PREPARED STATEMENT OF

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On

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Mr. Chairman, members of the Committee, my name is Joan Claybrook and I am pleased to be asked to testify today concerning proposed motor vehicle safety legislation to enhance the authority and capacity of the National Highway Traffic Safety Administration in the U.S. Department of Transportation to protect the public. I am President Emeritus of Public Citizen and a former Administrator of the National Highway Traffic Safety Administration (NHTSA).

In the last eighteen months we have witnessed corporate executives take huge financial risks with investors money and a massive failure of regulation in the financial sector that has upended our economy, caused people to loose their savings, their jobs, their homes and forced many into bankruptcy. The effects will be tearing at the fabric of our society for years to come.

In the past few months the American public has witnessed more spectacular examples of corporate excesses and of the failure of regulation to moderate corporate misbehavior, resulting in unnecessary deaths, injuries, and environmental and economic harm. The year 2010 began with the shutdown of Toyota production until repairs for a sticky accelerator could be made after Toyota notified Canadian and European authorities about the problem last year but failed to notify the U.S. Department of Transportation. The company was recently fined $16.4 million, the maximum under current law.

This revelation followed a horrible crash of a runaway Toyota built Lexus last August while the occupants were on a cell phone begging the 911 operator for help. They crashed at almost 100 mph, killing all four occupants. Shortly thereafter Toyota recalled over 5 million vehicles for the so-called floor mat problem (which many believe is an electronic problem that is still being investigated by the Department of Transportation). Toyota officials boasted in an internal memo last summer that in 2007 it had avoided a major recall for its runaway vehicles and saved the company $100 million. Over 50 people are dead because of runaway Toyotas and many others injured.

Revelations two weeks ago show that Toyota also lied to NHTSA in 2004 about U.S. customer complaints it received about its trucks and 4-Runner steering rod breakage (causing a complete loss of steering control). Toyota denied knowing about any U.S. complaints and thus refused to conduct a recall in the U.S. when it carried about one in Japan. NHTSA did nothing when it received Toyota's notice of the Japanese recall even though the vehicles were identical. Toyota finally initiated a U.S. recall a year later in 2005. With the recent press revelation of Toyota's law violations, NHTSA is now conducting an investigation.

In early April, a horrible coal mine explosion at the Massey Energy Upper Big Branch coal mine in Montcoal, West Virginia killed 29 miners. This mine had been cited just weeks before the disaster for numerous safety violations, including problems in ventilating the mine and failure to prevent a buildup of deadly methane gas. The mine company denied there were any ventilation problems shortly before the blast. The mine owner, Don Blankenship, is a well known opponent of mine regulation. In 2006 a subsidiary of Massey pleaded guilty to 10 criminal charges at the Sago mine that killed two miners and the company paid a $2.5 million criminal fine. As the families and the nation mourned the most recent mine deaths, the FBI has begun an investigation of criminal offenses under the Federal Mine Safety and Health Act. According to the Washington Post, "More than 200 former Congressional staff members, federal regulators and lawmakers are employed by the mining industry as lobbyists, consultants, or senior executives, including dozens who work for coal companies with the worst safety records in the nation." Regulation of mining operations and enforcement of violations has been weak for years.

Then on April 20, a British Petroleum (BP) oil rig exploded in the Gulf of Mexico, off shore from New Orleans and its fragile wetlands, marshes and estuaries. Eleven workers were killed, others injured, fire ensued, the rig collapsed, and oil started leaking at 40,000 gallons a day. It is now estimated by the Coast Guard to be a raging torrent of oil pouring out of the drilled hole a mile deep in the water at a rate of more than 200,000 gallons a day and BP cannot stop it. The blowout preventer designed to seal the well was activated by workers but did not work nor did the failsafe switch. The huge oil slick will far exceed the spill of the Exxon Valdez oil tanker in Alaska. It threatens wildlife all along the Gulf Coast, where some 30 percent of U.S. fish and shell fish are harvested. The rest of the nation will feel the impact of higher prices for these products. But thousands of workers and small business owners along the Gulf Coast are now being shutdown, who knows for how long, because their products are awash in oil. The Coast Guard is responsible for supervising the clean up but regulation of oil drilling by the Interior Department is minimal as the Wall Street Journal recently reported. Also, in federal legislation passed after the Exxon Valdez debacle, oil industry lobbyists secured very low limits on company liability (economic liability is capped at $75 million).

