

Calendar No. 653

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-381

MOTOR VEHICLE SAFETY ACT OF 2010

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3302



DECEMBER 21, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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MOTOR VEHICLE SAFETY ACT OF 2010

DECEMBER 21, 2010.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 3302]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3302), to amend title 49, United States Code, to establish new automobile safety standards, make better motor vehicle safety information available to the National Highway Traffic Safety Administration and the public, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 3302, the Motor Vehicle Safety Act of 2010, is to improve automobile safety standards, make auto industry executives more accountable for safety information submitted to the Federal government, make vehicle safety information more transparent for consumers, reduce conflicts of interest between government agencies and the auto industry, and enhance authorities and funding levels of the National Highway Traffic Safety Administration (NHTSA) to address vehicle safety defects.

BACKGROUND AND NEEDS

In 1970, Congress established NHTSA to administer safety programs previously handled by the National Highway Safety Bureau. Its mission is to save lives and prevent injuries due to road traffic accidents through education, safety standards, research, and enforcement activity. Among the broad areas of NHTSA's vehicle jurisdiction are safety standards, fuel economy standards, defect investigations, recalls, compliance testing, safety ratings, child re-

straints, tire standards, odometer fraud, theft deterrence through vehicle identification numbers (VINs), and international harmonization of vehicle standards.

As of 2008, the Department of Transportation (DOT) estimates there are approximately 256 million vehicles on America's roads. In fiscal year (FY) 2010, General Fund appropriations for NHTSA's vehicle safety efforts totaled \$140 million. NHTSA also received funding from The Highway Trust Fund in FY 2010, including \$105 million to conduct highway safety research, and \$619 million to administer safety grants for the States. In comparison, the Federal Aviation Administration's Safety Division was allocated approximately \$1.2 billion in FY 2010 to oversee less than 250,000 commercial and general aviation aircraft.

Vehicle Defect Investigation Process

NHTSA receives approximately 4,000 complaints each month from consumers regarding safety problems with vehicles. In addition, under the requirements of the TREAD Act of 2000 (P.L. 106-414), manufacturers are required to report to NHTSA on a quarterly basis aggregated data regarding consumer complaints submitted to the manufacturer, warranty claims related to certain vehicle components, as well as vehicle crashes that result in property damage, serious injury, or death that are alleged to have been caused by a safety defect. This "Early Warning Reporting" data is reviewed by the Defects Assessment Division at NHTSA in conjunction with the consumer complaints submitted directly to the agency. If the defects division notices a trend in vehicle problems reported, the issue is referred to NHTSA's Office of Defects Investigation (ODI), which may choose to open an investigation.

Manufacturers are required to notify NHTSA within five days of finding a vehicle defect that jeopardizes safety. In many cases, the manufacturer moves directly to a recall without NHTSA's involvement. About 60 percent of all recalls are initiated in this manner. NHTSA has no jurisdiction over vehicle defects that are not safety-related. If a manufacturer finds a defect with the automobile, but determines it is not related to safety, there is no requirement that the manufacturer report it to NHTSA.

If a consumer believes that NHTSA is not adequately investigating a safety concern, the consumer may submit a petition requesting NHTSA to open an official investigation into an alleged safety defect. If NHTSA determines the petition makes a plausible claim, a defect investigation is opened. If the petition is denied, NHTSA must publish the reasons for denial in the Federal Register.

Sudden Unintended Acceleration Investigations

In early 2010, auto safety entered the headlines due to concern about sudden unintended acceleration (SUA) in certain Toyota vehicles. In several widely reported incidents, Toyota vehicles sped out of control and drivers were unable to stop their vehicles. Toyota has conducted two separate recalls to address problems with acceleration and accelerator control in the past year. In a recall that was first announced in October 2009 and widened a month later, Toyota recalled 4.6 million vehicles due to concerns that accelerator pedals could become trapped under floor mats. A January 2010 recall of "sticky pedals" in 2.3 million vehicles was conducted to re-

solve a defect in which accelerator pedals would be slow to return to idle. Although this problem did not lead to SUA, it had other safety implications.

Investigations into SUA in Toyota vehicles have raised questions about whether the electronic throttle control systems that auto-makers first began installing in vehicles in the early 2000s are responsible for these incidents. With electronic throttle control, instead of an accelerator pedal pulling a cable leading to the engine throttle, the new accelerator pedals have sensors that send electronic signals to the engine's computer for opening the throttle valve. The computer precisely calculates the correct air-to-fuel ratio, thus improving gas mileage and engine power. Some independent engineers and safety advocates have suggested that electronic failures could lead to incorrect information being sent to the throttle, causing unintended acceleration.

After Toyota introduced electronic throttle controls in some of its model year 2002 vehicles, including the Camry, the company and NHTSA witnessed increases in driver complaints of SUA. Drivers reported that their vehicles unexpectedly lurched forward from a standstill, or accelerated at very high speeds, without the driver pressing the accelerator pedal. After safety complaints about SUA in Toyotas first arose in 2003, NHTSA investigated Lexus vehicles, which are made by Toyota. NHTSA did not find any safety defects.

But, the persistently high level of complaints about SUA in Toyotas led NHTSA to open seven more investigations over the next six years. The next three investigations (2004, 2005, and 2006) again found no safety defects. After the fifth investigation in 2007, and the eighth investigation in 2009, Toyota recalled vehicle floor mats that sometimes trapped accelerator pedals in place.

Nearly every make and model of passenger vehicle has witnessed reports of SUA. Many of these have been blamed on driver error, with drivers stepping on the wrong pedal. While driver error can account for some of the reports of SUA, NHTSA data analyzed by *Consumer Reports* suggests that Toyota vehicles have a higher rate of such complaints than other vehicles, potentially indicating a problem with the vehicle, not the drivers. *Consumer Reports'* analysis of all 5,916 SUA complaints in NHTSA's database for 2008 model year vehicles found that Toyota had more such complaints than Chrysler, GM, Honda, and Nissan combined.¹ The study also placed the SUA complaints in the context of market share as is demonstrated in the following chart:²

Automaker	Number of SUA Complaints for the 2008 Model Year	Percentage of SUA Complaints	Automaker's Average Market Share 2007 & 2008	Percentage of SUA Complaints Above or Below Market Share
Toyota	52	41	16	25
Ford	36	28	16	12
Chrysler	11	9	12	3
GM	7	5	23	-18
Honda	5	4	10	-6
Nissan	4	3	6	-3

¹ "Analysis shows over 40 percent of sudden-acceleration complaints involve Toyotas," *Consumer Reports*, December 7, 2009.

² Complaints for 2008 model year vehicles submitted to NHTSA through August 28, 2009, prior to the media attention related to the Toyota SUA crashes.

According to this analysis, NHTSA received complaints of SUA for about one in every 50,000 Toyota vehicles made in model year 2008. In comparison, there was only one such complaint for every 500,000 GM vehicles from that same model year.³

In addition, State Farm Mutual Automobile Insurance Company, the country's largest auto insurer, alerted NHTSA officials in 2004 and 2007 that its claims data showed an unexpected jump in SUA incidents among Toyotas compared to other vehicles.⁴

In December 2009, Toyota hired an independent firm, Exponent, to investigate its electronic throttle control system. After tests of six cars and more than 100 new and used engine parts, the firm said their investigators could not replicate SUA and had found no defect.⁵ However, engineers outside Toyota have pointed to several possible flaws in the Exponent study. Toyota states that it will continue hiring independent firms to research the problem; NHTSA officials also are taking a fresh look at the potential for software or electronics causing SUA. The agency has contracted with the National Aeronautics and Space Administration to examine the electronics in Toyota vehicles, and has contracted with the National Academy of Sciences to conduct a larger study of electronics in all vehicles.

Adequacy of NHTSA Investigations

The issue of SUA has focused attention on the actions taken by NHTSA officials in the course of safety investigations and the relationship between the agency and the entities it regulates. Safety advocates complain that NHTSA officials failed to push Toyota to find the cause of SUA. The early NHTSA investigations into Toyota's SUA appear not to be as rigorous and thorough as merited.⁶

For example, in a 2004 investigation,⁷ NHTSA appears to have used a narrow definition of SUA which led to the under collection of data. Christopher Santucci, Toyota's manager of technical and regulatory affairs, who previously worked for NHTSA, said in a December 2009 court deposition that Toyota did not provide NHTSA with information about all SUA events because NHTSA wanted to limit the Toyota documents just to those involving unintended acceleration from a standstill.⁸ "I recall [NHTSA] saying to us, Toyota, myself, that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration," Santucci testified.⁹ For that investigation, Toyota had identified 114 cases of potential SUA; but after NHTSA limited the investigation to SUA from a standstill, the inquiry was narrowed down to 11 incidents that resulted in five crashes, according to the deposition.¹⁰ Santucci testified that limiting the vehicles to short-duration incidents was beneficial for both Toyota and NHTSA. "I think it worked out well

³ "Analysis shows over 40 percent of sudden-acceleration complaints involve Toyotas," *Consumer Reports*, December 7, 2009.

