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**New Car Assessment Program
Request For Comments
87 Federal Register 13452, March 9, 2022**

Advocates for Highway and Auto Safety (Advocates) and the Consumer Federation of America (CFA) file these comments in response to the National Highway Traffic Safety Administration's (NHTSA) Request for Comments (RFC) on upgrades to the New Car Assessment Program.¹

I. Introduction

According to recent data released by NHTSA, 42,915 people were killed in motor vehicle crashes in 2021.² This represents a 10.5 percent increase from 2020 and the highest number of deaths since 2005.³ In addition, fatalities across a number of categories increased from 2020 to 2021 including speeding (five percent), alcohol-involved crashes (five percent) and unrestrained occupants of passenger vehicles (3 percent).⁴ The NHTSA currently values each life lost in a crash at \$11.8 million.⁵ The crashes, injuries, and fatalities impose a financial burden of well over \$800 billion in total costs to society -- \$292 billion of which are direct economic costs.⁶ This is equivalent to a "crash tax" of \$877 on every person living in the U.S. with total costs reaching nearly a trillion dollars annually when adjusted solely for inflation.⁷ In 2019, crashes alone cost employers \$72.2 billion.⁸

¹ 87 FR 13452 (Mar. 9, 2022).

² Early Estimate of Motor Vehicle Traffic Fatalities in 2021, NHTSA, Apr. 2022, DOT HS 813 283.

³ *Id.*

⁴ Early Estimates of Motor Vehicle Traffic Fatalities And Fatality Rate by Sub-Categories in 2021, NHTSA, May 2022, DOT HS 813 298.

⁵ John Putnam, DOT Deputy General Counsel, Guidance on the Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses – 2021 Update.

⁶ Economic costs include lost productivity, medical costs, legal and court costs, emergency service costs, insurance administration costs, congestion costs, property damage, and workplace losses.

⁷ "The Economic and Societal Impact of Motor Vehicle Crashes, 2010," NHTSA (2015).

⁸ Cost of Motor Vehicle Crashes to Employers 2019, Network of Employers for Traffic Safety, March 2021.

In 2020, approximately 14 million new light trucks and automobiles were sold in the U.S. and nearly 40 million used vehicles were sold.⁹ Encouraging consumers to purchase vehicles equipped with important safety technologies and that perform well in crashes will assist in efforts to reduce the unacceptable motor vehicle death and injury toll on our streets and roads.

By any measure NCAP has been exceedingly successful. The program has been copied the world over and has provided necessary safety information to consumers for decades.¹⁰ NCAP is an invaluable tool in helping to ensure car buyers have the information they need to purchase safe vehicles that will protect them and their families. As NHTSA has stated, “[f]rom its inception, NCAP has played a significant role in educating consumers on vehicle safety as a key factor in their vehicle purchasing decisions.”¹¹ In addition, the program has served as an important incentive for automakers to improve crashworthiness and place the latest safety technologies into their vehicles. As such, NCAP must be provided with the appropriate funding and agency resources.

Advocates and CFA firmly support NCAP as an essential program to reducing the needless deaths and injuries that occur on our nation’s roads each year. However, NCAP is woefully outdated and in need of substantial upgrades to ensure that the program is both keeping pace with the current state of technology and maximizing its benefits to safety.¹² Advocates, CFA and a wide range of stakeholders have been urging NHTSA to update NCAP for years.¹³ In addition, opinion polls have consistently demonstrated the public’s concern for safety on our roads and support for providing consumers with the information they need to make informed decisions when purchasing a vehicle. In a poll commissioned by Advocates in January of this year, two-thirds of respondents did not think enough was being done to reduce dangerous behavior on our roadways.¹⁴ In fact, over two decades ago, a poll commissioned by Advocates showed that a majority of the public indicated that safety was a high priority in purchasing a new car.¹⁵ The survey found that people want to know how safe their car might be as well as “how protective key safety equipment in the vehicle will be.”¹⁶

Unfortunately, as expressed in previous comments to other NHTSA proposals to update the program, we are deeply concerned with the lack of specificity provided in the current RFC as well as firm commitments for action needed on essential upgrades to the program. Furthermore, while the utility of NCAP is unquestioned, the program cannot be a substitute for NHTSA

⁹ Statista, U.S. new and used car sales 2010-2020.

¹⁰ Other NCAP Programs include: Euro NCAP, Australia and New Zealand (ANCAP), Latin NCAP, China (CNCAP), Japanese (JNCAP), Korean (KNCAP) and Southeast Asia (ASEAN NCAP).

¹¹ 83 FR 38202 (Aug. 3, 2018).

¹² Attached is a chart comparing U.S. NCAP to Euro NCAP.

¹³ Attached to these comments is a paper released in October 2019 authored by former NHTSA Administrator Joan Claybrook and Advocates outlining specific actions needed to upgrade NCAP. See also Advocates’ comments to the RFC issued by NHTSA in 2015 (80 FR 4630 (Jan. 28, 2015)) and statement at the public meeting held on October 1, 2018. (83 FR 38201 (Aug. 3, 2018)).

¹⁴ ENGINE’S CARAVAN SURVEY, Public Concern About Roadway Safety (Jan. 2022).

¹⁵ Lou Harris Public Opinion Poll, A Survey of the Attitudes of the American People on Highway and Auto Safety (May 1998).

¹⁶ *Id.*

fulfilling its statutory duty of issuing Federal Motor Vehicle Safety Standards (FMVSS). The FMVSS are also outdated in many respects and need to be improved. However, in the interim, NCAP can continue its important role of being an effective incentive to manufacturers to exceed current federal safety standards. As such, NHTSA must be forward thinking in modernizing the current program to continue that critical function.

