 or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer of the motor vehicle or motor vehicle equipment shall report the determination to the Secretary.

(3) **REPORTING REQUIREMENTS.**—The Secretary shall prescribe the contents of the notification required by this subsection.

(m) **EARLY WARNING REPORTING REQUIREMENTS.**—

(1) **RULEMAKING REQUIRED.**—Not later than 120 days after the date of enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, the Secretary shall initiate a rulemaking proceeding to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the Secretary's ability to carry out the provisions of this chapter.

(2) **DEADLINE.**—The Secretary shall issue a final rule under paragraph (1) not later than June 30, 2002.

(3) **REPORTING ELEMENTS.**—

(A) **WARRANTY AND CLAIMS DATA.**—As part of the final rule promulgated under paragraph (1), the Secretary shall require manufacturers of motor vehicles and motor vehicle equipment to report, periodically or upon request by the Secretary, information which is received by the manufacturer derived from foreign and domestic sources to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—

(i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; and

(ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.

(B) **OTHER DATA.**—As part of the final rule promulgated under paragraph (1), the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.

(C) **REPORTING OF POSSIBLE DEFECTS.**—The manufacturer of a motor vehicle or motor vehicle equipment shall report to the Secretary, in such manner as the Secretary establishes by regulation, all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States or a foreign country when the possible defect is in a motor ve-

hicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

(4) *HANDLING AND UTILIZATION OF REPORTING ELEMENTS.*—

(A) *SECRETARY'S SPECIFICATIONS.*—In requiring the reporting of any information requested by the Secretary 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 permit such information to be reviewed and utilized; 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 and 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 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.

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

(1) *IN GENERAL.*—The Secretary shall, within 90 days of the date of this subsection, 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 order is restrained or the order is set aside in a civil action to which section 30121(d) applies.

* * * * *

§30170. Criminal Penalties.

(a) CRIMINAL LIABILITY FOR FALSIFYING OR WITHHOLDING INFORMATION.—

(1) GENERAL RULE.—A person who violates section 1001 of title 18 with respect to the reporting requirements of section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or grievous bodily harm to an individual, shall be subject to criminal penalties of a fine under title 18, United States Code, or imprisoned for not more than 15 years, or both.

(2) SAFE HARBOR TO ENCOURAGE REPORTING AND FOR WHISTLE BLOWERS.—

(A) CORRECTION.—A person described in paragraph (1) shall not be subject to criminal penalties under this subsection if such person corrects any improper reports or failure to report within a reasonable time.

(B) REASONABLE TIME AND SUFFICIENCY OF CORRECTION.—The Secretary shall establish by regulation what constitutes a reasonable time for the purposes of subparagraph (A) and what manner of correction is sufficient for purposes of subparagraph (A). The Secretary shall issue a final rule under this subparagraph within 90 days of the date of enactment of this section.

(C) EFFECTIVE DATE.—Subsection (a) shall not take effect before the final rule under subparagraph (B) takes effect.

(b) COORDINATION WITH DEPARTMENT OF JUSTICE.—The Attorney General may bring an action, or initiate grand jury proceedings, for a violation of subsection (a) only at the request of the Secretary of Transportation.

* * * * *

THE WHITE HOUSE

9/21

TO: Jake Sievert
Valerie Owens
Jose Cerda
Matt Bennett

FR: Sean O'Hara

Re: J. Slater's testing
scheduled for today
at 12PM.

AS of 9am
9/20/00**ORAL STATEMENT****THE HONORABLE RODNEY E. SLATER
SECRETARY OF TRANSPORTATION****before the
Subcommittee on
Telecommunications, Trade and Consumer Protection
of the
Committee on Commerce
U. S. House of Representatives
September 21, 2000**

Mr. Chairman and Members of the Committee:

Thank you for holding this hearing on legislation to improve the federal law on motor vehicle safety. To begin, I want to emphasize the importance of safety to the Department of Transportation. It is our top transportation priority. It is the North Star by which we are guided and willing to be judged. I want to commend you for your leadership on this issue, Mr. Chairman, and that of other Committee members.