⁴ "State Farm says it warned NHTSA on Toyota in 2007," *The Washington Post*, February 9, 2010.

⁵ "Suspensions linger over acceleration in Toyota Camrys," *The Washington Post*, February 20, 2010.

⁶ "Toyota Recall Shines Harsh Light On Safety Agency," National Public Radio, February 4, 2010.

⁷ NHTSA PE04-021.

⁸ "Lawsuit Over a Crash Adds to Toyota's Difficulties," *The New York Times*, February 5, 2010.

⁹ *Id.*

¹⁰ "U.S. Regulators Hired by Toyota Have Helped Deflect Past U.S. Car Safety Probes," *Business Week*, February 18, 2010.

for both the agency and Toyota, meaning Toyota provided what they were looking for,” Santucci testified.¹¹ The investigation was closed on July 22, 2004, when a NHTSA investigator concluded: “A defect trend has not been identified at this time and further use of agency resources does not appear to be warranted. Accordingly, this investigation is closed.”¹²

This limitation to SUA from a standstill may have inappropriately limited the investigation and biased the results. Complaints of SUA from a standstill have not created the most serious injuries and deaths, with the exception of a driver who was parked beside a cliff overlooking the Pacific Ocean.¹³ Instead, the most serious injuries and deaths have occurred when a car reportedly accelerated at full throttle to speeds of more than 80 mph over a long period of time after the car was already moving—incidents that fell outside NHTSA investigators’ “standstill” definition of SUA.

NHTSA critics accuse the agency’s investigators of having a bias toward mechanical rather than electronic explanations for defects. Because they could not find a mechanical explanation for SUA in many cases, critics assert that the investigators did not adequately search for other possible causes and were left with human error as an explanation. Allan Kam, a former NHTSA attorney who worked at the agency for 25 years said: “There tended to be sort of an institutional bias against sudden acceleration at [NHTSA]. This belief that, going back some years ago, that there’s no such thing as sudden acceleration. It was just pedal misapplication.”¹⁴

Critics also have raised questions about whether NHTSA has adequate expertise and resources to investigate safety defects in a fleet of approximately 256 million vehicles in the United States. There is concern that NHTSA’s limited staff must rely too heavily on automakers’ explanations about whether a safety defect exists within engine computers and software.¹⁵ *The Washington Post* reported that 33 former NHTSA and DOT employees now work for automakers as lawyers, consultants, and lobbyists dealing with safety investigations, recalls, and regulations.¹⁶

In addition, critics have raised concerns about the level of consideration provided to defect petitions filed by concerned individuals. Between 2003 and 2009, NHTSA received six petitions from consumers requesting that the agency open an investigation into Toyota SUA. Five of those petitions were rejected and the sixth was folded into an existing investigation. The Committee expects NHTSA to respond to defect petitions that present credible evidence that a defect or non-compliance may exist. Where appropriate, NHTSA should consider the petition in context of other information and data provided to NHTSA by manufacturers and consumers.

¹¹ “Lawsuit Over a Crash Adds to Toyota’s Difficulties,” *The New York Times*, February 5, 2010.

¹² NHTSA PE04-021.

¹³ “Toyota Recall Shines Harsh Light on Safety Agency,” National Public Radio, February 4, 2010.

¹⁴ *Id.*

¹⁵ “NHTSA overly reliant on carmakers’ accounts during complaint review process,” *The Washington Post*, February 5, 2010.

¹⁶ “Analysis finds uneasy mix in auto industry and regulation,” *The Washington Post*, March 9, 2010.

SUMMARY OF PROVISIONS

As amended in Committee, the legislation would require NHTSA to issue new safety standards for passenger motor vehicles. The new standards would require that vehicles be able to stop within a certain distance even if the throttle is open; that vehicle electronics meet minimum safety standards; and that consumers have full access to event data recorders. The bill would raise the cap on civil penalties to better deter multi-billion dollar multinational auto companies from violating safety regulations or withholding critical safety data from safety investigators. It would also grant the Secretary of Transportation (Secretary) authority to immediately stop the sale of vehicles with a defect that can cause death or serious bodily injury.

To improve information for consumers, the bill would require more safety data submitted by manufacturers to NHTSA to be made available to the public. The bill would require NHTSA to update its consumer information website, and make it more user-friendly. The bill would require manufactures to give consumers notice of software upgrades, which have become just as important to auto safety as mechanical parts. To encourage the reporting of vehicle defects, auto industry employees would receive the same whistleblower protections as airline workers.

To promote corporate responsibility, the bill, as amended in Committee, would require the principal executive officer of a company residing in the U.S.—or a U.S.-based safety officer of the company who reports directly to the principal officer—to personally attest that information sent to NHTSA in response to a safety investigation is true and does not omit important information. The bill would prohibit NHTSA employees who work on vehicle safety issues from working for the auto industry for a period of three years in a position in which they advise the industry on vehicle safety regulation.

To help NHTSA adequately enforce vehicle safety regulations, the bill would increase NHTSA's authorization levels. The initial increase would be weighted toward dramatically improving NHTSA's vehicle safety databases and public information, while also starting the process of hiring more vehicle safety engineers and inspectors. In later years, a greater share of the funding would be directed toward the steady hiring of additional safety personnel. The bill would also require NHTSA to establish a Council for Vehicle Electronics, Vehicle Software and Emerging Technologies to build, focus, and integrate expertise in vehicle electronics.

To protect used car buyers, the bill would require auto dealers to determine if a used vehicle has any parts or other problems that have been recalled by the original manufacturer that have not been remedied. A dealer would then have the choice of having the recall work performed by a manufacturer's dealership, or providing conspicuous notice to the consumer that recalled parts or other problems with the used vehicle have not been remedied.

During the Committee's Executive Session, amendments were adopted that would: (1) require NHTSA to issue a new safety standard requiring electric and hybrid vehicles to make a small amount of artificial noise at low speeds so that pedestrians—especially blind pedestrians—can hear these cars approach; (2) author-

ize \$12 million a year for fiscal years 2011 through 2015 for NHTSA to research the potential of “in-vehicle” technology that would prevent a drunk driver from starting a vehicle; (3) require that all heavy- and medium-duty vehicles beginning in model year 2017 be equipped with event data recorders that meet requirements of the bill; (4) require the Council for Vehicle Electronics, Vehicle Software and Emerging Technologies to conduct research on the safety of using lightweight plastics as part of a vehicle’s core structure; and (5) allow the Secretary to notify vehicle owners who fail to respond to a manufacturer’s recall notice to remedy especially serious safety defects.

LEGISLATIVE HISTORY

On March 2, 2010, the Senate Committee on Commerce, Science, and Transportation held a hearing specifically on the issue of Toyota’s recalls and NHTSA’s response. To address the concerns raised during the hearing, on May 4, 2010, Chairman Rockefeller introduced S. 3302, the Motor Vehicle Safety Act of 2010, which was referred to the Committee for consideration. The Committee held a second hearing on May 19, 2010, to consider the legislation. The bill is co-sponsored by Senators Pryor, Snowe, Boxer, Cantwell, Lautenberg, McCaskill, Klobuchar, Udall, and Begich.

On June 9, 2010, in an open Executive Session, the Committee considered the bill, which was modified by a substitute amendment. Senator Kerry offered an amendment to require NHTSA to issue a new safety standard requiring electric and hybrid vehicles to make a small amount of artificial noise at low speeds so that pedestrians—especially blind pedestrians—can hear these cars approach. Senator Udall offered an amendment to authorize \$12 million a year for fiscal years 2011 through 2015 for NHTSA to research the potential of “in-vehicle” technology that would prevent a drunk driver from starting a vehicle. Senator Udall also offered an amendment to require that all heavy- and medium-duty vehicles beginning in model year 2017 be equipped with event data recorders that meet requirements of the bill. Senator Warner offered an amendment to require the Council for Vehicle Electronics, Vehicle Software and Emerging Technologies to conduct research on the safety of using lightweight plastics as part of a vehicle’s core structure. Senator Thune offered an amendment to allow the Secretary to notify vehicle owners who fail to respond to a manufacturer’s recall notice to remedy especially serious safety defects. The Committee adopted these amendments as part of a managers’ package and reported S. 3302 favorably by voice vote.

Also during the Executive Session, Ranking Member Hutchison expressed an interest in revisiting the bill’s authorization levels and new requirements for used car sales before consideration by the full Senate. Similarly, Senator McCaskill expressed the hope that the bill’s corporate accountability requirements would be reviewed to ensure equal treatment of foreign and domestic manufacturers.

In the House of Representatives, Representative Henry Waxman, Chairman of the House Committee on Energy and Commerce, introduced similar legislation on May 25, 2010, as H.R. 5381. On May 26, 2010, the House Committee ordered H.R. 5381 to be reported favorably with amendments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 3302—Motor Vehicle Safety Act of 2010

Summary: S. 3302 would authorize the appropriation of an estimated \$782 million over the 2011–2015 period for the National Highway Traffic Safety Administration (NHTSA) to establish new safety standards for certain vehicles, complete safety research, and make certain information more readily available to the public. Assuming appropriation of the specified amounts and the amounts estimated to be necessary, CBO estimates that implementing the bill would cost \$761 million over the 2011–2015 period.