II. ADAS (Advanced Driver Assistance Systems) Performance Testing Program-New Technologies

All proven safety technologies identified for inclusion in NCAP should be a part of the actual vehicle rating system to inform customers, allow meaningful comparisons among vehicles to inform purchasing decisions and spur the adoption of the technology by manufacturers. Inclusion of these systems as only a recommended technology (a “checkbox”) has little impact on manufacturers and purchasing decisions. On the other hand, providing specific performance information will allow consumers to compare choices and stimulate competition among the manufacturers for better performance. Moreover, providing individual performance ratings for the various technologies enables a more robust overall vehicle safety rating.

Lane Keeping Support

Advocates and CFA support NHTSA’s proposal to include the lane keeping support (LKS) technology in the recommended technologies portion of the NCAP. The adoption of the testing protocols from the Euro NCAP program appear to be appropriate and would support international harmonization. In fact, the Euro NCAP has been testing and rating LKS systems for multiple years already.

Responses to Specific Numbered Questions

2. Advocates and CFA do not oppose the inclusion of lane departure warning (LDW) testing in the LKS testing procedure. The test protocol from the Euro NCAP dictates that certain test protocols be used for LDW-only systems or where the LDW function can be used as a standalone system. The agency must justify its decision regarding a selected protocol and provide evidence to support same. Logically, the tolerances for LKS, in which the vehicle responds on its own, should be tighter than for LDW which relies on a human reaction (with all its delays) to respond.

3. As with forward collision warning (FCW) and automatic emergency braking (AEB), most LKS systems likely implement LDW as a function, if not an integral part, of the system. The agency provides no comparison of the effectiveness of LKS systems with and without LDW, let alone evidence that current LKS systems are available without an LDW function. Advocates and CFA surmise that LKS, with its automatic intervention, would likely result in greater benefits than LDW, but that LDW would provide an initial opportunity to re-engage the driver and enable a response prior to the automatic intervention. Barring evidence to the contrary, Advocates and CFA recommend that NCAP rates both LDW and LKS and provides additional weight in the rating scale for the adoption and performance of the technology which provides the greater safety benefit.

5. The excursion limit for any of the LKS tests should be based on analysis of crashes and road dimensions in the U.S. The agency indicates that the one foot (0.3 m) limit is based on the limited analysis presented¹⁷ in which 19 of the 25 National Motor Vehicle Crash Causation Survey (NMVCCS) cases and 16 of the 19 Crash Investigation Sampling System (CISS) cases with a shoulder included a shoulder width of one foot or more. However, it is unclear if these cases are representative of the national on-road experience and current infrastructure because of the limited sample size. The Euro NCAP provides a limit of one foot for single lane lines (dashed or solid) and a tighter limit of 0.3 foot for a road edge.¹⁸ The excursion limits should be based on the on-road experience to ensure that the testing will promote systems which address the most frequent and most dangerous situations appropriately. Considering the Euro NCAP requirements, this may mean that different excursion limits are warranted for different conditions.

6. NHTSA should present any data and testing establishing the benefits of moving to a smaller specified curve radius, while also comparing with performance under the original testing specifications. Established testing protocols should enable the agency to ensure that tested systems will perform in real world conditions and provide the benefits estimated and needed. Convenience or expediency in testing should not be a substitute for robust and accurate protocols.

7. NHTSA should provide data justifying the decision to use a single or double lane line scenario for testing LKS systems. Vehicles are already meeting the single lane line testing in Euro NCAP testing. Without further analysis and data presented by the agency, Advocates and CFA are concerned that a number of devastating collisions could be occurring on U.S. roads where the only lane line provided is a dashed or solid center line, such as on a two-lane rural road. In 2021, according to NHTSA, 7,424 fatalities occurred on rural local/collector roads alone, accounting for 17 percent of all traffic fatalities.¹⁹ This is a substantial safety issue that must be addressed. As such, NHTSA should query states to evaluate the application of edge lines in accordance with Manual on Uniform Traffic Control Devices (MUTCD) guidance and correlate this information with crash data to justify this decision. Moreover, the agency should provide data illustrating whether testing with two lane lines or a single lane line is more stringent or if a certain scenario identifies weaknesses in the underlying technology.

8. Advocates and CFA strongly support including road edge test scenarios as road edge departures were the third most common scenario identified in the data reviewed by the agency. Advocates and CFA also support such scenarios based on the reasoning above regarding one lane line vs. two lane lines for LKS testing. Advocates and CFA endorse road edge testing for both LDW and LKS, assuming that any LKS system which can identify a road edge can trigger LDW prior to initiating an automatic response.

¹⁷ See: <https://www-esv.nhtsa.dot.gov/Proceedings/26/26ESV-000208.pdf>

¹⁸ See: <https://cdn.euroncap.com/media/67254/euro-ncap-assessment-protocol-sa-v91.pdf>

¹⁹ See: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813298>

9. NHTSA should provide justification for any range of lateral velocities selected for testing. Relevant data from several sources including event data recorder (EDR) files, reconstructions included in NHTSA databases, available naturalistic driving studies and even analysis of videos of lane / road departure crashes should be presented to support such a decision. The agency also should provide an analysis illustrating how the range of lateral velocities used in the Euro NCAP testing is representative of the crash experience on U.S. roads.

10. Advocates and CFA support developing criteria to ensure LKS safe performance on curved roads given the large proportion of crashes, particularly road edge departure crashes, that occur on such roadways. In addition, NHTSA should provide any research and testing available on the issue of whether increased lateral velocity in a straight road test would correlate with better curved road performance.

11. Advocates and CFA support the agency's intention to avoid LKS intervention causing secondary lane departures. In accordance with previous responses about lane and road edge lines for testing, NHTSA should ensure that the testing protocols selected are stringent, reflect actual on-road conditions, and accurately discern the performance of the systems. If testing with two lane lines reduces the stringency of the lane / road departure test, then tests to ensure prevention of secondary lane departure should be conducted separately.