Mr. Chairman, enactment of your vehicle safety legislation in the next months before Congress adjourns is crucial. Since I left the NHTSA in 1980, more than one million Americans have lost their lives in motor vehicle crashes and many millions more have suffered serious injuries. Applying the DOT cost value of $5.8 million per fatality, the cost to the nation of this loss of life over 30 years amounts to nearly $6 trillion dollars, not adjusted for inflation. While the number of annual deaths has dropped in the last few years because of the recession, if history is our guide, they will rapidly climb back as the economy recovers. These numbers do not include the cost of the horrible injuries in car crashes, from amputations, brain injury, quadriplegia, paraplegia, epilepsy, burns, and the resulting bankruptcies, orphaned children, divorces, and increased government health care, unemployment and

other social assistance costs. The most recent figure for the total annual cost of crash injuries in 2000 was $230 billion a year.

These examples of regulatory failures, corporate malfeasance and profits before safety, and the extraordinary loss of life in auto crashes every day set the backdrop for our discussion of the need for amendments to the National Traffic and Motor Vehicle Safety Act. With strong regulation and enforcement, regulated companies take fewer risks with the public's safety, environment or money. NHTSA has been far less effective that it can and should be. Your legislation reflects the importance of reenergizing the agency, and helping it achieve its primary goal of securing public safety on the highways. We deeply appreciate your effort in preparing this legislation. I will focus my comments on the four main sections of this important bill to give NHTSA the regulatory heft and direction it needs to do its job:

I. To require the issuance of key safety standards that update and enlarge the agency's oversight of electronic systems in motor vehicles;

II. To enhance the authority of the National Highway Traffic Safety Administration to enforce the law;

III. To increase transparency, accountability and integrity at NHTSA so that the public can play a greater role in overseeing what the agency is and is not doing and to assist the public in protecting themselves;

IV. To provide greater resources for an agency that is responsible for 95 percent of the nation's transportation deaths but that receives only one percent of the U.S. transportation budget. It's motor vehicle safety budget [FY 2011 request] is a paltry $132 million;

Mr. Chairman, I will not comment on every provision in the proposed legislation, but will highlight those that I believe need the most support or adjustment, and in addition I will submit more technical amendments to the staff.

Title I. Vehicle Electronics and Safety Standards.

I support the provisions in this title but urge that the bill include deadlines for issuance of proposed rules as well as final rules as did this committee's 2005 NHTSA legislation on rollover safety standards. This is needed to make sure that the agency does not wait to act until the last minute, missing the deadline for the final rule.

I particularly want to discuss vehicle Event Data Recorders (EDRs), Section 107. I have a few suggestions I think are critical to the viability and utility of this provision. I also commend to the committee the EDR legislation developed by Representative Jackie Speier (D-CA) which is more comprehensive and supported by consumer groups. In particular with regard to Section 107, I recommend the following:

First, under Section 30102 of the existing law, motor vehicle safety standards are minimum standards for "motor vehicle or equipment performance". To require an "event data recorder" is not really a "performance" standard. And given the dramatic developments in motor vehicle electronic advancements and particularly wireless communications, I urge that the bill be amended to require an "EDR or other system" so that manufacturers are encouraged to innovate. For simplicity in my testimony I will refer to "EDR", but that should be considered shorthand for a performance standard.

Second, the time to accomplish these two rulemakings (subsections (a) and (b)) is too long and unnecessary given the current state of technology development and installation by the industry. The bill requires one rulemaking to mandate installation of minimal EDRs and a second to upgrade the requirements. Both objectives can be achieved with a single rulemaking in three years, 18 months to issue a final rule and 18 months lead time, rather than a total of five years, three years to issue the rule and two for lead time.

Third, at a minimum, I also urge that NHTSA be required to mandate recording of all the data elements listed now in its voluntary standard unless there is a strong reason not to do so. Also, collection of rollover data should not be optional. It must be required. Rollover crashes are a major source of auto crash deaths, with some 10,000 deaths and almost 20,000 severe injuries resulting each year. It is essential such data are collected. There is no reason to make collection of data for such critical crashes optional, other than the fact that the auto companies have been lobbying medical societies, NHTSA and CDC to downgrade the importance of rollover crashes. But in fact, if you are in a rollover crash, the risk of serious injury approximately doubles from other crash modes.