Pay-as-you-go procedures apply because enacting the legislation could affect revenues. The bill would increase certain civil penalties paid by vehicle manufacturers; such collections are classified as revenues in the budget. Based on information from NHTSA about historical penalty collections, CBO estimates that the expanded penalties would increase revenues by \$1 million per year over the 2011–2020 period.

S. 3302 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws relating to the safety standards for motor vehicles established by the bill. While that preemption would limit the application of state law, CBO estimates that it would impose no duty on state, local, or tribal governments that would result in additional spending.

By placing new requirements on manufacturers of motor vehicles and used car dealerships, S. 3302 would impose private-sector mandates, as defined in UMRA. The cost of several of the mandates related to vehicle motor safety would depend on future regulations. However, because the requirements would apply to a large number of vehicles intended for sale in the United States each year, CBO estimates that the total cost of the mandates would probably exceed the annual threshold (\$141 million in 2010, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 3302 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a						
Estimated Authorization Level	214	252	292	12	12	782
Estimated Outlays	124	204	259	122	52	761

^a CBO estimates that enacting S. 3302 also would increase revenues by \$1 million a year over the 2011–2020 period.

Basis of estimate: For this estimate, CBO assumes that S. 3302 will be enacted in 2010 and that the authorized amounts will be appropriated each year. Estimates of spending are based on historical spending patterns for similar programs.

Spending subject to appropriation

S. 3302 would authorize appropriations of \$780 million over the 2011–2015 period for certain NHTSA operations. CBO estimates that an additional \$2 million would be necessary to carry out a rulemaking to require hybrid and electric vehicles to generate sounds. The bill would require NHTSA to create new regulations and to update certain safety regulations that are applied to motor vehicles. The agency would be required to complete new research and expedite other research on several topics related to the safety of motor vehicles, including research on detecting alcohol use by drivers. NHTSA also would be required to make certain information more readily available to the public, expand the capabilities of an existing telephone call center, and submit several new reports to the Congress. Based on information from NHTSA and assuming appropriation of the amounts specified and estimated to be necessary, CBO estimates that implementing those provisions would cost about \$761 million over the 2011–2015 period.

Revenues

H.R. 5381 would increase civil penalties paid by vehicle manufacturers who violate certain regulations governing motor vehicle safety. Collections of civil fines are recorded as revenues and deposited in the Treasury. Based on information from NHTSA about historical penalty collections and the number of violations, CBO estimates that the expanded penalties would increase revenues by \$1 million per year over the 2011–2020 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 3302 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON JUNE 9, 2010

	By fiscal year, in millions of dollars—													2010– 2015	2010– 2020
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020				
NET INCREASE OR DECREASE (–) IN THE DEFICIT															
Statutory Pay-As-You-Go Impact	0	–1	–1	–1	–1	–1	–1	–1	–1	–1	–1	–1	–5	–10	

Estimated impact on state, local, and tribal governments: S. 3302 contains an intergovernmental mandate as defined in UMRA because it would preempt state laws relating to the safety standards for motor vehicles required by the bill. While that preemption would limit the application of state law, CBO estimates that it would impose no duty on state, local, or tribal governments that would result in additional spending.

Estimated impact on the private sector: By placing new requirements on manufacturers of motor vehicles and used car dealerships, S. 3302 would impose private-sector mandates, as defined in UMRA. The cost of several of the mandates related to vehicle motor safety would depend on future regulations. However, because the requirements would apply to a large number of vehicles in-

tended for sale in the United States per year, CBO estimates that the total cost of the mandates would probably exceed the annual threshold (\$141 million in 2010, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Safety standards for passenger motor vehicles

The bill would direct NHTSA to establish safety standards for such things as the configuration and labeling of gear shift controls, the control of vehicles with push-button ignition systems, and fail-safe systems for accelerator control systems. NHTSA estimates that the safety standards would apply to 12 million to 17 million passenger motor vehicles annually over the next five years. Based on information from NHTSA and industry sources about the cost of potential requirements, CBO estimates that the cost to the industry to comply with the new standards could be significant. Because the types of safety requirements implemented would be determined by future regulations, CBO cannot estimate the cost of the mandates.

Event data recorders

The bill would require manufacturers to install event data recorders (EDRs) in all passenger vehicles sold in the United States beginning in model year 2015 and in all medium-duty and heavy-duty vehicles by model year 2017. EDRs record information from a vehicle before, during, and after a safety event such as when an air bag is deployed.

Information from industry sources indicates that it would cost each passenger car manufacturer \$6 million in development costs and \$5.50 per vehicle to install EDRs that meet existing standards. Most passenger cars now produced already include EDRs. However, EDRs would have to meet new standards to be established by NHTSA related to the types of events recorded, the length of the recording for each event, and the types of data stored. Because such standards would be determined by future regulations, CBO cannot estimate the cost of this mandate to the manufacturers of passenger vehicles.

According to information from NHTSA, a few hundred thousand medium-duty and heavy-duty vehicles are produced each year. Because the cost to install EDRs on medium-duty and heavy-duty vehicles would depend upon future rules and regulations, CBO has no basis for determining the cost of the mandate to the manufacturers of medium-duty and heavy-duty vehicles.

Hybrid and electric vehicle sounds

S. 3302 would require hybrid and electric vehicles to generate sounds that alert blind pedestrians when such a vehicle is operating nearby in a quiet mode. Based on information from NHTSA and industry sources on the number of vehicles that could be affected and the potential cost of installing such devices, CBO estimates that the cost of this mandate would be small relative to the annual threshold.

Notification of recalls by used car dealers

The bill would require used-car dealers to notify each customer in writing of any recalls on a vehicles that have not been remedied

before completing a sale or lease transaction. According to industry sources, about 27 million used vehicles are sold or leased by dealers per year and it would take about 15 minutes per vehicle to prepare the required paperwork and search for any outstanding recalls. The direct cost of the mandate would primarily be any additional staffing expenses dealers would incur. Based on information from industry sources, CBO estimates that the direct cost of the mandate would be small relative to the annual threshold.

Other mandates

CBO estimates that the incremental costs of several other private-sector mandates imposed by the bill would be minimal. For example, the legislation would require manufacturers of motor vehicles to:

- Make information about recalls and notices of software upgrades available to customers on the Internet;
- Place information about submitting a safety related complaint to NHTSA in each automobile;
- Have a senior official responsible for safety residing in the United States who would certify certain information submitted to the Department of Transportation;
- Send a mailing list of current owners of a recalled vehicle to the Department of Transportation, upon request;
- Not hire certain former NHTSA employees for a period of 36 months after the employee stops working at NHTSA; and
- Comply with whistleblower protections for employees.

Previous CBO estimate: On June 25, 2010, CBO transmitted a cost estimate for H.R. 5381, the Motor Vehicle Safety Act of 2010, as ordered reported by the House Committee on Energy and Commerce on May 25, 2010. That bill would authorize appropriations of \$1.1 billion and would impose a user fee that would offset some of the costs of the authorized appropriations. In total, CBO estimated that H.R. 5381 would authorize net appropriations of \$876 million over the 2010–2015 period. Each bill also contains both intergovernmental and private-sector mandates.

Estimate prepared by: Federal spending: Sarah Puro; Federal revenues: Mark Booth; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation would apply to: (1) motor vehicle manufacturers or motor vehicle equipment manufacturers that sell vehicles and equipment in the United States; (2) dealers and distributors of motor vehicles or motor vehicle equipment within the United States; (3) motor vehicle mechanics, and (4) persons, including corporations with vehicle fleets, who operate motor vehicles.

ECONOMIC IMPACT

The legislation would affect the nation's economy to the extent that it would require, for specific kinds of information, persons covered under the bill to collect, retain, and report safety-related information regarding motor vehicles or motor vehicle equipment. Additional safety-related information may be required by the Secretary as a result of his or her authorized rulemaking authority, the economic impact of which cannot be defined until the rulemaking concludes. The legislation also may require automakers to install some new safety features on passenger motor vehicles. CBO estimates that the cost to the industry to comply with the new standards could be significant, but cannot be calculated before the completion of required rulemakings.

PRIVACY AND PAPERWORK

The impact on the personal privacy of the persons covered by this legislation is difficult to define prior to the completion of the Secretary's rulemaking proceedings authorized under the legislation. The required rulemaking on event data recorders may result in the collection of private information, but the bill clarifies that any such information would remain the property of the vehicle's owner or lessee. The outcome of these rulemaking proceedings will also determine whether paperwork requirements will be necessary.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 would establish the short title of the Act as the "Motor Vehicle Safety Act of 2010." The section also contains a Table of Contents.