12. With regards to straight roads, the agency must indicate whether longitudinal velocity is correlated with lateral velocity and which of these or their interaction are determining factors in assessing performance of LKS systems. For example, NHTSA should provide evidence as to whether testing at a lower longitudinal speed and higher lateral velocity is better at discerning between a safe LKS system and a less safe or poorly performing system. The agency should explain and justify its decision with the appropriate data and evidence.

13. NHTSA, in its preparation for improving NCAP, we presume NHTSA was testing and evaluating LKS technologies to answer questions with respect to which test conditions are most demanding or appropriate. The number of scenarios selected should be based on establishing that performance in those different scenarios is sufficient to demonstrate that the technology will meet the safety need targeted by the technology.

14. The agency should provide evidence to support the selection of the number of trials and pass/fail criteria which will ensure that consumers purchasing a vehicle with a technology identified and tested by the agency will operate as intended for the life of the vehicle. NHTSA must select pass / fail criteria that provides the agency with confidence that the system will work as intended and provide justification for the criteria selected. The agency should consider that technologies, such as LKS, will be expected to operate in different road conditions such as worn lane lines, markings of varying sizes or shapes, construction zones and environmental conditions. Ensuring a higher level of confidence in the testing of a system that is limited to a series of nearly ideal conditions is important as consumers will be using the information to make an informed purchase of a vehicle that will actually be driving on a wide variety of road and line conditions.

Blind Spot Warning

Advocates and CFA are pleased that NHTSA is proposing to include Blind Spot Warning (BSW)²⁰ technology in the recommended technologies portion of NCAP. The test criteria presented appear reasonable based on the data analyses cited by the agency. Advocates and CFA support efforts to include motorcycles in testing of BSW systems. In both testing scenarios proposed by NHTSA, the subject vehicle is traveling at 45 miles-per-hour (mph). Advocates and CFA are concerned that testing the subject vehicle at only one speed will not ensure that BSW systems effectively operate across a range of speeds. Furthermore, BSW technology is particularly important for multi-lane highway driving where speeds are considerably higher than 45 mph. NHTSA must explain how this issue will be addressed.

Responses to Specific Numbered Questions

16. The agency should provide evidence indicating which operating characteristics of BSW are most effective at re-engaging the driver and eliciting the correct response to avoid a collision. For example, a passive / steady visual alert may not be sufficient to make a driver aware of a vehicle in a blind spot. However, if a turn signal is activated and thus an intent is indicated to move into a space occupied by another vehicle (blind spot), it would seem logical that the alert should escalate. NHTSA should recommend a requirement for this issue and provide the data and evidence to support that recommendation.

17. Any testing protocol proposed by NHTSA should be justified through the presentation of available testing and data analyses. The testing protocols should identify those systems which address the safety need identified by the agency. Protocols should enable the agency, and thus consumers, to confidently identify vehicles with systems meeting a minimum performance as well as discern between systems of minimum and higher levels of performance.

19 / 21. NHTSA should provide evidence to support the selection of the number of trials, conditions and pass/ fail criteria which will ensure that consumers purchasing a vehicle with a technology identified and tested by the agency will operate as intended for the life of the vehicle. NHTSA must select pass / fail criteria that provides the agency with confidence that the system will work as intended and provide justification for the criteria selected. The same applies for testing at different speeds and different directions. The agency should consider that technologies will be expected to operate in a number of conditions. As noted above, ensuring confidence in systems that are tested under a limited set of ideal conditions is essential.

Blind Spot Intervention

Advocates and CFA endorse NHTSA's proposal to include blind spot intervention (BSI) technology in the recommended technologies portion of the NCAP. As with FCW and AEB, LKS and LDW, automatic intervention will provide lifesaving benefits beyond that of BSW. As with BSW, Advocates and CFA have serious concerns about conducting testing at a single speed of 45 mph for the subject vehicles because it will fail to ensure that these systems operate across a range of speeds at which these collisions occur.

²⁰ NHTSA should define the difference between "blind spot" and "blind zone" to avoid consumer confusion.

Responses to Specific Numbered Questions

18. Any testing protocol, including the use of specific testing devices such as the global vehicle target (GVT) and any specific revisions, proposed by the agency should be justified through the presentation of available testing and data analyses. The testing protocols should identify those systems which reflect the safety need identified by NHTSA. Protocols should enable the agency, and thus consumers, to confidently identify vehicles with systems meeting a minimum performance and evaluate which are better or worse.

20. As NHTSA discussed in the RFC, false positive activation of technologies can lead to poor consumer acceptance and deactivation of systems. A deactivated system or ignored warning will negate safety benefits. The agency should provide analyses of any potential false activations for all technologies to ensure that the safety benefits of the technologies are not undermined by consumer dissatisfaction. This impact may be further exacerbated for technologies with false activation of automatic technologies (BSI, LKS, AEB) where consumers would be unable to ignore an incorrect active intervention as opposed to only an incorrect warning.

22. The agency should present its research and evaluation of vehicles with BSI and LKS systems to justify any decision regarding testing protocols. BSI should perform independent of lane lines and should intervene whenever the subject vehicle is taking a path in the direction of a vehicle or VRU detected in the blind spot. Conversely, LKS should work in the absence of a vehicle in the blind spot. NHTSA should evaluate changes in testing protocols for LKS and BSI which would avoid the triggering of the other during testing.

Pedestrian AEB

Advocates and CFA support NHTSA proposing to include pedestrian automatic emergency braking (PAEB) technology in the recommended technologies portion of the NCAP. However, Advocates and CFA strongly object to omitting bicyclists or turning vehicle scenarios, both of which already are tested and rated as part of Euro NCAP. This is particularly important going forward as other transportation organizations (and U.S. DOT) propose increased use of bicycles in urban transportation programs. As recently as this past April, the Biden Administration once again reiterated its goal of encouraging safe walking or bicycling transportation to school and work.²¹

Advocates and CFA support the proposed increased test speeds and recommend that the process of evaluating the current state of technology should be used to continually push for the best available systems on the market to be recognized by the program. Similarly, Advocates and CFA endorse the proposed lower test speed to ensure that these systems operate across a range of speeds. In addition, Advocates and CFA support the proposal to conduct testing in lower daylight and dark conditions with lower beam lights activated. Further, Advocates and CFA agree with NHTSA's proposal to allow automatic engagement of advanced headlighting systems during the dark testing conditions. Including this feature in NCAP will encourage more manufacturers to install such equipment until NHTSA issues an upgraded 108 FMVSS.