Fourth, the language in Sec. 107(b) (5) and (b)(6) should require a single, universal or uniform access port. This would result in any downloading tool being compatible and resulting in a reasonable cost for downloading data in any EDR. The bill should not merely restate the current requirement that access tools be commercially available. Relying on the current "commercially available" requirement means that the system of having a different tool for each EDR will continue a very expensive and confusing proposition for police agencies and others.

Fifth, I also urge that Section 107(c) (4) be deleted. Recording the crash location is essential for getting medical care immediately to crash victims, as OnStar and the BMW system now do. Also, for future research using the crash data from EDRs, location can be a critical factor. At present, if you call 911 on your cell phone, your location can be identified. On balance, identifying the location of the crash to save lives and reduce injuries far outweighs abstract arguments for keeping it secret, particularly with strong privacy standards.

Sixth, the bill should be amended to require that the data collected by the EDR be automatically transmitted electronically to a NHTSA data base (with privacy protections for those involved in the crash as NHTSA routinely requires now in its data collection). GM's On Star and BMW now regularly collect this data electronically for its vehicles for evaluation of their vehicles. Electronic transmission of EDR data would be faster and would ensure more timely medical care for those injured in crashes by providing additional information on the crash event to emergency responders. Electronic collection of EDR data by NHTSA would expedite the speed and reduce the cost of collecting this data, and allow the agency to obtain the data without waiting for the physical examination of the vehicle. EDRs can lose data due to tampering and inept physical downloading.

Handling by intermediaries increases the chances that EDR data will be corrupted. It will be far less expensive and far more reliable for NHTSA to receive real-time data electronically and directly from actual crashes at about the same time as the crash notification systems alert medical help.

Currently, NHTSA spends over $15 million a year to investigate crashes weeks after they occur as part of the National Automotive Sampling System, but the number of crashes investigated is only about 4,000, far fewer than needed for statistically robust data. NHTSA's crash data program is too small for the agency to conduct its mission. Specifically, the agency requires detailed data on a large, representative number of crashes that occur on U.S. roads to diagnose safety problems, to identify safety defects and noncompliance with safety standards, and to evaluate the degree to which its standards and programs are achieving their goals.

Crash investigations do collect far more data per crash than a real time EDR system would, but the EDR data would provide a high quality basis for selecting which crashes to investigate and would reveal the state of highway safety in this country. EDR data and crash investigations would complement each other, giving NHTSA more robust and statistically valuable data. Getting such data will also assist the agency to oversee the EDR program and improve it because it will be constantly looking at the data collected. In short, the agency is totally thwarted and cannot do its job with inadequate and outdated data. Any more band aids are a waste of lives, time and money. The agency needs to enter the 21st Century and be able to collect and analyze real time crash data received electronically. The agency should be directed to undertake immediately a complete review and redesign of its crash data systems by 2011 showing how it could collect and use real-time electronic crash data by 2015.

NHTSA should require such electronic collection systems either as part of the EDR rule, or as a separate requirement. With some manufacturers now collecting such data for themselves, it should not be difficult to make sure such data is routinely transmitted to a NHTSA data base.

Title II. Enhanced Safety Authorities

1. Civil Penalties:

I heartily support the increase in civil penalties of $25,000 per violation (as at the Environmental Protection Agency (EPA) emissions program) without any mandated maximum. One of the NHTSA's serious problems is that the auto industry has not felt any pressure to comply with safety standards or recall vehicles because the agency had no real tools to punish them if they disobey the law. The agency's penalties for violation of fuel economy standards have no maximums, and there is no maximum on EPA's vehicle emissions penalties. With NHTSA's maximum of $5,000 per violation ($1,000 until the 2000 TREAD Act) and maximum for any case of $16.4 million ($1 million in the law prior to TREAD), the agency until the recent Toyota $16.4 million fine had imposed a total of only $8,273,496 in fines from 1966 through 2009. No wonder the auto companies view NHTSA as a toothless tiger. It is important to evaluate both sides of the ledger, and to realize that since there is no limit on the damage a manufacturer can cause with it operations, so there should be no limit on the penalties the Secretary can impose, justified by the facts of a case.