Mr. Chairman, almost four years ago when I began my service as Secretary of Transportation, I pledged that I would continue to make safety and security of the highest importance. I promised to strive to raise our current levels of safety to even greater heights, and I believe that we are accomplishing this goal on many key fronts: aviation, maritime, highway, transit, and rail. In the Clinton-Gore Administration, we have worked in

partnership in a collaborative way across the transportation spectrum to achieve specific and measurable safety goals – with the States, industry, labor and management, local communities, safety advocates, and individual citizens – and the results speak for themselves.

- Highway death and injury rates have fallen to all-time lows.
- Seat belt and child safety seat use rates are at all-time highs.
- Alcohol-related highway fatalities are lower than ever before.

On the whole, we have the safest transportation system in the history of the United States. Yet we must work together to address the challenge before us. I am pleased that the Senate Commerce Committee reported S.3059 yesterday, and that this Committee is also poised to act shortly on its counterpart, H.R. 5164.

In addressing you today, I want to acknowledge the outstanding effort that NHTSA, under the leadership of its Administrator, Dr. Sue Bailey, is making to address the investigation and recall of Firestone ATX, ATX II, and Wilderness AT tires. NHTSA's most recent information shows 101 fatalities and more than 400 injuries related to these Firestone tires. Our investigation continues on an urgent basis. I have directed the agency to use every means available to conclude the investigation as soon as possible.

The challenge before us is to investigate this issue vigorously, find the facts, and use the lessons we learn to avoid such incidents in the future.

[In a related matter, we are pleased that Continental General Tire has stepped forward to initiate a customer service campaign regarding certain tires on Lincoln Navigators.]

Mr. Chairman, as you are aware, in March of this year the Department submitted a bill to Congress to strengthen the legislative framework for our vehicle safety programs. This bill increased civil penalties, extended the period within which the manufacturers must provide a no-cost remedy to consumers, and required manufacturers to test their products before certifying their compliance.

To strengthen our ability to deal with the Firestone investigation, we again took the initiative, by submitting further comprehensive legislation on September 11 to the Congress. This new authority would close the gaps in our current authority that hinder our ability to detect the problems that led to the Firestone recall. This bill represents our best thinking on what needs to be done and I encourage you incorporate its provisions into H.R. 5164, the bill introduced by Chairman Upton with bipartisan support that you

cosponsored, Mr. Chairman. We ask you and the Congress to join with us, again in a bipartisan effort, to enact effective legislation before this Congress adjourns. We firmly believe that all representatives of our safety-conscious industries will join us in supporting this important effort.

Our bill addresses a number of the concerns raised by what is clearly the globalization of the motor vehicle industry. We believe that the provision on international cooperation included in our bill would provide the kind of early warning network that members of the committee have said they favor, and is necessary to ensure that the issues raised in the Firestone investigation do not recur.

Our bill would strengthen NHTSA's information-gathering powers in several vital respects. It would clarify the agency's authority to obtain information about vehicles and equipment used abroad that is relevant to vehicles and equipment in the United States and put it on the same statutory footing as its authority to obtain information concerning those vehicles in this country. H.R. 5164 addresses the need for NHTSA to get timely information about safety recalls and safety campaigns that occur in foreign countries. We strongly recommend that it not be limited to information about vehicles and equipment that are "also offered for sale in the United States," a limitation that might excuse a manufacturer if the foreign vehicle

or equipment is not identical to that sold in this country, even though it may share common design or construction elements.

H.R. 5164 also addresses the issue of NHTSA's tire safety standards. NHTSA has already moved ahead in the process of addressing possible changes to these standards to improve safety, and we are committed to moving forward quickly.

There is another issue I want to mention that has come up recently regarding criminal penalties. Some have raised concerns that criminal penalties could adversely affect our ability to investigate and gather information. As I said last week, and want to reiterate now, the Administration supports a 3-tiered approach to the enforcement of health and safety statutes: administrative civil penalties (which we are seeking), judicially enforced civil penalties (which the NHTSA statute already provides), and, in egregious circumstances, criminal penalties for those who knowingly and willfully violate the law.