²¹ FACT SHEET: The Biden-Harris Action Plan for Building Better School Infrastructure (Apr. 4, 2022).

The agency's presentation of the research, analyses, and justification for many of the proposals regarding PAEB should serve as an example of the type of explanation and detailed proposal the public should be provided in each section of the RFC. Unfortunately, it is often lacking with respect to several of the other technologies in the RFC.

Responses to Specific Numbered Questions

23. NHTSA should evaluate the safety need of all vulnerable road users (VRU) to determine if the speeds are adequate to address safety on U.S. streets and roads. On the lower end of the speed range, NHTSA should evaluate the occurrence of front-overs where children are struck by vehicles when they are just beginning or shortly after just having begun to move.²² The agency should also evaluate if higher speeds are needed to capture the full ranges of incidents. Previous studies have illustrated the correlation between the fatality risk of a pedestrian and the impact speed.²³ At the upper speed range, where a PAEB system might be unable to avoid a collision entirely, a substantial reduction in speed could significantly increase the possibility of an unprotected VRU surviving the collision.

24. The agency must provide data and analyses to support any decisions on which scenarios to include and which to exclude. Testing protocols should be sufficient for NHTSA to have confidence that the system being tested will perform as indicated by the automaker and as evaluated / rated by the agency.

25. Advocates and CFA support the proposed testing in low light and dark conditions considering a significant percentage of pedestrian fatalities occur at nighttime.²⁴ Advocates and CFA do not oppose allowing the use of advanced lighting systems which operate automatically. However, NHTSA should confirm that the advanced lighting systems operate automatically under a range of lighting levels including dark lighting conditions.

26. Unless NHTSA has sufficient evidence to suggest that drivers, especially those in collisions, are making constant use of upper beams or non-automatic advanced lighting systems, Advocates and CFA support retaining the dark testing condition with lower beams as it should be the most stringent condition. Because of the wide variance in the illumination of street lights across the country, the agency should test in dark and daylight conditions.

27 / 30. The number of trials and pass/fail criteria should be firmly established to ensure the agency is confident that the technology will operate as tested. As noted repeatedly in the above responses, Advocates and CFA understand that the test conditions for any technology are limited by design and systems are tested under ideal conditions. As such, NHTSA should set as stringent a pass/fail criteria as is necessary to account for the fact that in real world on-road conditions, technologies will have to operate in extremely varied and less than ideal conditions.

²² Parking lots, driveways and other non-traffic locations should be included in the testing.

²³ See: <https://nacto.org/wp-content/uploads/2017/11/2011PedestrianRiskVsSpeed.pdf>

²⁴ National Center for Statistics and Analysis. (2022, May). Pedestrians: 2020 data (Traffic Safety Facts. Report No. DOT HS 813 310). National Highway Traffic Safety Administration.

28. The non-contact test result is the best outcome for unprotected VRUs. However, as noted earlier, there is a great benefit to substantial reductions in impact speed as it is related to fatality risk. Advocates and CFA recommend the agency quantifies the state of the technology and strives to require no-contact as a result for the most common and widest range of speed that is technically feasible. There may be some benefit to continue to give credit for meaningful speed reductions at higher speeds which correlate to safety benefits despite contact occurring. However, NHTSA should establish a base speed range in which all PAEB systems are expected to achieve no contact and where speed reduction at higher speeds could be used to support additional credit.

29. NHTSA must provide the data and analyses to support its conclusion regarding test protocols, including the pass/fail criteria. As noted repeatedly, the agency must be confident that the criteria established ensures that the consumer can rely on NHTSA's rating for an accurate comparison of safety performance.

31. Given that the Euro NCAP is already testing PAEB in conditions where the subject vehicle is turning, the agency should be working to incorporate these scenarios as soon as possible. Advocates and CFA strongly disagree with NHTSA's contention that since the technology has not yet permeated the U.S. fleet, the time is not right to include this testing. NCAP should be a tool for pushing manufacturers to go beyond the status quo. If these systems, often provided by the same domestic and foreign automakers that sell their vehicles in the U.S., can perform in similar testing abroad, there is no reason that extra credit could not be used as an incentive for manufacturers to provide similar safety benefits to U.S. consumers. Moreover, including these technologies in the rating, and not just as a recommended technology, would enable the expanded testing to differentiate between safety systems.

32. The agency should provide the data and analysis underlying their proposal to use the articulated mannequin illustrating that such a change improves and does not reduce the ability of the tests to identify the proper functioning of these systems.

33. NHTSA should evaluate U.S. crash data to determine what scenarios of crashes are occurring in low light and dark conditions which would benefit from the safety technologies identified. There is a potential for testing AEB, LDW/LKS, BSW/BSI and others under low light and dark conditions if the systems are impacted by that lighting condition.

34. Bicyclists should be included in the evaluation of AEB systems, akin to how Euro NCAP has been testing these systems. The agency should evaluate the need to develop and include other types of VRU targets in testing including wheelchair users, micro-mobility users, and varying types of bicycles to ensure these systems are properly responding. The NTSB investigation of the 2018 Uber Crash²⁵ details the trouble that the vehicle's autonomous driving system (ADS) was having with identifying the pedestrian walking her bike across the road. The ADS classified

²⁵ See: <https://www.nts.gov/investigations/accidentreports/reports/har1903.pdf>

the pedestrian as a vehicle, other and bicycle at different times in the moments leading up to the collision.

