

**Testimony of Michael J. Stanton
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before the
Subcommittee on
Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives**

May 6, 2010

Chairman Rush, Ranking Member Whitfield, and members of the Subcommittee, thank you for the opportunity to speak with you today regarding the draft Motor Vehicle Safety Act of 2010. My name is Michael Stanton, and I am President and CEO of the Association of International Automobile Manufacturers, or AIAM. AIAM is a trade association representing 15 international motor vehicle manufacturers who account for 40 percent of all passenger cars and light trucks sold annually in the United States. AIAM members have invested over \$40 billion in U.S. vehicle plants, component manufacturing facilities and R&D centers and directly employ 90,000 Americans. More than half of all vehicles sold by AIAM members in the United States are made in the United States.

AIAM and its member companies appreciate the Subcommittee's efforts to improve motor vehicle safety and understand the intended benefits of the draft bill. Having NHTSA consider additional Federal Motor Vehicle Safety Standards to address certain issues raised by recent recalls is an important goal. We also fully support the Subcommittee's proposals to provide additional engineering and related resources to NHTSA, including improving the agency's vehicle safety database to provide greater public accessibility. However, AIAM believes that NHTSA also must be given the necessary time and flexibility to study these important safety issues so that it can make analytic, data-based, technology neutral decisions. Similarly, manufacturers require sufficient lead time to engineer, test and produce vehicles that meet any new standards.

We are concerned that the rulemaking mandates in the draft bill pre-determine conclusions as to matters currently under active investigation and not yet fully analyzed by NHTSA. As a general matter, it would be more appropriate to direct NHTSA to complete its investigations as soon as possible and issue rules based upon a full and comprehensive analysis of these important safety issues.

With respect to the proposed Corporate Responsibility requirement (Section 305), we have concerns that this requirement could significantly chill the speed of the safety investigation processes employed by some AIAM members and introduce those who are not safety experts into the process. The current process employed by some AIAM members separates safety related decisions from financial considerations and intentionally excludes these executives. We are

concerned that the proposal might have the unintended consequence of introducing financial considerations (inherent when highest ranking executives are involved) into the safety decision-making process.

We also note that under existing law, manufacturers are already legally responsible and accountable for submitting accurate information to NHTSA. Providing false or misleading statements to the federal government is strictly prohibited (18 U.S.C. Section 1001). AIAM does not believe requiring a senior officer to certify responses to safety investigations and other submissions to NHTSA are necessary or practicable. Consideration should be given to limiting the scope of this certification by restricting it to formal responses to NHTSA's defect determinations. Further, consideration should be given to allowing a corporate officer specifically charged with safety matters to certify submissions.

We defer to NHTSA's judgment as to the feasibility of the deadlines for issuing the numerous final rules, as specified in the bill. However, we note that the deadlines for many rulemaking mandates appear to be unreasonably short and provide for insufficient lead time. Short deadlines can adversely affect the quality of the final rule, potentially placing the agency in the position of having to decide whether to rush completion of a proceeding or miss the statutory deadline and have to explain the delay to Congress. Prior to issuance of a final rule NHTSA often finds it necessary to conduct research to address issues that first arise after publication of a proposed rule, as a result of public comments submitted to the agency. From our perspective, if the short deadlines adversely affect the quality of the final rules, consumer and manufacturer resources used to comply with the rule may be misallocated. Moreover, short deadlines tend to limit opportunities for public comment, potentially impairing the ability of interested stakeholders to assist in the development of an effective final rule.

With regard to the effective dates specified in the bill, we note that while some of our members already equip their vehicles with several technologies contemplated by this legislation (for example, brake override and EDRs), others do not. For those manufacturers who do not currently employ these technologies, especially some of the small volume manufacturers, the effective dates specified in the bill are simply not feasible. Even those companies that currently have these technologies, however, also need sufficient lead-time because there are no assurances that these current technologies, which may vary from company to company, will be employed consistent with the mandates in the anticipated final rule. More often than not, complexities in achieving compliance with a proposed standard first become apparent during the rulemaking proceeding as a result of public comment and further research and analysis by the agency. This new information may demonstrate a need for greater lead-time than was initially anticipated. Without the appropriate lead-time, successful implementation of the rule would be compromised.