Section 2. Definitions

Section 2 would define "passenger motor vehicle" for purposes of the Act as a motor vehicle under 10,000 pounds gross vehicular weight, but not including a motorcycle, low speed vehicle or trailer. The section also would define "Secretary" as the Secretary of Transportation, acting through the Administrator of NHTSA.

TITLE I—VEHICLE ELECTRONICS AND SAFETY STANDARDS.

Section 101. NHTSA Electronics, Software and Engineering Expertise

Section 101 would establish within NHTSA a Council for Vehicle Electronics, Vehicle Software and Emerging Technologies (Council) to build, focus and integrate expertise in vehicle electronics. The section also would charge the Council with investigating the safety of lightweight plastics used in motor vehicles and assessing implications of emerging safety technologies in consultation with af-

ected stakeholders, including safety advocacy groups. The section would establish an “Honors Recruitment Program” to train engineering students for a career in vehicle safety. During the Committee hearings, the Committee received testimony that NHTSA only had two electronics engineers to assess today’s vehicles. NHTSA at the time had no software engineers, although computers now run many vehicle functions, including acceleration.

Section 102. Vehicle Stopping Distance and Brake Override Standard.

Section 102 would require the Secretary to initiate a rulemaking to prescribe a motor vehicle safety standard by which every new passenger motor vehicle must be able to stop safely by normal brake application, even when the engine is receiving accelerator input signals. In issuing the rule, the Secretary would be permitted to allow vehicles to temporarily suspend the safety function for times when both brake and accelerator need to be applied together, such as on a steep hill or for maneuvering a trailer. The rule would require the installation of redundant circuits or mechanisms for the accelerator control system in the event that the primary circuit or mechanism fails. The section would require the Secretary to issue the final rule within one year after enactment. While the Secretary may permit compliance with the new standard through the incorporation of “brake override” technology that instructs engine computers to allow the brake to override the accelerator pedal, the section is technology neutral. If a better technology or mechanism emerges for stopping vehicles while the vehicle receives accelerator inputs, the automakers would be free to adopt it.

Section 103. Pedal Placement Standard.

Section 103 would require the Secretary to consider issuing a rule to require minimum distances between floor pedals, minimum distances between foot pedals and the vehicle floor, and minimum distances to account for any other potential obstructions to pedal movement. The Secretary would be required to issue the rule within 3 years after enactment, or, if the Secretary determines that a standard is not warranted, transmit to Congress a report stating the reasons for not issuing a rule.

Section 104. Electronic Systems Performance Standard.

Section 104 would require the Secretary to issue a rule requiring passenger vehicles to meet minimum performance standards for electronic systems, taking into account electronic components, the interaction of electronic components, or the effect of surrounding environments on the entire vehicle electronic systems. The Secretary would be required to issue the rule within 4 years after enactment. The Committee notes that while there already are several industry-wide standards for electronics that most automakers meet, new entrants to the U.S. auto market and existing manufacturers are under no obligation to meet those industry standards. Therefore, a Federal regulation setting minimum electronics standard would help to ensure that all vehicles sold in the United States have safe electronics systems.

Section 105. Push-Button Ignition Systems Standard.

Section 105 would require the Secretary to initiate a rulemaking to consider issuing a rule that establishes a uniform protocol by which a driver who may be unfamiliar with the vehicle uses a push-button ignition system during an emergency situation. The Secretary would be required to issue the rule within 2 years after enactment, or, if the Secretary determines that a standard is not warranted, transmit to Congress a report stating the reasons for not issuing a rule. The Committee expects that the Secretary would use discretion in determining which types of push-button systems would be required to have standardized operations pursuant to any rule issued under this section, and does not anticipate that systems that require the physical insertion of a tangible key device to start the ignition would necessitate such a rule.

Section 106. Transmission Labeling Standard.

Section 106 would require the Secretary to consider issuing a rule that requires accurate labeling for gear shifting controls, including for drivers not familiar with the vehicle. The Secretary would be required to issue the rule within 2 years after enactment, or, if the Secretary determines that a standard is not warranted, transmit to Congress a report stating the reasons for not issuing a rule.

Section 107. Vehicle Event Data Recorders Standard.

Subsection 107(a) would direct the Secretary to revise part 563 of title 49 of the Code of Federal Regulations to require that new vehicles sold in the United States beginning with the 2015 model year be equipped with event data recorders (EDRs) that meet the standards set forth in that part. Subsection (b) would establish that the data in an EDR is the property of the owner or lessee of the passenger vehicle. The subsection further provides that data from the EDR may not be retrieved by a third party without the consent of the owner or lessee, except pursuant to a court order, pursuant to an authorized NHTSA investigation and then only if personally identifiable information is not disclosed, or for the purpose of facilitating emergency medical response. Subsection (c) would require the Secretary to issue, within 3 years after enactment, a rule for new data requirements for passenger motor vehicle EDRs. Subsection (d) would establish specifications for the rule to be issued under subsection (c), including a requirement that the EDR store data covering a reasonable time before and after a triggering event, a requirement that data stored be accessible with commercially available equipment, a requirement for preventing unauthorized access to stored data, a direction that the Secretary consider requiring an interoperable data access port, and a prohibition on the EDR recording vehicle location information for purposes other than facilitating emergency medical response in the event of a crash. Subsection (e) would require manufacturers to disclose the existence and purpose of the EDR to purchasers of passenger motor vehicles. Subsection (f) would clarify that NHTSA would have access to EDR data pursuant to an investigation authorized by section 30166(c)(3)(C) of title 49, subject to the privacy limitations of subsection (b). Subsection (g) would require the Secretary to require all new medium-duty and heavy-duty vehicles sold in the United

States beginning with the 2017 model year to be equipped with an EDR.

TITLE II—ENHANCED SAFETY AUTHORITIES

Section 201. Civil Penalties.

Section 201(a) would increase the per-vehicle civil penalty from \$5,000 to \$25,000, and raise the overall cap on civil penalties from \$15 million to \$300 million for auto manufacturers that intentionally fail to report vehicle safety defects to NHTSA, or that intentionally provide misleading information to NHTSA. Before issuing a fine, the Secretary would be required to consider several relevant factors in setting the level of the fine, including the nature of the violation, the severity of the risk of injury, actions taken by the person charged to identify, investigate or mitigate the violation, the nature of the defect or noncompliance, and the size of the company. Subsection (b) would require the Secretary to issue a final regulation, within 1 year after enactment, providing the Secretary’s interpretation of the penalty factors set forth in subsection (a).

Section 202. Imminent Hazard Authority.

Section 202 would give the Secretary authority to expedite the process of a recall in the event that the vehicle defect “presents a substantial likelihood of death or serious injury to the public if not discontinued immediately.” The Secretary would be required, within 2 years after enactment, to establish procedures and circumstances by which this extraordinary authority would be used.

TITLE III—TRANSPARENCY AND ACCOUNTABILITY

Section 301. Public Availability of Early Warning Data.

Section 301 would reverse the presumption under the TREAD Act that none of the information submitted by manufacturers should be made public, unless the Secretary determines that it should, in favor of requiring the disclosure of the maximum amount of safety information to the public, while at the same time still giving the Secretary the authority to protect confidential, competitive business information from public disclosure. Section 301(a) would amend section 30166(m) of title 49 by codifying certain types of data that auto manufacturers would be required to submit to NHTSA. Subsection (b) would require the Secretary to issue regulations within 2 years after the date of enactment establishing categories of early warning data that must be made available to the public and categories that may be confidential and exempt from public disclosure. Subsection (c) would require the Secretary to consult with the Director of the Office of Government Information Services in the National Archives and the Director of the Office of Information Policy of the Department of Justice in conducting the rulemaking under this section. Subsection (d) would require the Secretary to favor maximum public availability of information in issuing a rule under subsection (b) and would provide that vehicle safety defect information related to incidents involving death or injury, aggregated numbers of property damage claims, and aggregated numbers of consumer complaints related to potential vehicle defects are presumptively not confidential information and eligible

for protection under section 552(b) of title 5. Greater transparency and public disclosure is intended to facilitate the identification of potential safety defects by NHTSA, manufacturers, and safety advocates, and help consumers make informed decisions about passenger motor vehicles. The Committee expects the Secretary to expeditiously provide the public with access to nonconfidential data in a format that promotes ease of use and transparency.

Section 302. Improved NHTSA Vehicle Safety Database.

Subsection 302(a) would require NHTSA to modernize its vehicle safety databases to facilitate public access by improving their organization and functionality, standardizing search terms, and posting aggregate data files for easy download. Subsection (b) would require the Secretary to establish a means by which an individual could search by vehicle identification number and determine whether a vehicle was subject to a safety recall and whether the safety issue related to such recall had been remedied. The subsection would allow the Secretary of Transportation to accomplish this by requiring automakers to provide such recall information at no cost on their own web sites.

Section 303. Consumer Notice of Software Updates and Other Communications with Dealers.