Finally, Mr. Chairman, we seek additional funding for NHTSA's safety enforcement program. We are pleased that the Senate bill includes additional authorizations, which will enable us to work with the Congress on appropriate funding levels. The Office of Defects Investigation (ODI) needs to have additional resources, both in funding and in people, and we ask

Congress to provide for these measures. We will immediately reallocate \$1.8 million to the Firestone investigation from other NHTSA activities in order to address this issue. We are seeking an increased authorization of \$9 million to expand ODI's activities, increase public access to ODI's public files, and provide resources for updating our tire safety standards. We urge you to include this \$9 million authorization for NHTSA in the bill now before the committee.

Mr. Chairman, I pledge that as long as I am Secretary, we will do everything in our power to use the new authority we seek, and our existing authority, vigorously. The Department of Transportation is made up of 100,000 visionary and vigilant employees, and I can think of no clearer case in which this message must be heard: we must look to the future and guard against any repetition of tragedies caused by defective vehicles or equipment to the American people.

Mr. Chairman, this concludes my testimony. Dr. Bailey and I will be glad to answer your questions.

From : N. McFadden

Copy to Jose Gorda
Sean O'Shea / Man
October 18, 2000 Smith 0

Mr. John Podesta
Chief of Staff
The White House
1600 Pennsylvania Avenue, NW
Washington DC 20500

Dear Mr. Podesta,

The Ford/Firestone auto safety T.R.E.A.D. bill (H.R. 5164) contains two terrible problems, and we need the Administration's assistance to solve these problems before Congress adjourns.

The bill both has a secrecy provision that may override the Freedom of Information Act (FOIA), and repeals a critical section in the FY 2001 Department of Transportation Appropriations Bill imposing a duty upon manufacturers to evaluate their accident, component failure, and consumer complaint data for signs of a dangerous defect. This language was placed in the DOT appropriations bill by the Chair of the House and Senate Transportation Appropriations Committees, Rep. Frank R. Wolf and Sen. Richard C. Shelby, respectively.

The T.R.E.A.D. bill that passed both houses of Congress was the House version of the bill, unamended by the Senate or a conference committee. It appears that some portions of the bill were new to both senators and the administration when it passed in the Senate, a mere 18 hours after passage in the House. This process did not allow anyone sufficient time to address the troubling provisions described below.

I. The secrecy provision applies to all safety defect information collected as part of the bill's "early warning reporting requirements" section. This section thwarts the original purpose of the legislation by imposing secrecy demands on the National Highway Traffic Safety Administration (NHTSA).

Under Sec. 3(b)(4)(C) of the bill, a section entitled "disclosure," the Secretary *shall not* disclose defect and early warning information such as lawsuits, consumer complaints, deaths, injuries, component failures, or consumer satisfaction campaigns *unless* DOT determines that disclosure is allowed. This is in direct contrast to existing law, as the presumption of 49 U.S.C. sec. 30167(b) is to favor disclosure over and above the disclosure requirements of FOIA.

The new law has no savings clause for FOIA, and thus may undercut the current floor on disclosure. Furthermore, because it is possible that the early warning reporting section will be interpreted broadly, and will encompass all of the types of information currently collected in NHTSA enforcement investigations, these conditions may subsume NHTSA's current information collection practices, and result in secrecy for critical information in perpetuity. In fact, the industry's goal in reversing the presumption of disclosure was to create an exception to FOIA under FOIA's exemption 3, and bureaucratize the process by making the Secretary evaluate the disclosure of documents at every possible juncture.

Industry argued in support of this provision that commercially sensitive documents needed

secrecy. However, documents such as these are already routinely protected under NHTSA's confidentiality request process. This new law is completely unnecessary for that purpose. But the public may pay dearly for the rulemaking mandated here— by losing timely access to crucial, safety-related documents that this legislation was initially intended to produce for the public's protection. The bill was intended to remedy the efforts to delay reporting or to cover up by Ford and Firestone. It instead creates a new mechanism for the auto industry to keep safety and defect information secret.