36. NHTSA should evaluate the performance of bicyclist responsive AEB systems available and rated as part of Euro NCAP and proceed expediently with incorporating their evaluation into NCAP. If technologies were included as part of the rating system as opposed to being a simply recommended technology, the agency would be able to differentiate between systems by indicating their ability to address these additional scenarios.

III. ADAS Performance Testing Program-Changes to Currently Recommended Technologies

Lane Departure Warning

Advocates and CFA support the updating of lane departure warning (LDW) testing as part of the recommended technologies in NCAP.

Responses to Specific Numbered Questions

1. The question around identifying which alert modalities and designs are most effective at reengaging the driver and eliciting a safe, timely and accurate response from a driver, is something that requires agency study and evaluation. As the agency highlighted in the RFC, research indicates that “haptic alerts improve acceptance of LDW Systems,”²⁶ and since disengaged systems provide no safety benefit, requiring a haptic alert would be a commonsense step to improve effectiveness. Including credit for having a haptic alert would not necessarily prohibit or prevent manufacturers from implementing other human- machine interface (HMI) designs but would at least promote the adoption of the modality most associated with increased acceptance. As more vehicles are being equipped with ADAS systems, NHTSA should expedite additional research on HMI. The agency includes no discussion of the further benefit of standardizing the alert style to improve effectiveness as individuals move from vehicle to vehicle.

4. The agency should provide more information on the use of Botts’ Dots across the U.S. beyond California. This will allow the public to more fully understand how widespread their use is and how long it will be before their use is replaced allowing NHTSA to safely ignore them as a part of their testing.

15. NHTSA should evaluate for LDW, and for all technologies, the impacts of false activations and false positives on consumer acceptance and use. The most beneficial safety system is not effective if a consumer has turned it off or ignores its warnings. Given the issues with consumer satisfaction for LDW identified by the agency and the frequency with which this results in the system being turned off, NHTSA should evaluate false positives and include an evaluation to reduce non-use by consumers. While every instance resulting in a false positive will likely not

²⁶ 87 FR 13460.

be captured by testing protocols, the agency should identify the most frequent cause(s) and develop testing to limit false positives.

Crash Imminent Braking / Dynamic Brake Support / Forward Collision Warning

Advocates and CFA support the updating of crash imminent braking, dynamic brake support and forward collision warning testing as part of the recommended technologies in NCAP. The higher stringency resulting from increasing speeds, revisions to pass/fail criteria, changes to headway and other testing conditions should result in additional safety benefits.

Responses to Specific Numbered Questions

38. For FCW, as with any other warning aspect of ADAS technology, the agency should collect information to identify the optimal HMI that will increase compliance, reduce consumer dissatisfaction, and elicit an appropriate, safe and timely response. Establishing criteria for the proper driver warning and standardizing those warnings across vehicles would likely improve consumer understanding of the systems including how to properly respond to the system's warning.

Advocates and CFA support NHTSA testing FCW / AEB / PAEB systems on the middle or next latest setting as is the current protocol for Euro NCAP. However, the agency should ensure that this approach does not adversely impact the safety benefits obtained by use of the technology. For example, safety concerns would arise if a system can meet the requirements of the testing on the middle (or next latest) setting but on another setting would severely reduce the safety benefit that is not tested by NHTSA, especially if it becomes the favored setting for consumers. Under such a scenario, the testing protocol proposed would result in allowing consumers to select a setting which undermines the safety benefit of the system.

Advocates and CFA are not opposed to combining FCW into crash imminent braking (CIB) testing. However, the agency must provide the data and analyses supporting this proposal. In addition, NHTSA must ensure that the protocol selected enables a clear distinction and confirmation of the operation of the two different technologies and functions.

If the agency continues to assess FCW separately from CIB, NHTSA must present the data and analyses regarding the FCW test protocol specifics (time-to-collision (TTC), test speeds, headway, number of trials, pass/fail criteria). FCW systems should be evaluated over a range of scenarios and speeds to confirm its ability to re-engage a driver and elicit a safe and appropriate response by the operator.

The agency should establish, based on data and analysis, the range of test specifications necessary to ensure that these systems address the intended safety need and will perform reliably in real world situations. NHTSA should institute a minimum range of test criteria to ensure that systems provide a certain level of safety in order to initially gain credit. This approach would also allow the agency to provide additional credit for systems which work at higher (or lower) speeds, closer following distances and other relevant conditions. In all cases, the agency should not seek convenience or expediency over the promotion of safety. Therefore, any decision to

reduce the number of trials, tests, or specification ranges must be supported by evidence. NCAP must include stringent requirements to drive innovation and spur adoption of safety technologies.

39. Advocates and CFA support NHTSA aligning CIB testing with that conducted by Euro NCAP. In addition, increasing the maximum speed of the subject vehicle in the lead vehicle stopped (LVS) scenario should increase the stringency of the test. However, the agency must provide a more thorough justification for not aligning the proposed minimum speed with that of Euro NCAP beyond the unacceptable response that they “see no reason” to do so.

Advocates and CFA support aligning the NCAP lead vehicle decelerating (LVD) scenario with the Euro NCAP car-to-car rear stationary (CCRb) scenario in terms of speed, headway, and deceleration as it will increase the stringency of the test. NHTSA should also include a range of test speeds based on available data and testing.

Similarly, Advocates and CFA also support aligning the US NCAP lead vehicle moving (LVM) scenario with the European NCAP car-to-car (CCRm) scenario in terms of speed (for the subject and other vehicles). As with the LVS scenario, the agency should provide a more thorough justification for not aligning the proposed minimum speed with that of Euro NCAP.

The no-contact requirement for passing a trial is essential. However, NHTSA should consider, based on the performance limits of the current technology, allowing for credit for systems which can reduce impact speeds in a specific and meaningful way at speeds outside (above and below) the range of speeds identified as the currently expected performance.