Section 303 would require manufacturers to notify the Secretary, and to publish on their web sites, notices to dealers and owner communications, including software updates, so that consumers will be better informed about potential safety issues affecting their vehicles. Many of the “fixes” for defective vehicles—such as the remedies for the Toyota Prius braking system and the Lexus GX stability control system—involve reprogramming the vehicle’s software. Some software updates are done through recalls. However, some software updates are performed during routine maintenance at dealerships often without the knowledge of the vehicle owner. The section would require manufacturers to provide a plain language description of such communications that summarizes all the pertinent consumer information and to provide an index to each communication that identifies the make, model, and model year of the affected vehicles. The Secretary would be required to make the index and summary available to the public on the Internet in searchable format. The section is meant to facilitate, not supplant, public access to dealer and consumer communications submitted to NHTSA that may be sought through the Freedom of Information Act (FOIA). The Committee expects NHTSA to respond in a timely manner to all FOIA requests.

Section 304. Promotion of Vehicle Defect Reporting.

Section 304 would require the placement of a sticker or other notification in the glove box or other location accessible by the consumer with plain language about how to contact NHTSA to report a potential vehicle safety defect.

Section 305. NHTSA Hotline for Manufacturer, Dealer, and Mechanic Personnel.

Section 305 would require NHTSA to establish a “hotline” for mechanics and other auto industry workers to confidentially report potential vehicle defects.

Section 306. Whistleblower Protections For Motor Vehicle Manufacturer, Part Supplier and Dealership Employees.

Section 306 would amend subchapter IV of chapter 301 of title 49 to establish protections against retaliation for auto industry executives, production workers, dealership employees and mechanics who provide information related to a motor vehicle defect or violation of law. The whistleblower protections set forth in this section are consistent with the protection currently provided to airline employees.

Specifically, the section would provide that no motor vehicle manufacturer, part supplier, or dealership may discharge or otherwise discriminate against an employee because the employee: provided or is about to provide to the employer or the Secretary information relating to a motor vehicle defect or violation of chapter 301 of title 49; has filed or is about to file a proceeding related to a violation of a motor vehicle safety defect or violation of the chapter; testified, assisted or is about to testify or assist in such a proceeding; or objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of any Act enforced by the Secretary. Under the section, a person who believes they have been discharged or discriminated against in violation of the above would be able to file a complaint with the Secretary of Labor within 180 days after the date of the violation. The complaint must make a prima facie showing.

Within 60 days after receipt of the complaint and after affording opportunity for response from the person named in the complaint, the Secretary of Labor would be required to conduct an investigation. If the Secretary of Labor concluded that there is reasonable cause to believe a violation has occurred, the Secretary of Labor would issue a preliminary order with findings. The person named in the complaint would be able to object to the order and findings and seek a hearing. If a hearing is not requested in 30 days, the preliminary order would be deemed final.

The section further provides that, after a hearing, the Secretary of Labor would be required to issue a final order within 120 days. Upon a finding of a violation, the Secretary of Labor in a final order would be able to require the person who committed the violation to take affirmative action to abate the violation, reinstate the complainant, and provide compensatory damages. If a complaint is determined to be frivolous, the Secretary of Labor would be able to award the prevailing employer a reasonable attorney’s fee not to exceed \$1,000. If the Secretary of Labor has not issued a final order within 210 days of the filing of a complaint, the complainant would be allowed to bring an action in the district court of the United States. Final orders would be appealable to the United States Circuit Court of Appeals. If an employer does not comply with a final order, the Secretary of Labor would be able to file a civil action in the United States District Court to enforce that order.

Section 307. Corporate Responsibility for NHTSA Reports.

Subsection 307(a) would direct the Secretary to require, for each company submitting information in response to a request for information in a safety defect or compliance investigation, that a principal officer certify that the signing officer has reviewed the submission and, based on the officer's knowledge, the submission does not contain an untrue statement of a material fact or omit a material fact. For purposes of this section, a principal officer means an officer of the company who resides in the United States who is responsible for safety compliance under U.S. laws and who reports directly to the principal executive office of the company or the principal executive officer of the company residing in the United States.

Subsection 307(b) would establish that a person who knowingly and willfully submits materially false, misleading, or incomplete information to the Secretary, after certifying the same pursuant to subsection (a), would be subject to a civil penalty of not more than \$50,000 per day with a maximum penalty for a related series of violations of \$10,000,000. The subsection further provides that a person who violates section 1001 of title 18 with the specific intent of misleading the Secretary with respect to a motor vehicle safety defect would be subject to imprisonment for not more than 12 months in addition to the penalties set forth in section 1001 of title 18.

The certification process is similar to that established for executive officers under the Sarbanes-Oxley Act of 2002. On May 18, 2010, Toyota paid a fine of \$16.4 million, without admitting wrongdoing, after NHTSA found that it had failed to report a safety defect related to certain accelerator pedals in a timely manner. In addition to improving the accuracy of submissions to NHTSA, it is hoped that this section will reduce such failures to report defects to NHTSA by requiring a senior officer in the company to participate in the review of such filings.

The section would seek to strike a balance between making sure a senior executive with authority to influence corporate policy is closely overseeing reporting to NHTSA with facilitating the flow of information to NHTSA. The Committee understands that NHTSA may seek information through a series of information requests and companies may wish to provide information to NHTSA as it becomes available. The Committee supports the free flow of information and application of this section to enable NHTSA to receive information as quickly as possible. The Committee notes that liability under the section applies only to a knowing and willful violation that is material and not to unintentional omissions and misstatements.

Section 308. Anti-Revolving Door.

Subsection 308(a) would prohibit a covered NHTSA employee to commence employment with, or otherwise advise or represent, a manufacturer or other person subject to regulation under chapter 301 of title 49 during the 36-month period after leaving NHTSA, if such employment involves communicating with NHTSA with respect to compliance with safety regulations, representing or advising a manufacturer with respect to a motor vehicle safety or fuel economy issue, or assisting a manufacturer in responding to a request for information from NHTSA. Covered NHTSA employees

would be defined as individuals to whom section 207 (c) or (d) of title 18 applies or whose responsibilities during their last 12 months of employment at NHTSA included administrative, managerial, supervisory, legal, or senior technical responsibility for any motor vehicle safety-related program or activity. The subsection would not apply to individuals employed by a manufacturer or other covered entity as of the date of enactment.

Subsection 308(a) would also prohibit a manufacturer or other covered entity from employing or contracting for the services of a covered individual during the 36 month period following his or her departure from NHTSA. The subsection would establish that persons violating the provision would be subject to civil penalties as set forth in section 216(b) of title 18, and manufacturers or other covered entities who violate the provision would be subject to a penalty of not less than \$100,000 and an amount equal to 90 percent of the annual compensation or fee paid to the individual with respect to whom the violation occurred.

Subsection 308(b) would direct the DOT Inspector General to review the Department's policies and procedures applicable to official communications with former employees concerning motor vehicle safety compliance matters for which they had responsibility during the last 12 months of their employment and submit a report containing his findings, conclusions, and recommendations, within 1 year, to the Committee and the House of Representatives Committee on Energy and Commerce.

Subsection 308(c) would direct the DOT Inspector General to study the Department's policies relating to post-employment restrictions on employees who perform functions related to transportation safety and submit, within 1 year, to the Committee and the House of Representatives Committee on Energy and Commerce, a report containing his findings, conclusions, and recommendations.

Section 309. Deadlines for Rulemaking.

Section 309 would require the Secretary to notify Congress if a rulemaking deadline will not be met, explain the reason for the delay, and establish a new deadline.

Section 310. Used Passenger Motor Vehicle Consumer Protection.

Section 310 would prohibit a dealer from selling or leasing a used passenger motor vehicle until the dealer clearly and conspicuously notifies the purchaser or lessee of any outstanding notifications of safety defects with respect to a vehicle that have not been remedied and the purchaser or lessee acknowledges such notification in writing. The requirement would not apply to a dealer to the extent that recall information regarding a vehicle was not accessible at the time of the sale or lease through the search function established by NHTSA under section 302(b) of the Act. The section further provides that the Secretary may exempt by rule vehicles that are auctioned. The Committee notes that many used vehicles are sold at auction to dealers and not directly to consumers. The section would provide the Secretary with flexibility to exempt such business to business transactions. The section would be effective 18 months after enactment.

Section 311. Use of Existing Regulatory Framework.

Section 311 would provide that, in conducting a rulemaking required by this Act, the Secretary would, where appropriate, amend or modify existing regulations or standards pertaining to the same or similar subject matter. However, the Secretary would not be required to amend or modify existing regulations or standards for any rulemaking, if the Secretary determines that such a change does not further the goal of safety.

Section 312. Recalled Vehicles and Replacement Equipment.

Section 312 would authorize the Secretary to have the DOT individually notify vehicle owners of the importance of a particular safety recall, if the Secretary determines that the first and second recall notices of a manufacturer have failed to result in an adequate number of recall remedies. The section would authorize the Secretary to use government databases, or require manufacturers to provide vehicle owner information, to enable the Secretary to locate and notify vehicle owners of the recall.

TITLE IV—FUNDING

Section 401. Authorization of Appropriations.

