



May 14, 2018

Chairman John Thune
U.S. Senate Committee on Commerce,
Science, and Transportation
512 Dirksen Senate Building
Washington, DC 20510

Ranking Member Bill Nelson
U.S. Senate Committee on Commerce,
Science, and Transportation
425 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Thune and Ranking Member Nelson:

The Center for Auto Safety (“the Center”) submits the following letter in connection with today’s hearing regarding the nomination of Deputy Administrator Heidi King of the National Highway Traffic Safety Administration (NHTSA) for the position of Administrator. While Ms. King has only held the Deputy Administrator position for seven months, her actions, or lack of actions, have raised serious questions regarding the nominee’s ability to direct NHTSA as a safety and enforcement agency. The Center, founded in 1970, is an independent, non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy not only for our members, but all drivers, passengers, and pedestrians across the county. On behalf of those members, and all individuals nationwide impacted by traffic safety and the quality of the air we breathe, the Center writes today to express our significant concerns with this nomination.

1. Rulemakings

NHTSA’s responsibility for promulgating rules and regulations to maintain the safety of the American people is one of its most important authorities and duties. Currently there are many regulations that are required to be written by law which remain untouched. Under Deputy Administrator King, rules that Congress mandated in order to protect children, inform consumers of recalls, and provide predictability and fairness in the marketplace have been ignored. To name only a few:

- NHTSA was required by Moving Ahead for Progress in the 21st Century Act (MAP-21) to issue a rule by October 1, 2015 providing requirements for improved Child LATCH Restraint Systems, in order to protect our most vulnerable citizens in cars and light trucks – infant children. Since issuing the NPRM in January 2015, NHTSA has provided no target date for further action.

- NHTSA was required by MAP-21 to issue a final rule by October 1, 2014 providing requirements for how Child Restraint Systems must perform when involved in a side impact crash. The NPRM was issued in January 2014. Based on current activity, NHTSA's recent suggestion the rule would be completed by October 2018 seems unlikely at best.
- NHTSA was required by MAP-21 to issue a rule by October 1, 2015 providing requirements for all new vehicles to have Reminders for Rear Seat Passengers to put on Seat Belts. Almost 1,000 people die every year in crashes in the back seat of cars and light trucks because they are not wearing their seatbelts. Under Deputy Administrator King, NHTSA has not even initiated rulemaking, nor has a realistic time frame for a final rule been proposed.
- NHTSA was required by the Fixing America's Surface Transportation Act (FAST) Act to issue a rule by August 29, 2016 providing requirements for how auto manufacturers must use electronic means to notify consumers of Vehicle Safety Recalls. With tens of millions of open recalls on the road, including 20 million or more deadly Takata airbag inflators remaining in circulation, this rule would actively assist in increasing recall completion rates and, if done quickly enough, could save lives. Since issuing an NPRM in August 2016, NHTSA has provided no target date for further action. Ms. King recently released a short video attempting to reach the owners of certain vehicles for which "do-not-drive" orders had been issued. Perhaps this would not have been necessary if these owners had been reached via e-mail.

The continued blatant disregard under Deputy Administrator King for the lawful mandates passed by the United States Congress by NHTSA raises serious concerns over what will be different if she is confirmed with respect to delivering on NHTSA's core safety mission to the American people.

2. Autonomous Vehicles

In recent months there have been multiple incidents involving what are commonly referred to as "autonomous vehicles," or "self-driving cars." Some of these incidents have resulted in deaths of both pedestrians (an Uber vehicle striking and killing a pedestrian in Tempe, Arizona) as well as drivers (Tesla driver killed with vehicle in "autopilot" mode). Under Deputy Administrator King, NHTSA has done nothing but cheerlead for industry even as incidents pile up and new questions arise about the complete lack of federal standards or oversight required to protect our citizenry from being used as guinea pigs in a corporate product development experiment.¹

Instead of looking for ways to protect Americans, and ensure the safe development of potentially groundbreaking technology, over the last seven months there have been

¹ Christopher Mims, *In Self-Driving-Car Road Test, We Are the Guinea Pigs*, Wall Street Journal, May 14, 2018, at: <https://www.wsj.com/articles/in-self-driving-car-road-test-we-are-the-guinea-pigs-1526212802>

nothing but multiple open comment periods² attempting to identify and eliminate regulations that might slow down universal deployment of still unproven robot-cars. One of the few public steps taken since Deputy Administrator King has been in office is to make the very limited set of voluntary guidelines for manufacturers to follow when testing self-driving cars – even less specific and even more voluntary.