By comparison with auto safety enforcement, California last week fined Sempra Energy $410 million for gouging the state on energy contracts signed during the energy crisis there a decade ago. Last week the Justice Department announced Johnson and Johnson has agreed to pay more than $81 million in a case accusing them of illegally promoting the epilepsy drug Topamax for psychiatric uses. And in February BAE Systems, a large defense contractor, agreed to pay $400 million to resolve allegations it misled the Defense and State departments in its activities in relation to the Foreign Corrupt Practices Act a decade ago. By any reasonable measure, NHTSA's piddling fines for behavior that can or has caused death and injury are far too low.

2. Imminent Hazard Authority:

I also strongly support the imminent hazard authority. However, to assure due process for a violator, I suggest NHTSA be required to seek a court order in the district court, allowing the company the opportunity to object. The court should be required to conduct an expedited hearing and response.

3. Criminal Penalties:

Finally, I strongly urge the committee to include criminal penalties for knowing and willful violations of the Act. Criminal penalties are standard in many consumer protection and other regulatory statutes for knowing and willful acts. In the transportation regulatory agencies there are numerous authorities for criminal penalties. For example:

- Motor carriers who knowingly and willfully violate certain motor carrier laws are subject to up to one year of imprisonment.
- Persons, who misrepresent the contents of a container with hazardous material, or tamper with the labeling of hazardous materials, are subject to five years of imprisonment.
- Persons operating certain aircraft may receive up to three years of imprisonment for knowingly and willfully forging, altering, displaying or selling fraudulent registrations or certificates.
- Persons who damage an oil pipeline sign or marker are subject to up to one year of imprisonment.
- Persons who knowingly and willfully violate vessel operation and waterfront safety requirements commit a felony punishable with up to six years of imprisonment.
- A person who knowingly and willfully falsifies a report required under the Railroad Safety Act is subject to up to 2 years imprisonment.

In addition, environmental, worker and consumer protection laws regularly authorize criminal penalties, including the Consumer Product Safety Act that this committee amended in 2008 to make its criminal penalty provisions effective. For example,

- The Clean Water Act provides that anyone who knowingly violates provisions regarding disposal or discharge of effluents or knowingly introduces a hazardous substance into a sewer system or public treatment facility is subject to up to three years of imprisonment.

- The Food, Drug, and Cosmetic Act provides that anyone who introduces adulterated or misbranded foods, drugs, devices or cosmetics into interstate commerce can receive up to one year of imprisonment.
- The Solid Waste Disposal Act provides that anyone who knowingly transports or disposes of hazardous waste without a permit can be sentenced to up to five years of imprisonment.
- The Clean Air Act provides that anyone who knowingly releases any hazardous air pollutant into the air can receive up to fifteen years of imprisonment.
- The Mine Safety Act provides that any operator, including corporate officers, who knowingly violates or fails to comply with mandatory health and safety standards, is subject to up to one year of imprisonment.
- The Occupational Health and Safety Act provides that willful violations of any standard that cause the death of an employee are punishable by up to six months of imprisonment.
- The Consumer Product Safety Act provides that anyone who manufactures, sells, distributes or imports a consumer product that does not conform to the applicable product safety standard can receive up to one year of imprisonment.
- The Consumer Product Hazardous Substances Act provides that anyone who, with intent to defraud or mislead, introduces misbranded or banned hazardous substances into interstate commerce can receive up to one year of imprisonment.

In addition, a driver who participated in an illegal street race that killed eight people is subject to criminal penalties. Goldman Sachs is subject to criminal penalties for securities fraud by the Securities and Exchange Commission. Antitrust violations can be criminally prosecuted. Why not NHTSA?

There is no reason why NHTSA should not also have the authority to seek criminal penalties for persons who knowingly and willfully violate the Act, especially because these actions result in death and injuries and so many lives are at stake. Such prosecutions would have to be brought by the Justice Department after a thorough review of the evidence in the case. The Justice Department does not bring many such cases each year. But it would be a strong deterrent to auto companies knowingly and willfully violating the law. And it would change the way the top brass views the company's regulatory obligations. Disclosures about how Toyota, the largest auto manufacturer in the world, specifically and knowingly and willfully refused to conduct safety recalls and in fact boasted about saving the company $100 million dollars by falsely narrowing the scope of a recall, more than justify this provision.