II. The language in the FY 2001 Department of Transportation Appropriations Bill created a duty for manufacturers to review and consider domestic and foreign information on their products in order to learn whether a defect exists. Under existing law, 49 U.S.C. sec. 30118(c), manufacturers who "learn" that a defect exists must report that conclusion to NHTSA. The provision thus neatly dovetailed with present law to require more comprehensive coverage of manufacturer review of their products.

This provision is crucial because industry lobbyists earlier succeeded in removing any language from the final version of the T.R.E.A.D. bill that would have enhanced NHTSA's power to require companies to analyze their data. As experience with the latest Ford and Firestone tragedies have dramatically shown, the manufacturers retain an enormous information advantage in dealing with both government agencies and the public.

Without a duty to analyze data, manufacturers may continue to deny the existence of safety defects even as compelling evidence of a defect accumulates in company files. As recent news articles have documented again and again, without a duty to analyze and report information, companies will continue to play dumb with regulators. If NHTSA must do *all* the hard work of finding trends and patterns in consumer use that indicate a defect, many more lives will be unnecessarily lost, and many more people seriously injured.

From our many years of experience in working on auto safety issues, and as the Ford/Firestone hearings revealed, we know that the industry actually keeps such data on hand, in its completed form, or produces detailed analyses of the safety of their products as "cost assessment" documents as soon as the first lawsuit is filed. It is perverse that this latest round of legislation, which was intended to make NHTSA accurate and effective, would conclude with this crucial piece of the puzzle still out of reach for consumers and government.

It has come to our attention that the administration wrote its letter supporting the Senate passage of the House bill before DOT realized that the appropriations provision was being repealed in section 2 of the new bill. Indeed, the repeal of this provision was an obscure, midnight maneuver, and had never been part of the full committee's public deliberations on the legislation. Like the administration, many staffers (and presumably, their Members) in the House and Senate were unaware of its presence until after passage of the House bill in the Senate. As mentioned above, passage of the bill through both houses of Congress within an 18-hour period.

These two provisions substantially diminish the value of this legislation. The first provision actually reduces NHTSA's current authority, and the second provision repeals a recent and merited expansion of that authority. Unless they are addressed now, it will be far more

difficult to make these changes in the future. We believe, therefore, that it would not be prudent for the president to sign this legislation until congressional leaders agree to correct these mistakes, either in this or another vehicle before Congress this session.

We sincerely hope that you will work to address these pressing issues before the session ends and we look forward to your response.

With warm regards,

Joan Claybrook
President, Public Citizen

Michael Scippa
Executive Director, CRASH

Janette Fennell, Founder
Trunk Releases Urgently Needed Coalition
(TRUNC)

Rob Sanders
Executive Director
Parents for Safer Airbags

Michele Struttman
Co-Founder
Kids N' Cars

Jack Gillis
Public Information Officer
Consumer Federation of America

Clarence Ditlow
Executive Director
Center for Auto Safety

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

Andrew McGuire
Executive Director
Trauma Foundation

Sally Greenberg
Senior Product Safety Counsel
Consumers Union

facsimile
TRANSMITTAL

U.S. Department of Transportation
National Highway Traffic Safety Administration
Office of the Administrator (NOA-01)

400 7th Street SW
Washington, DC 20590
Fax (202) 366-2106

Organization	
Attention <i>Have Cenda</i>	From Charlotte Hrnair, Director of Intergovernmental and Congressional Affairs
Telephone	Telephone 202-366-2111
Fax <i>456-7028</i>	Date <i>10/26/00</i>

Urgent ☐ Please Reply ☐ Please Review ☐ Per Request ☐ For your Information ☐

Number of Pages (including cover sheet) 7

Comments:

STATEMENT BY THE PRESIDENT**DRAFT**

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 sets forth a significant regulatory agenda to improve safety standards for tires, to upgrade safety for children, and to establish a rollover rating system for vehicles.