3. The Air We Breathe (Corporate Average Fuel Economy (CAFE) standards)

One of the roles of the NHTSA Administrator which impacts the lives of every human being in the United States, and to a lesser extent, the world, is setting fuel economy standards for passenger vehicles. In addition to setting those standards, NHTSA also has the authority to enforce those standards by levying fines against auto companies that violate the rules. Under Deputy Administrator King, NHTSA has neither acted to protect the environment by maintaining the consensus standards set over a multi-year negotiation process, resulting in the current CAFE standards, nor has NHTSA acted in consumers' best interest at the gas pump.

Based on widely reported media stories, Deputy Administrator King fully backs the proposed rollback of the MY 2017-2025 standards, a proposal which would increase oil consumption by 206 billion gallons of gasoline between 2020-2050. The importance of these standards to the public is tremendous, and not only with respect to the air we breathe. Consumers can expect to save between \$3,200-\$4,800 over the lifetime of a new vehicle meeting the standards, even at low gas prices. Gas prices are rising on almost a daily basis. They are currently approaching a three-year high and they are expected to continue to rise. Savings from the existing CAFE standards are estimated to be up to \$8,200 per vehicle to consumers.

The efforts to ignore NHTSA's statutory obligation to set the "maximum feasible" standard for each model year highlight the concerns that all Senators should have with this nomination. Rolling back CAFE standards not only will put the American auto industry behind in the global market, where many of our largest competitors, like China and India, are moving forward with more stringent standards, it is an insult to the American automaker's ability to adopt new technology to meet the challenges of a new world.

4. Resource Allocation

Under Ms. King's leadership, NHTSA continues to promise to make safety a priority, yet when putting pen to paper and making decisions about how to allocate appropriated funds, these promises always seem to evaporate. NHTSA's budget requests under the

² Public Meeting - Voluntary Safety Assessments, October 20, 2017;
Automated Driving Systems 2.0: A Vision for Safety Public Meeting, November 6, 2017;
Removing Regulatory Barriers for Vehicles With Automated Driving Systems, January 18, 2018

nominee appear to remain in line with the larger DOT philosophy of promising safety but cutting areas that could deliver on those promises.

The Fiscal Year (FY) 2019 budget request sought to significantly decrease funding to the areas of the agency that are the most likely to deliver safety results to the American people. For example, in FY 2017, NHTSA's enacted appropriation for "Vehicle Safety Programs," (which are the heart of the agency) was \$180,075,000. For FY 2019, the request was reduced to \$152,427,000 for this vital program – a 15% decrease in funding.

A recent study, published in the *Journal of Public Health Policy*, noted that governmental interventions mandating traffic safety measures at the federal and state levels, along with technological advances, have saved over 5 million lives since 1968.³ Yet, among the areas that the current leadership of NHTSA would seek to underfund include the Rulemaking, Enforcement, and Research and Analysis departments. These departments have been integrally involved in creating the vehicle crashworthiness and other safety standards that make many of those 5 million lives saved possible.⁴ Smart, targeted regulations make a real difference when it comes to safety in our cars and on our roads.

While more funding alone will not make any safety agency function perfectly, the ability for NHTSA to realize its full potential to save lives, prevent injuries, and reduce the economic burdens we all face due to crashes on our nation's roads lies squarely with how its leadership sets agency priorities. The proposed budget of an agency is an outline of those priorities, and no matter how dedicated career staff may be, the agency tasked with overseeing so much of our nation's traffic safety cannot do its job with one arm tied behind its back. Underfunding this critical agency is counterproductive to the safety goals I am sure we all share. The priorities outlined by Ms. King's budget raise serious concerns regarding whether NHTSA will be able to fulfill its statutory mission.

5. Civil Penalties

One of the key tools in ensuring federal traffic safety laws and rules are followed by all regulated entities is enforcement by NHTSA. While civil penalties should be reserved for the most serious of violators, all safety agencies need to be prepared to employ the deterrent effect civil penalties have, not only on the party at fault, but any other potential violator.

Since Ms. King has been at NHTSA there has been exactly one civil penalty announced, for \$10,000 against a trailer company.⁵ This lax attitude when it comes to enforcement of the law sends exactly the wrong message to those who might contemplate whether it was worth their while to take the extra step to comply with the safety rules that exist to keep cars and trucks in compliance and our citizens safe.