In addition, the draft bill does not provide for the new requirements to be phased-in, nor does it provide for phase-in incentives to promote early deployment where feasible. It is generally more efficient for manufacturers to implement new technologies at the time of full model changes, so that the new items can be better integrated than would be the case with a purely “add-on” approach. Phase-in periods for new standards accommodate the integration of new technology as part of the model redesign process, generally resulting in superior compliance measures being implemented at lower cost for consumers and manufacturers. Phase-in periods also provide time for suppliers to design, test, and ramp up production capacity for new or significantly modified components so that all of their customers can meet the requirements of new safety standards within the given lead-time.

AIAM’s comments on specific provisions of the draft bill are as follows –

Sec.101. Electronics and engineering expertise. The creation within NHTSA of a “Center for Electronics and Emerging Technologies” is an appropriate response to the rapid movement of the industry toward electrification of vehicle systems (generally, to improve fuel efficiency) and the adoption of a wide range of advanced technologies.

Sec. 102. Vehicle stopping distance and brake over-ride standard. In late March 2010, NHTSA announced a research study with the National Academy of Sciences’ National Research Council to examine the broad subject of unintended acceleration and electronic vehicle controls. This work is expected to be completed in about 15 months. Additionally, NHTSA has brought in NASA engineers and other experts in subjects such as electromagnetic compatibility as part of a shorter-term review of the systems used in Toyota vehicles to determine whether they contain any possible flaws that would warrant a defect investigation. The study is expected to last through at least late summer and include NASA experts on computer-controlled electronic systems, electromagnetic interference and software integrity. While it would be inappropriate to pre-judge the outcome of this work, it would be appropriate for Congress to codify the need for expedited study of these matters and to direct the agency to consider rules to address whatever concerns are found, including the ones identified in the draft bill. Since it is premature to judge the precise scope of whatever needs emerge from the study process, it would be inappropriate to establish deadlines for issuing final rules and for achieving compliance. The bill directs NHTSA to issue a safety standard that would “prevent” unintended acceleration in passenger vehicles. Given that the instances and causes of potential unintended acceleration are uncertain, it would be more appropriate to focus legislation on means to address any issues. In addition, some vehicles sold in the U.S. (and elsewhere in the world) use mechanical, rather than electronic, throttle control systems. This section of the ACT should preserve that design option by limiting provisions in Section 102(a)(2)-(4) to those vehicles in which an electronic throttle control system has been installed.

Section 103. Pedal placement standard. The considerations noted with regard to Section 102 apply here as well. The ramifications of changes in pedal placement are more complex than might be initially apparent. NHTSA should be allowed the discretion to determine whether a standard is appropriate or feasible. Challenges include balancing the conflicting demands on pedal placement that, on the one hand, would suggest a larger separation between brake and accelerator to reduce the likelihood of pressing them simultaneously and, on the other hand, would suggest placing the pedals close together which would be expected to reduce braking time in emergency situations. Driver comfort is another issue and will be different for shorter, taller, younger, and older drivers. Currently, the variety of vehicles, as well as the availability on some vehicles of adjustable pedals, lets people select a vehicle that is comfortable for them to drive safely. Pedal placement can also affect the performance of a vehicle in a crash; it will affect the position of the driver relative to the steering wheel and airbag module which in turn could drive changes to the design of a vehicle's airbag system. Pedal placement also has an effect on driver injuries, not only to lower extremities but to other body regions as well since crash forces travel up through the legs to the hips and the rest of the body. In addition to potential changes to vehicles' safety systems, movement of pedal locations in vehicles could involve significant redesign of the floor pan and other vehicle components and should be undertaken at the time of full model changes, if found to be a cost-effective means of addressing the unintended acceleration matter.

Section 104. Electronic systems performance standard. As noted above in Section 102, this matter currently is the focus of the NASA work and will be addressed by NAS as well over the next 15 months. The study process should be allowed to run its course and the need for adoption of rules and the content of such rules should be determined after the completion of the studies.