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.

DEFECT INVESTIGATION ENHANCEMENT PLAN

DRAFT

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.

~~MEDIA CAMPAIGN~~

~~NHTSA requested funding for a media campaign to keep the public informed on how and when to contact the agency about motor vehicle safety concerns. ?????????????~~

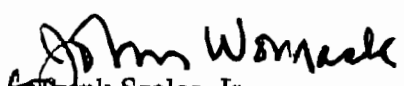


U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Memorandum

Subject: Disclosure of Information under the TREAD Act

Date: OCT 27 2000

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.

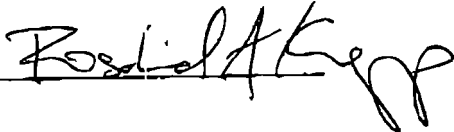
In addition, even under the limited circumstances when section 30167(b) or paragraph (4)(C) might be exercised, the differences between these two provisions would not lead to different results. Under either provision, if there is to be a disclosure, the disclosure must be made pursuant to section 30167(b), 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.

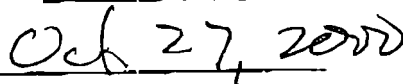
##

Concur



Non-concur

Date





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

FAX TRANSMISSION COVER

DATE

10/27/00

TO

Jose Soto

FROM

Joan Claybrook

Public Citizen

Ph: (202) 588-1000

Fax: (202) 588-7799

FAX #

457-7028

COMMENTS

Jose I thank you so much
for your help. Please call
me if you have any questions
Joan

NO. OF PAGES, INCLUDING COVER SHEET

9

Ralph Nader, Founder

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

Fax to

Jose Sesta

Fax #

456-7028

October 18, 2000

Mr. John Podesta
Chief of Staff
The White House
1600 Pennsylvania Avenue, NW
Washington DC 20500

Dear Mr. Podesta,

The Ford/Firestone auto safety T.R.E.A.D. bill (H.R. 5164) contains two terrible problems, and we need the Administration's assistance to solve these problems before Congress adjourns.

The bill both has a secrecy provision that may override the Freedom of Information Act (FOIA), and repeals a critical section in the FY 2001 Department of Transportation Appropriations Bill imposing a duty upon manufacturers to evaluate their accident, component failure, and consumer complaint data for signs of a dangerous defect. This language was placed in the DOT appropriations bill by the Chair of the House and Senate Transportation Appropriations Committees, Rep. Frank R. Wolf and Sen. Richard C. Shelby, respectively.

The T.R.E.A.D. bill that passed both houses of Congress was the House version of the bill, unamended by the Senate or a conference committee. It appears that some portions of the bill were new to both senators and the administration when it passed in the Senate, a mere 18 hours after passage in the House. This process did not allow anyone sufficient time to address the troubling provisions described below.

I. The secrecy provision applies to all safety defect information collected as part of the bill's "early warning reporting requirements" section. This section thwarts the original purpose of the legislation by imposing secrecy demands on the National Highway Traffic Safety Administration (NHTSA).

Under Sec. 3(b)(4)(C) of the bill, a section entitled "disclosure," the Secretary *shall not* disclose defect and early warning information such as lawsuits, consumer complaints, deaths, injuries, component failures, or consumer satisfaction campaigns *unless* DOT determines that disclosure is allowed. This is in direct contrast to existing law, as the presumption of 49 U.S.C. sec. 30167(b) is to favor disclosure over and above the disclosure requirements of FOIA.

The new law has no savings clause for FOIA, and thus may undercut the current floor on disclosure. Furthermore, because it is possible that the early warning reporting section will be interpreted broadly, and will encompass all of the types of information currently collected in NHTSA enforcement investigations, these conditions may subsume NHTSA's current information collection practices, and result in secrecy for critical information in perpetuity. In fact, the industry's goal in reversing the presumption of disclosure was to create an exception to FOIA under FOIA's exemption 3, and bureaucratize the process by making the Secretary evaluate the disclosure of documents at every possible juncture.