Title III. Transparency, Accountability, and Integrity

I support all of the provisions in Title III of the bill. They make excellent improvements to help the public learn about NHTSA's programs with greater openness and accessibility. The bill encourages the public and manufacturers, dealers and mechanics to report safety problems to the agency, and helps to encourage the integrity of the government's auto safety program.

However, in addition to the provisions in the bill, we would urge the Committee to adopt the following provisions which are essential to achieve these goals:

1. Judicial Review of Rejections of Defect Investigation Petitions

We strongly urge the committee to include, as the House bill does, authorization for judicial review when a public petition for a recall investigation is rejected by NHTSA. Giving the public the authority to challenge an agency rejection of a defect petition is essential. As we now know, NHTSA on a number of occasions turned down safety defect petitions from Toyota owners for an investigation of their runaway vehicle. The owner had no recourse when his/her petition was rejected, and NHTSA did nothing to protect the public. It is clear that greater public involvement would improve NHTSA's attention to consumer complaints and concerns. It is unlikely that this provision will be used often because it is costly to bring such suits, but it is available for the times when citizens have done their homework and are ready to press the case. During the 22 years when such authority was available (before a court ruling in 1988 indicating that such suits were not authorized by the NHTSA statute), only two cases were brought. Also the standard is very high to be successful in such a case. It is not unlike the provision in the Federal Election Commission law that authorizes a challenge of the dismissal by the Commission of a complaint or failure to act on it. The U. S. Supreme Court has upheld that specific authorization for review of the dismissal of a complaint. A precedent for the provision in the bill is found in two antidiscrimination statutes concerning particular actions that shall not be deemed committed to unreviewable agency discretion. To assure that the agency is responsive to the public, which suffer death and injury from vehicle defects, such authority should be granted.

2. Reporting Law Suits under Early Warning.

The statute should require NHTSA to distinguish claims or consumer complaints made to manufacturers by the public, and which the manufacturers are required to disclose to the agency (under the TREAD Act Early Warning Reporting requirements) from lawsuits filed in court. Currently, manufacturers are not required to separately report filed lawsuits that assert a product defect even thought these documents are public records in our courts. Manufacturers should be required to report both types of claims but to report them separately because lawsuits are an order of magnitude more substantial and important than general consumer letters that suggest a possible claim against a manufacturer. In terms of early warning, both the agency and the public should know whether the claims are full-fledged lawsuits or a general consumer request for compensation.

3. Fix Vehicle Defect Categories under Early Warning.

As a part of the Early Warning Reporting rulemaking required under Sec. 301(b), the bill should require the agency to either eliminate the potential defect vehicle categories now used by manufacturers when they report a potential safety defect, or vastly expand the number of categories so that the public can distinguish what specific part of the vehicle is a potential problem. The existing 24 categories are too vague and generalized and do not inform the public about what problem is being reported. Also, because the categories are vague, manufacturers can use one category in one report and another category in another report to undermine the whole purpose of consistent reporting under the Early Warning Reporting system. For example, in the Toyota runaway vehicles, the manufacturer's early warning report can reference a problem with the transmission, the engine or the

brakes. If the vehicle rolls over, they can even use that category. Such game-playing should be not possible. Also there is a need for instructions on how to report any category. Perhaps the best remedy is to have the manufacturer report the exact problem without any broad categories.

By comparison, for the VOQ (vehicle owner questionnaire) filed by consumers with NHTSA when they report a possible defect, there are 1200 possible vehicle defect categories consumers can review to select the one that best describes the potential defect in their vehicles. Why don't manufacturers, who know a lot more about the problems they are reporting, have to be as precise? The bill needs to correct this problem.

4. Make Public Manufacturer Reports of Deaths

We also urge that the underlying reports of deaths from manufacturers be required to be public. Such information comes to manufacturers in the form of consumer letters, newspaper articles, lawsuits, field reports, etc. These documents should be publicly available at NHTSA. As it now stands, it is impossible for the public to exercise any real oversight of NHTSA decision-making to act or not act on such information without access to this specific documented information. To be useful, the numbers of deaths and injuries should also be aggregated by make and model and alleged defect.