Section 105. Keyless ignition systems standard. This matter is the subject of ongoing work by the Society of Automotive Engineers (SAE). It was specifically requested by NHTSA in order to develop a consensus standard. The SAE committee, which has set a deadline of August 2010, should be allowed to proceed with its work. If Congress deems it necessary, it would be appropriate to specify a deadline for completion of that work and the adoption by industry of a voluntary agreement consistent with the SAE criteria. Congress could specify that if this process is not completed in a timely fashion and in a manner acceptable to NHTSA, NHTSA would then issue a rule.

Section 106. Transmission configuration standard. Transmission shift lever sequence is currently regulated by Federal Motor Vehicle Safety Standard 102. It would be appropriate for Congress to direct NHTSA to conduct an expedited review of this standard under its existing Regulatory Review Plan and issue rules to address any shortcomings in the current standard that are identified in the review.

Section 107. Vehicle event data recorders. We do not object to making the requirements of the current EDR rule, which is currently scheduled to go into effect beginning September 1, 2012 on an ‘as equipped’ basis, mandatory for all passenger vehicles. (A petition currently before the Agency requests an additional year lead-time). However, sufficient lead time must be given for implementation since not all manufacturers currently have EDRs in their vehicles and some may not have planned to add EDRs to all of their models. We are concerned that the part of this section directing the Secretary of Transportation to initiate rulemaking to revise the existing requirements for EDRs is excessively prescriptive. We do not object to directing NHTSA to consider the specifications listed in the bill, but the selection of new specifications should follow analysis by the agency and a notice-and-comment rulemaking process. As with the other mandates in the bill, the agency should be given flexibility regarding lead-time that is provided for compliance. This would allow the agency to balance the safety benefits of monitoring and recording additional data elements against the resulting cost and increased complexity. In addition, in the event that information is retrieved by a government safety agency under paragraph (d) (2) (C), the vehicle manufacturer should also receive access to the information., much as is done currently with information derived from on-board diagnostic systems. The section should also include a general prohibition on tampering with EDR information with associated civil penalties.

Section 201. Civil penalties. We understand the desire to increase the amount of civil penalties but object to an excessive increase that creates a system where penalties have little direct relationship to violations. Also, providing a cap on maximum penalties, as is the case under current law for most federal regulatory regimes, provides some degree of assurance that penalties would not reach a level that would risk bankrupting a manufacturer and result in a significant loss of jobs. We urge that a cap be retained and would be pleased to work with the Subcommittee to determine the appropriate penalty amount. It should be noted that civil penalties are not the primary factor in determining the conduct of manufacturers. The harm to a manufacturer’s reputation from the publicity, as well as the increase in tort exposure surrounding safety noncompliance or defect events, has a major impact in the marketplace. This provides a greater incentive to avoid these situations. Last, we urge that the bill allow the agency to retain discretionary authority on setting appropriate penalties.

Section 202. Imminent hazard authority. We agree with the concept of providing NHTSA new authority to address “imminent hazards.” However, such authority should be carefully circumscribed and defined to assure that this severe remedial approach is reserved for appropriate cases in which there is a high likelihood of imminent death. The draft language extends the authority to situations that “may” involve death or serious bodily harm, a standard that could be met in a wide range of routine enforcement cases, given the nature of automobile crashes. Moreover, unlike the recently amended Consumer Product

Safety Act, it does not require that NHTSA first go to court to obtain an imminent hazard order and there is no timeline for a prompt administrative hearing. The only remedy under the draft bill is for a manufacturer to go to the federal appeals court; a procedure that can take several years. The agency should develop guidelines and procedures, consistent with constitutional due process protections, for invoking the authority, and those guidelines should be subject to notice and comment and appropriate judicial review. In sum, given the severe consequences to a manufacturer, its workers and dealers of closing a production facility, the Subcommittee should reconsider the process and criteria provided in the draft bill for exercising imminent hazard authority to ensure that such authority is reserved only for situations involving a substantial number of vehicles and in which there is a high and imminent likelihood of death or serious bodily harm.¹

Section 301. Public availability of early warning data. We oppose the expansion of the information categories that could be made public under paragraph (d) of the bill. We note that current confidential early warning information is fundamentally vehicle quality data that often has little relationship to safety but has substantial competitive value. Access to information of this type would assist companies in evaluating the effectiveness of competitors' technology, while potentially avoiding the expense and risk of developing and marketing that technology themselves. The release of any additional categories of early warning information would be harmful to manufacturers and is likely to spawn frivolous lawsuits. In 2008, NHTSA looked at this issue and completed a rulemaking which we believe struck the proper balance between confidentiality and public disclosure. In addition, to the extent that any data is publicly released, provisions must be made to redact consumer identifying information and vehicle VINs.