³ Robertson, L., *J Public Health Pol* (2018) *Road death trend in the United States: implied effects of prevention*, available at: <https://doi.org/10.1057/s41271-018-0123-2>

⁴ It seems worth noting that the only area where DOT has requested an increase in this section of its budget is for administrative expenses, despite not even having an Administrator nominee.

⁵ <https://www.nhtsa.gov/laws-regulations/civil-penalty-settlement-amounts>

What is worse, is that one of the only steps Ms. King has taken since joining NHTSA is to actively work to rollback the implementation of inflation-adjusted civil penalties meant to ensure auto companies invest in fuel-saving technologies. While this unlawful delay has been stayed by 2nd Circuit Court of Appeals, the inability or unwillingness to enforce the law, or use civil penalty authority, raises significant concerns about the nominee's likelihood of carrying out the statutory mandate of the agency she is asking to lead.

6. Airbags

Despite the agency's continued assurance that the Takata inflator recalls are a top priority, recall completion rates remain dismal and consumers continue to face a risk of death or serious injury. Under Deputy Administrator King, NHTSA has been unwilling to penalize manufacturers who perform poorly under the Coordinated Remedy Program, deferring and delaying manufacturer responsibility. Furthermore, NHTSA has failed to even request that manufacturers provide loaner vehicles to consumers with ticking time bombs in their dashboards. As a result, only a small minority of automakers have voluntarily chosen to provide their customers with loaner vehicles while awaiting airbag replacements.⁶

So far, the only step taken by NHTSA under Ms. King is a letter to each manufacturer that failed to meet the December 31, 2017 deadline to replace the most deadly and defective Takata airbags. Released only two days prior to her confirmation hearing, King's letters merely "invite" these manufacturers to "contact NHTSA."⁷ By some counts 19 million airbags remain unreplaced, and the industry completion rate hovers under 60%. This "invitation" for an updated proposed timeline from NHTSA is months overdue, and based on prior history, it is hard to envision any penalty will be meted out by NHTSA for these gross violations of agreed upon timeframes for airbag replacement. Further delay serves only to prevent consumers from having defective airbags replaced that may explode and send shrapnel flying in their face or the faces of their loved ones.

As mentioned previously, NHTSA is two years late on issuing a rulemaking to require email notification of recalls, which would certainly have had positive impact on Takata recall completion rates - had NHTSA completed this mandate by the deadline. Unfortunately, under Ms. King, the agency has made no progress on this mandate, leaving consumers reliant on snail mail as their only notice of potentially dangerous defects in their vehicles.

7. Investigations

Since Deputy Administrator King took a leadership role at NHTSA, investigations have fallen to almost historic lows. Despite continuing to receive complaints on a regular basis that raise questions of potentially life-threatening defects, it is almost unheard of for

⁶ See *Staff Report for Senators Blumenthal and Markey: [Automaker Report Card: Loaner Car Policies for Consumers Affected by the Takata Airbag Recall](#)*, March 2018.

⁷ See Ryan Beene, *U.S. Regulators Slam Low Takata Air Bag Recall Rate by Carmakers*, Bloomberg, May 14, 2018, at: <https://www.bloomberg.com/news/articles/2018-05-14/u-s-regulators-slam-low-takata-air-bag-recall-rate-by-carmakers>.

NHTSA to formally open investigations in the current administration. Delaying the opening of investigations risks unnecessarily exposing consumers to vehicle defects. For circumstances where investigations sit open for years while NHTSA and automakers go back and forth over the details, consumers remain at risk for even longer periods of time.

For the motoring public to have faith that this safety agency is looking out for the public first, NHTSA must have an Administrator willing to support the agency's enforcement wing in opening investigations – and once the investigations have been opened, following the data to its logical end in a timely manner that eliminates unnecessary and possibly deadly delay.

Conclusion

There are few products that impact as many Americans as automobiles. NHTSA needs an Administrator who has as her first priority the safety of each and every driver, passenger, and pedestrian. Deaths and injuries from traffic crashes remain a public health crisis, with over 37,000 dead and over 2 million seriously injured every year. Cars continue to hold their place as the number one killer of Americans ages 5-24. New technology promises answers but offers little evidence yet of its reliability. The role of oversight of the auto industry, falls to NHTSA. Unfortunately, in seven months as Deputy Administrator, Ms. King's record raises serious concerns about her ability to lead NHTSA at this vital time in the history of auto safety.

On behalf of the Center for Auto Safety and our members, thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levine". The signature is fluid and cursive, with a large initial "J" and "L".

Jason Levine
Executive Director

cc: All Members of the U.S. Senate Committee on Commerce, Science, and Transportation