5. Collect Names and Addresses of Aftermarket Tire Purchasers

Sellers of aftermarket tires are not been required to record the names and addresses of buyers and report them to the manufacturer so that owners can be notified by mail or internet if there is a recall involving their tires. This provision was eliminated from the law in 1982 because independent aftermarket tire sellers did not want the manufacturers to have access to information about their purchasers because some manufacturers have retail company stores compete with them. But this of course undermines the ability to provide notice to the owners about a defective tire. With the internet and electronic record keeping so readily available now, this requirement should be reinstated with the data and recall notices managed by an independent operator just as R.L. Polk does this for auto purchaser names that it secures from state motor vehicle administrators.

6. Fully Document Ex Parte NHTSA Meetings with Interested Parties

A major problem with transparency at NHTSA has been private ex parte meetings manufacturers have with the agency about particular defects or pending rulemaking. Too often NHTSA writes only cursory notes about the meeting, mentioning the attendees but rarely stating the substance of the meeting or attaching the materials used at the meetings, including power point presentations, hand outs etc. Thus the public is essentially kept in the dark. In addition, these notes often are not put in the docket until months after the meeting occurs.

The Center for Auto Safety has discovered summaries of such meetings at NHTSA prepared by manufacturers and revealed later in litigation that bear no resemblance to NHTSA so-called notes of the same meeting. The purpose of the ex parte rule at regulatory agencies is transparency but at NHTSA it has been completely undermined. We ask that the bill require that detailed minutes of the entire discussion at ex parte meetings be prepared with all materials handed out by either the company or NHTSA put into the docket within two weeks of a meeting. Incidentally, when consumer

organizations take part in such meetings we make our materials fully available for the agency docket and have no objection to complete written minutes of our discussions being placed in the public docket.

7. Revolving Door

Recently Senator Barbara Boxer (D-CA) introduced legislation, S. 3268, to limit the revolving door between NHTSA staff and the auto industry. We commend her for this work. It requires a three year cooling off period before an agency employee could work for or represent a motor vehicle company on NHTSA matters. It is a very reasonable bill and we have urged the House Committee to include it in its draft legislation. As the press revealed several months ago, a large number of former NHTSA officials, including Administrators (the top presidential appointee), deputy administrators, general counsels, and chiefs of the enforcement, rulemaking and research divisions, as well as technical staff have left NHTSA over the years to be employed by vehicle and equipment manufactures as consultants, lobbyists, attorneys or on staff. This results in staff currying favor with regulated companies while at NHTSA, it encourages former employees to advise companies about how to avoid or influence NHTSA regulatory decisions, and undermines the integrity of the agency's work. Obviously this is a real problem and needs to be addressed. We appreciate the committee including the Boxer provisions in the bill.

8. Whistleblower Protections

The Congress has recognized the need to provide whistleblower protections for employees working in public transportation, commercial vehicle employees, and selling products regulated by the Consumer Product Safety Commission. We support the Committee's inclusion of Whistleblower Protection in the Senate bill.

9. NHTSA's Vehicle Test Facility Owned by Honda

NHTSA does not own its own test facility, yet it must conduct crash barrier and car to car tests all the time to do its job. NHTSA operates its testing activities in a facility owned by Honda Motor Company, which as a matter of principle and fact compromises the agency's integrity.

In 1978, as NHTSA Administrator, I agreed to lease space for NHTSA testing programs at a then new vehicle test facility built by the State of Ohio in East Liberty. At the time NHTSA conducted minimal equipment tests—but not vehicle tests--at a building in Riverdale Maryland. There was no crash test capacity or test track. With no money allocated by Congress to build a facility, and time-consuming contracts required for each testing program we initiated, we agreed to what was then our only option.

In the 1990's Honda Motor Co. became the owner of the East Liberty test facility and ever since NHTSA has been leasing the space from an auto manufacturer. This is an unacceptable conflict of interest. If the Toyota cases that have been under scrutiny this year had been Honda cases, this arrangement would have been widely acknowledged as untenable. But in fact every year the agency tests Honda as well as other vehicles at the Honda test facility which is also rented by other manufacturers and used by Honda.

