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# CENTER FOR AUTO SAFETY

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May 2, 2016

Docket Management Facility, M-30  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.,  
Washington, D.C. 20590

**RE: Request for Public Comments on NHTSA Enforcement Guidance Bulletin 2016-02: Safety-Related Defects and Emerging Automotive Technologies, Docket No. NHTSA-2016-0040.**

The Center for Auto Safety (CAS) files this comment in support of the National Highway Traffic Safety Administration's (NHTSA) efforts to outline the agency's enforcement authority by issuance of Enforcement Guidance Bulletin 2016-02: Safety-Related Defects and Emerging Automotive Technologies.

CAS agrees that NHTSA's broad enforcement authority under the Safety Act [as first laid out by former NHTSA Chief Counsel Frank Berndt](#) should remain unchanged even in the face of rapidly advancing automotive technology.

CAS also agrees with the agency that the complexity of modern electronic systems in no way diminishes the duty of manufacturers to ensure their products are safe before they are sold, and to quickly remedy any safety concerns that arise post-sale. Although the agency states safety defects need not have a death or injury to generate a safety recall, the fact is that the vast majority of recalls do not involve a single death or injury. Automobile Design Liability 3d, Chapters 7-8, Westlaw. This follows from 49 U.S.C § 30102(a) (8) "motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

The upsurge in [software related recalls in 2014-15](#), in which 125 software safety recalls were performed, demonstrates that software recalls may well surpass hardware recalls in the future. Even though crash avoidance technology just entered the market, already there are failures in these systems that have generated safety recalls, [as shown here](#).

In recent years, we have observed a number of established manufacturers shirking their duties under the Safety Act by failing to comply with regulations pertaining to timely reporting of

safety defects, timely notification to consumers of recalls, and Early Warning Reporting regulations, among other violations. The rapid technological advance in the automotive industry also means that there will be many new companies who may be unaware of similar obligations under the Safety Act. Issuance of the Enforcement Guidance Bulletin puts these new motor vehicle and equipment manufacturers on notice as to these responsibilities.

Above all else, stepped up enforcement is essential to preventing manufacturers from evading their duty to report and recall safety defects in emerging technologies that rely on software and complex electronics where the government's ability and resources to find such defects are limited. One need only look at VW using software to deliberately cheat on emission testing to realize the potential for illegal actions by auto manufacturers in the safety arena.

(See <http://www.autosafety.org/volkswagen-emissions-defeat-devices-violate-epa-emissions-rules/>).

Additionally, CAS supports the agency's broad view of software as motor vehicle equipment within the meaning of the Safety Act, and recognition that software must not necessarily be located within or on the vehicle to be considered motor vehicle equipment.

CAS believes that Enforcement Guidance Bulletin 2016-02 could be expanded to better explain the operations of the Office of Defects Investigation (ODI) and the recall process. The bulletin might also contain an expanded section delineating the various responsibilities conferred on manufacturers by the Safety Act, including Early Warning Reporting, recall notification and completion, and the importance of compliance with NHTSA requests for information.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence Ditlow". The signature is fluid and cursive, with the first name "Clarence" and last name "Ditlow" clearly distinguishable.

Clarence Ditlow  
Executive Director