The agency must justify its decision regarding the number of trials necessary as well as demonstrate that the selected number of trials and passing rates accurately identifies those systems which perform to the level specified and will do so in real world on-road environments.

40. Advocates and CFA concur with NHTSA’s stated concern that driver braking could override a CIB intervention and result in sub-optimal braking resulting in an impact. Barring evidence to the contrary, Advocates and CFA support the continuation of dynamic brake support (DBS) testing. NHTSA must determine the number of tests as well as speeds at which those tests should be conducted based on the appropriate data and analyses. The testing conducted should ensure that systems are sufficiently exercised to confirm they will perform across the appropriate range of conditions as expected including in real world on-road conditions.

41. NHTSA must justify the number of trials and pass/fail criteria necessary to establish that the systems evaluated will address the safety need and perform as expected given that the testing being conducted is limited to near ideal conditions.

42. As noted earlier, NHTSA should include these recommended technologies as part of the rating system. Doing so would enable the agency to meaningfully impact the purchasing decision of consumers and by extension the adoption and improvement of these technologies by manufacturers. This would also allow the agency to establish a minimum level of performance to receive credit and assign additional credit for performance above and beyond the minimum

requirements. Only recommending a technology, instead of including it in the NCAP rating, denies consumers critical information needed to discern between the performance of different vehicles and make an informed decision.

43. Advocates and CFA oppose eliminating the false positive test. As noted earlier, if NHTSA promulgated regulations mandating these already proven and available technologies as standard equipment in vehicles, NCAP would be able to focus on giving credit to those systems that go above and beyond the minimum requirements or the average industry performance similar to the early achievements by NCAP.

44. Advocates and CFA assert that unless regenerative braking is constantly engaged it should be turned off.

45. NCAP, as well as all regulations promulgated by NHTSA, should constantly evolve to address the on-road experience. NHTSA must undertake robust research, testing, analysis and evaluation to ensure that advances in one issue do not undermine the safety benefits in others, including to avoid the significant problem of unintended consequences.

FCW and AEB Comments Received in Response to 2015 RFC Notice

48) NHTSA should pursue research to assess AEB (and many other ADAS) performance under less than ideal conditions. Vehicles often operate under such conditions. Agency research should indicate what conditions are proving most onerous and problematic to these technologies, and NHTSA should encourage manufacturers to address any issues identified. Many of these technologies will be the foundation on which autonomous vehicles (AVs) are built. As such, it is critical that these systems be able to perform under all conditions that an AV would expect to operate. This should include variations in weather, temperature, fouling, roadway conditions, damage, traffic congestion and any other aspect that research indicates is associated with substandard performance.

IV. ADAS Rating System

Advocates and CFA support the creation of a rating system for the performance of advanced driver assistance systems (ADAS) beyond the current practice of NHTSA simply placing a check mark by the technology if it is present in the vehicle and meets certain performance specifications.²⁷ Additionally, Advocates and CFA concur with the agency that creating such a rating system would be beneficial to consumers by providing them with more complete information on the safety performance of these systems rather than simply informing them that a vehicle is equipped with one or more ADAS.²⁸

NHTSA notes it considered this issue as part of the 2015 RFC as well as during the 2018 public meeting.²⁹ Yet, in the intervening time period, the agency has not conducted any research on the best way to communicate such ratings to the public. In fact, NHTSA indicates only that it plans

²⁷ 87 FR 13492 (Mar. 9, 2022).

²⁸ *Id.* Similar to the points system utilized in Euro NCAP.

²⁹ *Id.*

to conduct consumer research at some time in the future.³⁰ The agency's inaction is confounding. If the agency had already conducted the research and provided the results in the current RFC, the public would have the opportunity to provide more substantive input on this issue. Advocates and CFA contend that no matter the method selected by the agency (i.e., stars, letter grades, Olympic style medals, etc.), the information conveyed must be concise and clear as well as provide the complete information a consumer requires to make an informed purchase. In addition, the future research should also determine if letter grades or another system provide a more precise and more easily understood rating to consumers than the current star system. Moreover, as is currently the practice in the Euro NCAP, the agency should consider adding a percentage grade based on points earned on specific program criteria. This type of more accurate and explicit rating provides consumers with additional information to evaluate ADAS in vehicles they are considering purchasing.

Lastly, NHTSA also discusses in the RFC the merits of developing an individual ADAS technology rating as well as an overall ADAS rating. Advocates and CFA support the establishment of both ratings as doing so will provide additional context for a consumer to make an informed decision about a vehicle's safety performance. However, once again the agency presents several options for doing so but does not recommend or propose to adopt any particular method. In addition, the agency fails to provide any data gathered or research undertaken as to the different options presented making it difficult for the public to provide substantive input. As Advocates has noted in previous comments to the agency, any rating adopted (as with all NCAP ratings) should accurately reflect which vehicles and technologies demonstrate the greatest potential to reduce injury and fatality risk.

V. Revising the Monroney Label (Window Sticker)

Congress, recognizing the importance of providing consumers safety information, required that NCAP ratings be placed on the Monroney label in in 2005 as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).³¹ As the agency notes in the current RFC, doing so "is to ensure that vehicle manufacturers provide consumers with relevant vehicle safety ratings information on all new light vehicles at the point of sale so they can make informed purchasing decisions."³²

Congress further mandated in 2015 as part of the Fixing America's Surface Transportation (FAST) Act that NHTSA revise the Monroney label to include crash avoidance information along with the crashworthiness rating already provided.³³ Pursuant to the legislation, the rulemaking was required to be completed by June 2017.³⁴ Completing this action in a timely manner is critical as crash avoidance information is currently only available on the NCAP website and NHTSA acknowledges that "there are limitations with the current label for

³⁰ *Id.*

³¹ Pub. L. 109-59 (2005).