Section 305. Corporate responsibility for NHTSA reports. Under current law, the vehicle manufacturer or its U.S. agent is legally responsible and accountable for submitting accurate information to NHTSA. Providing false or misleading statements to the federal government is strictly prohibited (18 U.S.C. Section 1001). AIAM does not believe requiring a senior officer of the U.S. company to certify submissions to NHTSA is necessary or practicable, and in fact may be counterproductive to the intended benefits. The safety concerns, analyses, and judgments are extremely complicated. It is an iterative process requiring engineering expertise and judgment as well as the analysis of data from a variety of sources both within and outside the company – including suppliers and affiliates. A senior executive, especially one based in the United States, must rely on the expertise and knowledge of others with the skills required to assess the accuracy and rigor of engineering and complicated data analyses, since such individuals are generally not experts in vehicle safety. Successful

¹ We also note that the notification in paragraph (3) (A) (iii) should go to "owners," not "purchasers," since some vehicles will have been resold by their original purchasers.

approaches to safety ensure the integrity of the decision-making and reporting process by eliminating the presence of senior officers who do not have this expertise and also have fiduciary responsibilities beyond vehicle safety.

In addition, requiring senior executives to have such an intimate role in reporting is likely to have the unintended effect of slowing down safety-related decisions and introducing additional layers to the process. It is not uncommon for NHTSA to make a series of information requests of varying degrees in scope. If each of these responses to the agency, no matter how minor, must be certified and signed by “the principal executive officer or officers residing in the United States,” the agency’s investigation process could be significantly delayed and it may not have the benefit of the greater knowledge of trained safety executives.

This does not mean that the U.S. company is not legally responsible for the accuracy of its submissions but that responsibility rests on the corporation as a whole not one U.S. senior executive. Requiring the “principal senior executive” to certify a submission, as opposed to requiring the person more directly responsible for handling the company’s safety and regulatory affairs, may unintentionally breach the wall between the responsibility for responding to safety issues and the sales/finance responsibility, which many have built to minimize the impact of financial considerations on voluntary recall decisions.

If the Subcommittee nevertheless insists on some sort of senior officer certification, consideration should be given to limiting the scope of this certification by restricting it to certain major submissions and/or allowing other corporate safety officials to sign. In addition, the potential liability cap of \$250 million is grossly excessive as applied to an individual corporate officer and presents unduly burdensome practical constraints on a manufacturer. The assessment of penalties for “incomplete” submissions is a vague and highly subjective standard. AIAM would be pleased to work with the Subcommittee to establish a more reasonable and productive scope of individual penalties.

Section 306. Appeal of defect petition rejection. Notwithstanding its title, this section applies to both defect petitions and petitions for new standards. These petitions are numerous and come from a wide range of parties, including inventors seeking to have NHTSA mandate the use of their inventions and non-profit and for-profit organizations affiliated with product liability attorneys. This provision could have a significant impact on agency resources resulting from the need for the agency to defend additional lawsuits. It could also allow manipulation of the process and result in frivolous lawsuits.

Section 307. Deadlines for rulemaking. This section provides helpful flexibility to allow necessary additional time to complete rulemaking proceedings, as conditions warrant. Similar flexibility should be provided to the agency to allow additional compliance lead-time and phase-in schedules as appropriate.

Section 401. Vehicle safety user fee. This section would levy a fee on manufacturers (which most likely would be passed on to consumers) to provide additional funding for NHTSA. The amount of the fee does not appear to be tied to any quantified estimate of additional resource needs by the agency and without any specification of how the additional funding would be used. As such, the fee circumvents safeguards contained in the traditional legislative appropriations and authorization processes. The Department of Transportation's Inspector General has an ongoing study of the resource needs of the NHTSA defects investigation program. Given the lack of any specific estimate of agency need or any limitation on the use of the funding, we oppose the provision as currently drafted.

Thank you for the opportunity to present AIAM's views.