Section 401 would increase authorizations for NHTSA's vehicle safety functions to \$200 million in FY 2011, \$240 million in FY 2012, and \$280 million in FY 2013. In FY 2010, Congress allocated NHTSA \$140 million for vehicle safety operations, including rulemakings, investigations, and enforcement. Testimony before Congress during the Toyota hearings illustrated that NHTSA does not have enough people or resources to adequately enforce vehicle safety regulations for approximately 256 million vehicles on American roads. NHTSA also lacks the expertise to investigate automobile software that now controls many vehicle safety functions. The Committee expects the initial increase would be weighted toward improving NHTSA's vehicle safety databases and information collection, while also starting the process of hiring additional personnel. In FY 2012 and FY 2013, an increasingly greater share of the funding would be directed toward the steady hiring of more auto safety engineers, vehicle inspectors, and enforcement personnel.

TITLE V—PEDESTRIAN SAFETY ENHANCEMENT

Section 501. Short Title.

This section would provide that the title may be cited as the "Pedestrian Safety Enhancement Act of 2010."

Section 502. Definitions.

Section 502 would set forth the definitions used in the title.

Section 503. Minimum Sound Requirement for Motor Vehicles.

Subsection 503(a) would require the Secretary, within 18 months after enactment, to initiate a rulemaking to promulgate a motor vehicle safety standard to establish performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby electric or hybrid vehicle operating below a cross-

over speed and require new electric or hybrid vehicles to provide an alert sound conforming to the standard. Subsection (b) would require the Secretary to determine the minimum level of sound emitted from a motor vehicle that is necessary to provide pedestrians with the information needed to reasonably detect a nearby electric or hybrid vehicle, determine the performance requirements for an alert sound that is recognizable, and consider the overall community noise impact. Subsection (c) would establish a phase-in period of 3 years after the date on which the final rule is issued. Subsection (d) would require the Secretary, in conducting the study and rulemaking, to consult with various entities including automobile manufacturers, the Environmental Protection Agency, and consumer groups. Subsection (e) would require the Secretary within 48 months of the date after enactment to study and report to Congress whether there exists a safety need to apply the motor vehicle safety standard required by subsection (a) to conventional motor vehicles.

Section 504. Authorization of Appropriations.

Section 504 would authorize such sums as may be necessary to carry out this title.

TITLE VI—IN-VEHICLE ALCOHOL DETECTION DEVICE RESEARCH

Section 601. Short Title.

This section would provide that the title may be cited as the “Research of Alcohol Detection Systems for Stopping Alcohol-related Fatalities Everywhere Act of 2010,” or the “ROADS SAFE Act of 2010.”

Section 602. Findings.

Section 602 would set forth findings by Congress about the need for alcohol detection technologies in motor vehicles.

Section 603. Driver Alcohol Detection System For Safety Research.

Subsection 603(a) would direct the Administrator of NHTSA to carry out a collaborative research effort to continue to explore the feasibility and the potential benefits of widespread deployment of in vehicle technology to prevent alcohol-impaired driving. Subsection (b) would require the Administrator to submit a report to the Committee and the House of Representatives Committee on Energy and Commerce describing progress in the research effort and including an accounting for the use of Federal funds expended in carrying out the effort.

Section 604. Definitions.

Section 604 would set forth the definitions used in the title.

Section 605. Application With Other Laws.

Section 605 would provide that nothing in this title would be construed to modify or otherwise affect any Federal, State, or local government law, civil or criminal, with respect to the operation of a motor vehicle.

Section 606. Authorization of Appropriations.

Section 606 would authorize to be appropriated \$12,000,000 for each of FYs 2011 through 2015 to carry out subsection (a). The section would further provide that any amounts appropriated that are not needed to carry out the research may be used by the Secretary for highway safety research in accordance with chapter 301 of title 49.

ROLLCALL VOTES IN COMMITTEE

Senator Hutchison made a motion to report S. 3302 out of the Committee, and to incorporate amendments by Sen. Kerry (Title V), Sen. Udall (Title VI, and electronic data recorders for commercial vehicles in section 107), Sen. Thune (section 312), and Sen. Warner (lightweight plastics research in section 101). The motion was seconded, and Chairman Rockefeller called for the yeas and nays. The Chairman ruled that S. 3302 was reported out of Committee by voice vote.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART A. GENERAL

CHAPTER 301. MOTOR VEHICLE SAFETY

SUBCHAPTER I. GENERAL

§ 30104. Authorization of appropriations

There is authorized to be appropriated to the Secretary **[\$98,313,500]** for the National Highway Traffic Safety Administration to carry out this part **[in each fiscal year beginning in fiscal year 1999 and ending in fiscal year 2001.]** *and to carry out the Motor Vehicle Safety Act of 2010—*

- (1) \$200,000,000 for fiscal year 2011;
- (2) \$240,000,000 for fiscal year 2012; and
- (3) \$280,000,000 for fiscal year 2013.

* * * * *

§ 30107. Restriction on certain employment activities

(a) *NHTSA EMPLOYEES.—*

(1) *IN GENERAL.—A individual to whom this subsection applies who is employed by the National Highway Traffic Safety Administration may not commence employment with, or otherwise advise, provide assistance to, or represent for compensation, a manufacturer or other person subject to regulation under this chapter during the 36-month period commencing upon that individual's termination of employment with the National*

Highway Traffic Safety Administration if such employment, advice, assistance, or representation involves—

(A) written or oral communication with the National Highway Traffic Safety Administration on any matter relating to compliance with the requirements of this chapter on behalf of the manufacturer or person;

(B) representing or advising a manufacturer with respect to a motor vehicle safety or fuel economy issue, including any defect related to motor vehicle safety, compliance with a motor vehicle safety standard, or compliance with an average fuel economy standard prescribed under chapter 329 of this title; or

(C) assisting a manufacturer in responding to a request for information from the National Highway Traffic Safety Administration.

(2) APPLICATION.—

(A) IN GENERAL.—This subsection applies to any individual—

(i) to whom section 207 (c) or (d) of title 18 applies;

or

(ii) whose responsibilities during his or her last 12 months of employment at the National Highway Traffic Safety Administration included administrative, managerial, supervisory, legal, or senior technical responsibility for any motor vehicle safety-related program or activity.

(3) SAFE HARBOR.—This subsection does not apply to any individual employed by a manufacturer or other person subject to regulation under this chapter as of the date of enactment of the Motor Vehicle Safety Act of 2010.

(b) MANUFACTURERS.—It is unlawful for any manufacturer or other person subject to regulation under this chapter to employ or contract for the services of an individual to whom subsection (a) applies during the 36-month period commencing on the individual's termination of employment with the National Highway Traffic Safety Administration in a capacity in which the individual is prohibited from serving during that period.

CHAPTER 301. MOTOR VEHICLE SAFETY

SUBCHAPTER II. STANDARDS AND COMPLIANCE

§ 30118. Notification of defects and noncompliance

(a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation shall notify the manufacturer of a motor vehicle or replacement equipment immediately after making an initial decision (through testing, inspection, investigation, or research carried out under this chapter, examining communications under section 30166(f) of this title, or otherwise) that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The notification shall include the information on which the decision is based. The Secretary shall publish a notice of each decision under this subsection in the Federal Register. Subject to section 30167(a) of this title, the notification and information are available to any interested person.

(b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—

(1) The Secretary may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter only after giving the manufacturer an opportunity to present information, views, and arguments showing that there is no defect or noncompliance or that the defect does not affect motor vehicle safety. Any interested person also shall be given an opportunity to present information, views, and arguments.

(2) *If the Secretary of Transportation in making a decision under subsection (a) initially decides that such defect or noncompliance presents a substantial likelihood of death or serious injury to the public if not discontinued immediately, the Secretary shall notify the manufacturer of the decision that the vehicle or replacement equipment poses an imminent safety hazard to the public and the basis for that decision. Not later than 10 days after the initial decision, the manufacturer and interested persons shall be given an opportunity to present information, views, and arguments to the Secretary. The Secretary shall consider such information, views and arguments and may make a final decision as to whether a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter.*

[(2)] (3) If the Secretary decides under paragraph (1) or (2) of this subsection that the vehicle or equipment contains the defect or does not comply, the Secretary shall order the manufacturer to—

(A) give notification under section 30119 of this title to the owners, purchasers, and dealers of the vehicle or equipment of the defect or noncompliance; and

(B) remedy the defect or noncompliance under section 30120 of this title.

(c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a motor vehicle or replacement equipment shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(d) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(e) HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.—On the motion of the Secretary or on petition of any interested person, the Secretary may conduct a hearing to decide whether the

manufacturer has reasonably met the notification requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

§ 30119. Notification procedures

(a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer required under section 30118 of this title of a defect or noncompliance shall contain—

- (1) a clear description of the defect or noncompliance;
- (2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;
- (3) the measures to be taken to obtain a remedy of the defect or noncompliance;
- (4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title;
- (5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title;
- (6) the procedure the recipient of a notice is to follow to inform the Secretary of Transportation when a manufacturer, distributor, or dealer does not remedy the defect or noncompliance without charge under section 30120 of this title; and
- (7) other information the Secretary prescribes by regulation.