³² 87 FR 13501 (Mar. 9, 2022).

³³ Pub. L. 114-94 (2015).

³⁴ *Id.*

NCAP.”³⁵ Yet, not only has NHTSA failed to complete the rulemaking by the deadline prescribed by Congress, but the agency also indicates in the current RFC that it plans to issue a Notice of Proposed Rulemaking next year.³⁶ NHTSA provides no credible explanation or plausible reason for this continuing delay in violation of the statutory deadline.

The agency indicates that in the future it would like to devise a path forward that would allow it to revise the Monroney label when it adds technologies to NCAP while minimizing the number of rulemakings required to take such action.³⁷ In order to achieve this goal, NHTSA indicates that it intends to develop a label that incorporates three main overarching categories: crash protection information, safety technology information and overall vehicle safety performance information.³⁸ To make these changes to the Monroney label, the agency indicates that it will be conducting additional consumer research in the future.³⁹ While Advocates and CFA could be supportive of such an approach if implemented properly, the agency fails to include any data or research conducted on any of these issues since the Congressional mandate to revise the Monroney label was enacted into law in 2015. Without such information or more detail, the public is limited in its ability to provide meaningful and accurate analysis on these proposals. Moreover, the agency is nearly five years overdue in completing the rulemaking and yet NHTSA indicates it only intends to issue a Notice of Proposed Rulemaking in 2023. The agency’s delay in completing such an important rulemaking even while recognizing the critical importance to safety is objectionable.

VI. Establishing a Roadmap for NCAP

Providing a roadmap of future actions to enhance NCAP is an essential informative tool for all stakeholders if the document provides sufficient detail. This is the case with the roadmap provided by Euro NCAP. Congress, recognizing the value in providing such a guide, required NHTSA to develop a roadmap for NCAP as part of the Infrastructure Investment and Jobs Act (IIJA).⁴⁰ However, the lack of specificity in the roadmap published in the RFC is unsatisfactory. Furthermore, equally objectionable is NHTSA’s consistent failure to not only meet statutory deadlines but also its own dates for action included in previous significant rulemaking reports and regulatory agendas. The NCAP roadmap report must be more than simply an aspirational document but an accurate indication of actions that NHTSA will undertake.

2021-2022

Advocates and CFA support NCAP developing a pedestrian crashworthiness rating as it is already part of Euro NCAP. Since it is already the second half of 2022, Advocates and CFA urge the agency to make such action a priority in order to meet the timeframe provided in the roadmap.

³⁵ 87 FR 13501 (Mar. 9, 2022).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 13502.

³⁹ *Id.*

⁴⁰ Pub. L. 117-58 (Nov. 15, 2021).

2022-2023

Advocates and CFA support several upgrades in this timeframe which are already part of the Euro NCAP. This includes adoption of the World SID 50 Anthropomorphic Test Dummy (ATD), frontal oblique test and rear AEB for pedestrians. In addition, consistent research has demonstrated that the current headlamp standards are badly outdated resulting in poor performance in many vehicles as demonstrated by IIHS testing.⁴¹ As such, upgrades to headlamp standards are urgently needed and should be done expeditiously through a rulemaking to update FMVSS 108. The agency should not solely rely on NCAP to achieve these improvements.

2023-2024

As noted immediately above, NHTSA, despite being nearly five years overdue to meet a Congressional mandate to revise the Monroney label, indicates that it plans to merely commence a rulemaking during this time. The agency's inaction and continual delay on this issue is utterly confounding and unacceptable.

2025-2031

The agency devotes three paragraphs to a time period that covers six years. While Advocates and CFA could potentially support the issues presented, the lack of substantive detail and dates for real action precludes the ability to provide any meaningful analysis or input. The paucity of information contained in this section renders it meaningless. The intent of a roadmap is to provide stakeholders with substantive information about future actions to enhance the program to ensure it meets future needs. The agency has failed to do this. As the roadmap is currently constituted, the agency completely ignores any intention of meeting the Congressional directives enacted in the IIJA.

VII. Adding Emerging Vehicle Technologies for Safe Driving Choices

Advocates and CFA support NHTSA expanding NCAP beyond crashworthiness systems to advanced safety technologies that can prevent a crash as well as protections for not only vehicle occupants but also other road users such as pedestrians and pedalcyclists. However, taking such action cannot be a substitute for requiring proven safety technologies as standard equipment in all vehicles through the promulgation of a Federal Motor Vehicle Safety Standard (FMVSS), especially when Congress has explicitly directed such actions.

Our organizations always have championed proven vehicle safety technologies because of their ability to save countless lives. The NHTSA has estimated that between 1960 and 2012, over 600,000 lives were saved by motor vehicle safety technologies.⁴² Advocates led the coalition including CFA and other consumer, safety, and medical groups that supported enactment of the bipartisan Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991⁴³ which included a

⁴¹ IIHS, Headlights, available at: <https://www.iihs.org/topics/headlights#headlight-performance>.

⁴² Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012, DOT HS 812 069 (NHTSA, 2015); See also, NHTSA AV Policy, Executive Summary, p. 5 endnote 1.