In fact, this facility is used by manufacturers far more than it is used by NHTSA. Manufacturers conduct 78% of durability and dynamics operations compared to 4% for the government, 64% of the impact laboratory operations compared to 33% for the government and 51% of contract services offered by the facility compared to 49% for the government.

Vehicle and equipment manufacturers regulated by NHTSA that are involved in a consortium that appears to be organized by Honda called the Center for Automotive Research or CAR, or that use the facility, include General Motors, Toyota, Ford, Nissan, Honda, Hyundai, Bosch, Chrysler, Eaton, Tenneco Automotive and others. The companies pay a $10,000 membership fee to belong to CAR. NHTSA is an "associate member" of CAR which is dominated by the auto companies. It is unclear what kind of research is conducted, who controls it, what role NHTSA plays, how much co-mingling of expertise and decision-making occurs, whether any of the "research" is published or made public etc. Unfortunately the web page restricts access to such information, even though a government agency is involved.

Honda disagrees that there is a conflict because, it claims, it has hired a third party, Ohio State University, to manage the facility and the finances. This use of an intermediary entity does not eradicate the fact that Honda is the owner that completely controls the facility, benefits from owning it, and along with other vehicle manufacturers makes use of the same facility as the agency. Honda's argument is like saying money laundering is clean. This is not a particular criticism of Honda. NHTSA is a government motor vehicle regulatory agency that must operate independently, and have its own facilities as do other government agencies. Because a number of companies use the Honda facility, and this bill will require more testing, it is doubtful there will be unused capacity at the facility if NHTSA were to move its testing activities to an independent location.

S. 3302 should require NHTSA to move its motor vehicle testing activities within two years to a location which it controls. The cost of making this move could be paid for by allocating the $16.4 million penalty paid by Toyota this year. This is new money not in the President's budget. I urge the Committee to include in the legislation a requirement that NHTSA move its test facility to a new independent location funded by the Toyota penalty.

IV. Funding

For years the NHTSA motor vehicle safety program has been on a starvation diet. Its current budget is a paltry $132 million dollars, less than the cost of minor government programs. It needs to be built up to at least $500 million annually. Beginning with this Fiscal Year (F.Y.) 2011, it should be doubled. We are very pleased the bill allocates $200 million for F.Y. 2011, but the increases for F.Y. 2012 and F.Y. 2013 are far too small, amounting to only $40 million in each year. These authorization levels are the same as in the House draft bill, but it includes in addition a vehicle safety user fee.

I realize that the vehicle safety user fee will bring in new money beginning in 2012, and more in subsequent years, and that such a user fee is in operation at the Food and Drug Administration (FDA). I do have concerns about it in that it might cause manufacturers to exercise even more

ownership leverage over the agency than they do now. And I believe the small amounts of funding we are discussing for this crucial agency can more than be met in the federal budget.

My major concern is that the NHTSA's budget reaches $500 million in funding in the next four years, either with federal appropriations and the user fee or through federal appropriations alone. My preference would be solely through federal appropriations. But the absence of a user fee should not be a rationale not to increase the federal appropriations. This agency has been undercut and undermined as have many regulatory agencies by industries that want to cut costs at the expense of the public. But their complaints have been shown to be short sighted and costly for so many American families who suffer the consequences of regulatory failures as the opening paragraphs of my statement today show. In fact, effective regulatory agencies that are properly funded are so cost effective and crucial to assuring our standard of living and way of life in America. I urge the Committee to assure this small agency is given the funds needed to do its job—which are but a footnote in the federal budget.

Conclusion:

Thank you very much Mr. Chairman and members of the Committee for this opportunity to testify. This important legislation needs to be enacted into law. A decade ago, after the Ford/Firestone debacle, the Congress passed legislation and thought it had fixed the problems at NHTSA. But time has revealed that the TREAD Act and the underlying statute need major improvements to upgrade the agency's regulatory authority, to increase transparency, to enhance enforcement powers, to add much needed resources and to protect its integrity. Recent months have shown how important these powers are to prevent massive numbers of preventable deaths and gruesome injuries. The public is fed up with regulatory failures that harm so many citizens and communities. Let's do it right this time and set an example. When regulation works well, the companies as well as the public benefit. We look forward to swift movement of the legislation.