Industry argued in support of this provision that commercially sensitive documents needed secrecy. However, documents such as these are already routinely protected under NHTSA's confidentiality request process. This new law is completely unnecessary for that purpose. But the public may pay dearly for the rulemaking mandated here— by losing timely access to crucial, safety-related documents that this legislation was initially intended to produce for the public's protection. The bill was intended to remedy the efforts to delay reporting or to cover up by Ford and Firestone. It instead creates a new mechanism for the auto industry to keep safety and defect information secret.

II. The language in the FY 2001 Department of Transportation Appropriations Bill created a duty for manufacturers to review and consider domestic and foreign information on their products in order to learn whether a defect exists. Under existing law, 49 U.S.C. sec. 30118(c), manufacturers who "learn" that a defect exists must report that conclusion to NHTSA. The provision thus neatly dovetailed with present law to require more comprehensive coverage of manufacturer review of their products.

This provision is crucial because industry lobbyists earlier succeeded in removing any language from the final version of the T.R.E.A.D. bill that would have enhanced NHTSA's power to require companies to analyze their data. As experience with the latest Ford and Firestone tragedies have dramatically shown, the manufacturers retain an enormous information advantage in dealing with both government agencies and the public.

Without a duty to analyze data, manufacturers may continue to deny the existence of safety defects even as compelling evidence of a defect accumulates in company files. As recent news articles have documented again and again, without a duty to analyze and report information, companies will continue to play dumb with regulators. If NHTSA must do *all* the hard work of finding trends and patterns in consumer use that indicate a defect, many more lives will be unnecessarily lost, and many more people seriously injured.

From our many years of experience in working on auto safety issues, and as the Ford/Firestone hearings revealed, we know that the industry actually keeps such data on hand, in its completed form, or produces detailed analyses of the safety of their products as "cost assessment" documents as soon as the first lawsuit is filed. It is perverse that this latest round of legislation, which was intended to make NHTSA accurate and effective, would conclude with this crucial piece of the puzzle still out of reach for consumers and government.

It has come to our attention that the administration wrote its letter supporting the Senate passage of the House bill before DOT realized that the appropriations provision was being repealed in section 2 of the new bill. Indeed, the repeal of this provision was an obscure, midnight maneuver, and had never been part of the full committee's public deliberations on the legislation. Like the administration, many staffers (and presumably, their Members) in the House and Senate were unaware of its presence until after passage of the House bill in the Senate. As mentioned above, passage of the bill through both houses of Congress within an 18-hour period.

These two provisions substantially diminish the value of this legislation. The first provision actually reduces NHTSA's current authority, and the second provision repeals a recent and merited expansion of that authority. Unless they are addressed now, it will be far more difficult to make these changes in the future. We believe, therefore, that it would not be prudent for the president to sign this legislation until congressional leaders agree to correct these mistakes, either in this or another vehicle before Congress this session.

We sincerely hope that you will work to address these pressing issues before the session ends and we look forward to your response.

With warm regards,

Joan Claybrook
President, Public Citizen

Michael Scippa
Executive Director, CRASH

Janette Fennell, Founder
Trunk Releases Urgently Needed Coalition
(TRUNC)

Rob Sanders
Executive Director
Parents for Safer Airbags

Michele Struttman
Co-Founder
Kids N' Cars

Jack Gillis
Public Information Officer
Consumer Federation of America

Clarence Ditlow
Executive Director
Center for Auto Safety

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

Andrew McGuire
Executive Director
Trauma Foundation

Sally Greenberg
Senior Product Safety Counsel
Consumers Union



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

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.

Ralph Nader, Founder

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

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.
- **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

For more information, please contact:

Joan Claybrook, President, Public Citizen or
Laura MacCleery, Legal Assistant to Joan Claybrook
at: 202-588-1000 (phone) 202-588-7799 (fax)