(b) EARLIEST REMEDY DATE.—The date specified by a manufacturer in a notification under subsection (a)(5) of this section or section 30121(c)(2) of this title is the earliest date that parts and facilities reasonably can be expected to be available to remedy the defect or noncompliance. The Secretary may disapprove the date.

(c) TIME FOR NOTIFICATION.—Notification required under section 30118 of this title shall be given within a reasonable time—

- (1) prescribed by the Secretary, after the manufacturer receives notice of a final decision under section 30118(b) of this title; or
- (2) after the manufacturer first decides that a safety-related defect or noncompliance exists under section 30118(c) of this title.

(d) MEANS OF PROVIDING NOTIFICATION.—

(1) Notification required under section 30118 of this title about a motor vehicle shall be sent by first class mail—

(A) to each person registered under State law as the owner and whose name and address are reasonably ascertainable by the manufacturer through State records or other available sources; or

(B) if a registered owner is not notified under clause (A) of this paragraph, to the most recent purchaser known to the manufacturer.

(2) Notification required under section 30118 of this title about replacement equipment (except a tire) shall be sent by first class mail to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer.

(3) Notification required under section 30118 of this title about a tire shall be sent by first class mail (or, if the manufacturer prefers, by certified mail) to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer. In deciding whether public notice is required, the Secretary shall consider—

(A) the magnitude of the risk to motor vehicle safety caused by the defect or noncompliance; and

(B) the cost of public notice compared to the additional number of owners the notice may reach.

(4) A dealer to whom a motor vehicle or replacement equipment was delivered shall be notified by certified mail or quicker means if available.

(e) SECOND NOTIFICATION.—If the Secretary decides that a notification sent by a manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d notification in the way the Secretary prescribes by regulation. *If, in the Secretary's judgment, depending on the severity of the defect or noncompliance, the second notification by a manufacturer does not result in an adequate number of passenger motor vehicles or items of replacement equipment being returned for remedy, the Secretary may—*

(1) attempt to notify the registered owner of the recalled vehicle via first class mail or electronic means; and

(2) explain in writing to the registered owner the safety risk posed by the defect or noncompliance.

(f) NOTIFICATION BY LESSOR TO LESSEE.—

(1) In this subsection, “leased motor vehicle” means a motor vehicle that is leased to a person for at least 4 months by a lessor that has leased at least 5 motor vehicles in the 12 months before the date of the notification.

(2) A lessor that receives a notification required by section 30118 of this title about a leased motor vehicle shall provide a copy of the notification to the lessee in the way the Secretary prescribes by regulation.

(g) LOCATING OWNERS OR LESSEES.—*Depending on the magnitude of the risk to passenger motor vehicle safety, in the case of severe and life-threatening defects the Secretary may utilize, as appropriate, governmental motor vehicle databases or require manufacturers to provide sufficient information to enable the Secretary to locate and notify the owner or lessee of the defective or noncompliant vehicle or replacement equipment.*

§ 30120. Remedies for defects and noncompliance

(a) **WAYS TO REMEDY.**—

(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 80118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

- (i) by repairing the vehicle;
- (ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or
- (iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to impose conditions on the replacement of a motor vehicle or refund of its price.

(b) **TIRE REMEDIES.**—

(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—

(A) the day the owner or purchaser receives notification under section 30119 of this title; or

(B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(c) **ADEQUACY OF REPAIRS.**—

(1) If a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—

(A) replace the vehicle or equipment without charge with an identical or reasonably equivalent vehicle or equipment;

or

(B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.

(2) Failure to repair a motor vehicle or replacement equipment adequately not later than 60 days after its presentation is prima facie evidence of failure to repair within a reasonable time. However, the Secretary may extend, by order, the 60-day

period if good cause for an extension is shown and the reason is published in the Federal Register before the period ends. Presentation of a vehicle or equipment for repair before the date specified by a manufacturer in a notice under section 30119(a)(5) or 30121(c)(2) of this title is not a presentation under this subsection.

(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. A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan. 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, and how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses. The manufacturer shall include information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification or remedy campaigns.

(e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the motion of the Secretary or on application by any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the remedy requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the remedy requirements. If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair reimbursement to a dealer providing a remedy without charge under this section.

(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 10 calendar years, or the tire, including an original equipment tire, was bought by the first purchaser more than 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.

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(i) LIMITATION ON SALE OR LEASE.—

(1) If notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(2) This subsection does not prohibit a dealer from offering for sale or lease the vehicle or equipment.

(j) PROHIBITION ON SALES OF REPLACED EQUIPMENT.—No person may sell or lease any 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) in a condition that it may be reasonably used for its original purpose unless—

(1) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(2) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which section 30121(d) applies.

(k) LIMITATION ON SALE OR LEASE OF USED MOTOR VEHICLES.—

(1) A dealer may not sell or lease a used passenger motor vehicle until—

(A) the dealer clearly and conspicuously notifies the purchaser or lessee, in writing, of any notifications of a defect or noncompliance pursuant to section 30118(b) or section

30118(c) of this title with respect to the vehicle that have not been remedied; and

(B) the purchaser or lessee acknowledges, in writing, the receipt of such notification.

(2) Paragraph (1) shall not apply if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which 30121(d) applies.

(3) This subsection does not apply to a dealer, if the recall information regarding a used passenger motor vehicle was not accessible at the time of sale or lease using the means established by the Secretary in section 302(b) of the Motor Vehicle Safety Act of 2010.

(4) In this subsection, notwithstanding section 30102(a)(1) of this title—

(A) the term “dealer” means a person who sold at least 10 motor vehicles to consumers during the prior 12 months; and

(B) the term “used motor vehicle” means a motor vehicle that has previously been purchased other than for resale.

(5) By rule, the Secretary may exempt the auctioning of used motor vehicles from the requirements of this section to the extent that the exemption does not harm public safety.

CHAPTER 301. MOTOR VEHICLE SAFETY

SUBCHAPTER IV. ENFORCEMENT AND ADMINISTRATIVE

§ 30165. Civil penalty

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—A person that violates any of section 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]~~ \$25,000 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.]~~ \$300,000,000.

(2) SCHOOL BUSES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the maximum amount of a civil penalty under this paragraph shall be \$10,000 in the case of—

(i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or

(ii) a violation of section 30112(a)(2) of this title.

(B) Related series of violations. 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 that section. The maximum penalty under

this paragraph for a related series of violations is \$15,000,000.

(3) SECTION 30166.—[A person] *Except as provided in paragraph (4), 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]** \$25,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is **[\$15,000,000.]** \$300,000,000.*

(4) *FALSE, MISLEADING OR INCOMPLETE REPORTS.—A person who knowingly and willfully submits materially false, misleading, or incomplete information to the Secretary, after certifying the same information as accurate and complete under the certification process established pursuant to section 30166(o), shall be subject to a civil penalty of not more than \$50,000 per day. The maximum penalty under this paragraph for a related series of daily violations is \$10,000,000.*

(5) SECTION 30107.—*An individual who violates section 30107(a) is liable to the United States Government for a civil penalty as determined under section 216(b) of title 18 for an offense under section 207 of that title. A manufacturer or other person subject to regulation under this chapter who violates section 30107(b) is liable to the United States Government for a civil penalty of the sum of—*

(A) an amount equal to not less than \$100,000; and

(B) an amount equal to 90 percent of the annual compensation or fee paid or payable to the individual with respect to whom the violation occurred.

(b) COMPROMISE AND SETOFF.—

(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

[(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.]

(c) *RELEVANT FACTORS IN DETERMINING AMOUNT OF PENALTY OR COMPROMISE.—In determining the amount of a civil penalty or compromise, the nature, circumstances, extent, and gravity of the violation shall be considered. The determination shall include, where appropriate, the nature of the defect or noncompliance, knowledge by the person charged of its obligation to recall or notify the public, the severity of the risk of injury, the occurrence or absence of injury, the number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance, the existence of an imminent hazard, actions taken by the person charged to identify, investigate, or mitigate the condition, the appropriateness of such penalty in relation to the size of the business of the person charged, including the potential for undue adverse economic impacts on small business, and such other factors as appropriate.*

(d) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

§ 30166. Inspections, investigations, and records

(a) DEFINITION.—In this section, “motor vehicle accident” means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.

(b) AUTHORITY TO INSPECT AND INVESTIGATE.—

(1) The Secretary of Transportation may conduct an inspection or investigation—

(A) that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter; or

(B) related to a motor vehicle accident and designed to carry out this chapter.

(2) The Secretary of Transportation shall cooperate with State and local officials to the greatest extent possible in an inspection or investigation under paragraph (1)(B) of this subsection.

(c) MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) at reasonable times, may inspect and copy any record related to this chapter;

(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter; and

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) enter and inspect with reasonable promptness premises in which a motor vehicle or motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce;

(B) enter and inspect with reasonable promptness premises at which a vehicle or equipment involved in a motor vehicle accident is located;

(C) inspect with reasonable promptness that vehicle or equipment; and

(D) impound for not more than 72 hours a vehicle or equipment involved in a motor vehicle accident.

(d) REASONABLE COMPENSATION.—When a motor vehicle (except a vehicle subject to subchapter I of chapter 135 of this title) or motor vehicle equipment is inspected or temporarily impounded under subsection (c)(3) of this section, the Secretary of Transportation shall pay reasonable compensation to the owner of the vehicle if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle.

(e) RECORDS AND MAKING REPORTS.—The Secretary of Transportation reasonably may require a manufacturer of a motor vehicle

or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) of this title or a regulation prescribed or order issued under subsection (f) or section 30117(b).

(f) PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NONCOMPLIANCE.—A manufacturer shall give the Secretary of **[Transportation]** *Transportation*, and make available on a publicly accessible Internet website, a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced. *Communications submitted to the Secretary and required to be published on a manufacturer's Internet website shall include all notices to dealerships of software upgrades and modifications recommended by a manufacturer for all previously sold vehicles. Notice is required even if the software upgrade or modification is not related to a safety defect or noncompliance with a motor vehicle safety standard. The notice shall include a plain language description of the purpose of the update and that description shall be prominently placed at the beginning of the notice. Communications required to be submitted to the Secretary under this subsection shall be accompanied by an index to each communication which identifies the make, model, and model year of the affected vehicles and a concise summary of the subject matter of the communication. The index shall be made available by the Secretary to the public on the Internet in a searchable format.*

(g) ADMINISTRATIVE AUTHORITY ON REPORTS, ANSWERS, AND HEARINGS.—

(1) In carrying out this chapter, the Secretary of Transportation may—

(A) require, by general or special order, any person to file reports or answers to specific questions, including reports or answers under oath; and

(B) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(h) CIVIL ACTIONS TO ENFORCE AND VENUE.—A civil action to enforce a subpoena or order under subsection (g) of this section may be brought in the United States district court for any judicial district in which the proceeding is conducted. The court may punish a failure to obey an order of the court to comply with a subpoena or order as a contempt of court.

(i) GOVERNMENTAL COOPERATION.—The Secretary of Transportation may request a department, agency, or instrumentality of the United States Government to provide records the Secretary con-

siders necessary to carry out this chapter. The head of the department, agency, or instrumentality shall provide the record on request, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary. This subsection does not affect a law limiting the authority of a department, agency, or instrumentality to provide information to another department, agency, or instrumentality.

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

(k) PROVIDING INFORMATION.—The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter or a regulation prescribed or order issued under this chapter.

(l) 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 the 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; or

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

(ii) customer satisfaction campaigns, customer advisories, recalls, consumer complaints, warranty claims, field reports, technical service bulletins, or other activity involving the repair or replacement of motor vehicles or 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 in 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 review and utilize such information; and

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

(B) INFORMATION IN POSSESSION OF MANUFACTURER.—The regulations promulgated by the Secretary under paragraph (1) may not require a manufacturer of a motor vehi-

cle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.

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

(C) DISCLOSURE.—*The information provided to the Secretary pursuant to this subsection shall be disclosed publicly unless exempt from disclosure under section 552(b) of title 5.*

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

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

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

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

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

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

(B) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies.

(o) CORPORATE RESPONSIBILITY FOR REPORTS.—

(1) IN GENERAL.—*The Secretary shall require for each company submitting information to the Secretary in response to a request for information in a safety defect or compliance investigation under this chapter, that a principal officer certify that—*

(A) *the signing officer has reviewed the submission; and*

(B) based on the officer's knowledge, the submission does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading.

(2) NOTICE.—The certification requirements of this section shall be clearly stated on any request for information under paragraph (1).

(3) DEFINITION OF PRINCIPAL OFFICER.—In this section, the term “principal officer” means—

(A) an officer of the company who resides in the United States who is responsible for safety compliance under United States laws and reports directly to the principal executive officer of the company; or

(B) the principal executive officer residing in the United States.

§ 30170. Criminal Penalties

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

(1) SUBMITTING MISLEADING INFORMATION TO THE SECRETARY.—A person who violates section 1001 of title 18 with respect to the reporting requirements of section 30118, 30119, or 30166 with the specific intent of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects shall, in addition to the penalties imposed under title 18, be subject to imprisonment for not more than an additional 12 months.

[(1) GENERAL RULE.—] (2) SUBMITTING MISLEADING INFORMATION TO THE SECRETARY THAT LEADS TO DEATH OR SERIOUS INJURY.—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 serious bodily injury to an individual (as defined in section 1365(g)(3) of title 18), shall be subject to criminal penalties of a fine under title 18, or imprisoned for not more than 15 years, or both.

[(2)] (3) 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: (1) at the time of the violation, such person does not know that the violation would result in an accident causing death or serious bodily injury; and (2) the person corrects any improper reports or failure to report within a reasonable time.]

(A) CORRECTION.—A person described in paragraph (1) or (2) shall not be subject to criminal penalties under this subsection if—

(i) the person corrects any improper reports or failure to report within a reasonable time; and

(ii) in the case of a person described in paragraph (2), at the time of the violation, such person does not

know that the violation would result in an accident causing death or serious bodily injury.

(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 the 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.

§ 30171. Protection of employees providing motor vehicle safety information

(a) DISCRIMINATION AGAINST EMPLOYEES OF MANUFACTURERS, PART SUPPLIERS, AND DEALERSHIPS.—*No motor vehicle manufacturer, part supplier, or dealership may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—*

(1) *provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or the Secretary information relating to any motor vehicle defect or any violation or alleged violation of any notification or reporting requirement of this chapter;*

(3) *has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any motor vehicle defect or any violation or alleged violation of any notification or reporting requirement of this chapter;*

(3) *testified or is about to testify in such a proceeding;*

(4) *assisted or participated or is about to assist or participate in such a proceeding; or*

(5) *objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of any Act enforced by the Secretary of Transportation, or any order, rule, regulation, standard, or ban under any such Act.*

(b) COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—*A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the op-*

portunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) *IN GENERAL.*—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) *REQUIREMENTS.*—

(i) *REQUIRED SHOWING BY COMPLAINANT.*—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) *SHOWING BY EMPLOYER.*—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) *CRITERIA FOR DETERMINATION BY SECRETARY.*—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) *PROHIBITION.*—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have

taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

- (i) to take affirmative action to abate the violation;
- (ii) to reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and
- (iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorney's fee not exceeding \$1,000.

(D) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to the action, be tried by the court with a jury. The Action shall be governed by the same legal burdens of proof specified in paragraph (2)(B) for review by the Secretary of Labor.

(4) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or

the circuit in which the complainant resided on the date of such violation. The petition for review shall be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) ENFORCEMENT OF ORDER BY SECRETARY.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of a motor vehicle manufacturer, part supplier, or dealership who, acting without direction from such motor vehicle manufacturer, part supplier, or dealership (or such person's agent), deliberately causes a violation of any requirement relating to motor vehicle safety under this chapter.

CHAPTER 323. CONSUMER INFORMATION

PART C. INFORMATION, STANDARDS, AND REQUIREMENTS

§ 32302. Passenger motor vehicle information

(a) INFORMATION PROGRAM.—The Secretary of Transportation shall maintain a program for developing the following information on passenger motor vehicles:

- (1) damage susceptibility.*
- (2) crashworthiness.*
- (3) the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems.*

(4) vehicle operating costs dependent on the characteristics referred to in clauses (1)-(3) of this subsection, including insurance information obtained under section 32303 of this title.

(b) MOTOR VEHICLE INFORMATION.—To assist a consumer in buying a passenger motor vehicle, the Secretary shall provide to the public information developed under subsection (a) of this section. The information shall be in a simple and understandable form that allows comparison of the characteristics referred to in subsection (a)(1)-(3) of this section among the makes and models of passenger motor vehicles. The Secretary may require passenger motor vehicle dealers to distribute the information to prospective buyers.

(c) INSURANCE COST INFORMATION.—The Secretary shall prescribe regulations that require passenger motor vehicle dealers to distribute to prospective buyers information the Secretary develops and provides to the dealers that compares insurance costs for different makes and models of passenger motor vehicles based on damage susceptibility and crashworthiness.

(d) MOTOR VEHICLE DEFECT REPORTING INFORMATION.—

(1) RULEMAKING REQUIRED.—*Within 1 year after the date of enactment of the Motor Vehicle Safety Act of 2010 the Secretary shall prescribe regulations that require passenger motor vehicle manufacturers to affix, in the glove compartment or in another readily accessible location on the vehicle, a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint to the National Highway Traffic Safety Administration. The Secretary shall require the same information to be prominently printed on a separate page within the owner's manual. The information may not be placed on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).*

(2) APPLICATION.—*The requirements established under paragraph (1) shall apply to passenger motor vehicles manufactured in model years beginning more than 1 year after the date on which a final rule is published under that paragraph.*