⁴³ Pub. L. 102-240 (Dec. 18, 1991).

mandate for front seat airbags as standard equipment. As a result, by 1997, every new car sold in the United States was equipped with this technology and the lives saved have been significant. Airbags have saved an estimated 50,457 lives from 1987 to 2017, according to NHTSA.⁴⁴ Advocates and CFA continued to support proven lifesaving technologies as standard equipment in new vehicles in other federal legislation and regulatory proposals. These efforts include: tire pressure monitoring systems;⁴⁵ rear outboard 3-point safety belts;⁴⁶ electronic stability control;⁴⁷ rear safety belt reminder systems;⁴⁸ brake transmission interlocks;⁴⁹ safety belts on motorcoaches;⁵⁰ rear-view cameras;⁵¹ safer power window switches;⁵² ADAS;⁵³ impaired driving prevention technology;⁵⁴ enhanced vehicle hood and bumpers to better protect vulnerable road users;⁵⁵ and, advanced head lamps.⁵⁶

Driver Monitoring Systems

Based on recent research and data, driver monitoring systems for passenger motor vehicles can help to prevent or mitigate crashes caused by a number of dangerous driving behaviors including impairment, fatigue, distraction, driver disengagement, automation complacency, and the foreseeable misuse of automated driving systems.⁵⁷ IIHS has indicated that it will include whether a vehicle is equipped with a driver monitoring system in its ratings program which evaluates the safeguards that vehicles with partial automation employ to help drivers stay focused on the road.⁵⁸ In addition, Consumer Reports grants additional credit to a vehicle's rating if the vehicle includes a driver monitoring system as part of the "active driver assistance package."⁵⁹ Advocates and CFA support the inclusion of evaluation of driver monitoring systems in NCAP which have appropriate privacy safeguards in place to prevent misuse of data. Furthermore, Euro NCAP has started evaluating driver monitoring systems which can help "mitigate the very significant problems of driver distraction and impairment through alcohol, fatigue, etc." in its rating program.⁶⁰ Lastly, Advocates and CFA urge NHTSA to conduct research on the safety benefits of requiring driver monitoring systems as standard equipment on new passenger motor vehicles.

⁴⁴ Traffic Safety Facts 2018, A Compilation of Motor Vehicle Crash Data, DOT HS 812 981, NHTSA (Nov. 2020).

⁴⁵ Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106-414 (Nov. 1, 2000).

⁴⁶ Anton's Law, Pub. L. 107-318 (Dec. 4, 2002).

⁴⁷ Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (Aug. 10, 2005).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Moving Ahead for Progress in the 21st Century (MAP-21) Act, Pub. L. 112-141 (Jan. 3, 2012).

⁵¹ Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. 110-189 (Feb. 28, 2008).

⁵² *Id.*

⁵³ Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Collision Between Vehicle Controlled by Developmental Automated Driving System and Pedestrian Tempe, Arizona, March 18, 2018, Accident Report NTSB/HAR-19/03 (Nov. 19, 2019); NHTSA Office of Defects Investigation Preliminary Evaluation PE21-020.

⁵⁸ IIHS, IIHS creates safeguard ratings for partial automation (Jan. 20, 2022).

⁵⁹ Keith Barry, Driver Monitoring Systems Can Help You Be Safer on the Road, Consumer Reports (Jan. 20, 2022).

⁶⁰ Euro NCAP 2025 Roadmap: In Pursuit of Vision Zero, Euro NCAP.

Driver Distraction

According to NHTSA, 3,142 people were killed in crashes involving a distracted driver in 2019.⁶¹ In addition, an estimated 424,000 people were injured in distraction-affected crashes in 2019.⁶² Moreover, crashes in which at least one driver was identified as being distracted imposed an economic cost of \$40 billion in 2010.⁶³ However, the true impact of distracted driving remains unclear due to issues with the underreporting of crashes involving distraction, including differences in police crash report coding and database limitations.⁶⁴ Nonetheless, it is clear from an increasing body of safety research, studies and data that the use of electronic devices for telecommunications (such as mobile phones and text messaging), telematics and entertainment can readily distract drivers from the driving task. In recognition of this safety hazard, the National Transportation Safety Board (NTSB) includes “eliminate distractions” on its Most Wanted List of Transportation Safety Improvements.⁶⁵

ADAS have the capability to prevent and mitigate crashes caused by numerous behavioral issues including distraction. Research by IIHS shows dramatic reductions in crashes with ADAS-equipped passenger vehicles.⁶⁶ Specifically:

- Automatic Emergency Braking (AEB) can decrease front-to-rear crashes with injuries by 56 percent;
- Lane Departure Warning (LDW) can reduce single-vehicle, sideswipe and head-on injury crashes by over 20 percent;
- Blind Spot Detection (BSD) can diminish injury crashes from lane change by nearly 25 percent;
- Rear AEB can reduce backing crashes by 78 percent when combined with rearview camera and parking sensors; and,
- Rear cross-traffic alert can reduce backing crashes by 22 percent.⁶⁷

Effective crash avoidance safety technologies with minimum performance requirements should be standard, and not optional, equipment in all new vehicles. Congress required in the IIJA that NHTSA promulgate a rulemaking requiring FCW, AEB, LDW and LKA as standard in equipment in all new passenger vehicles. Our organizations urge the agency to expeditiously issue these standards to save lives. This action will also achieve safety equity by both ensuring that the technology responds to and benefits all road users and that all consumers buying new vehicles are not required to pay extra for this lifesaving technology. Doing so will also reduce the base cost of technology due to economies of scale.

⁶¹ National Center for Statistics and Analysis. (2021, April). Distracted driving 2019 (Research Note. Report No. DOT HS 813 111). National Highway Traffic Safety Administration.

⁶² *Id.*

⁶³ The Economic and Societal Impact of Motor Vehicle Crashes, 2010 (Revised), NHTSA, May 2015 (Revised), DOT HS 812 013.

⁶⁴ Traffic Safety Facts Research note: Distracted Driving 2019, Apr. 2021, NHTSA, DOT HS 813 111.

⁶⁵ National Transportation Safety Board (NTSB) 2021-2022 Most Wanted List of Transportation Safety Improvements.

⁶⁶ Insurance Institute for Highway Safety (IIHS) and Highway Loss Data Institute (HLDI), Real-world benefits of crash avoidance technologies, December 2020.

⁶⁷ *Id.*

Alcohol Detection

In 2020, according to NHTSA, 11,654 people died in crashes involving impaired driving across the nation.⁶⁸ While the number of lives lost to drunk driving has decreased from previous decades, far too many people are still being killed in impaired driving crashes. In fact, since the mid-1990s, drunk driving fatalities has plateaued at around 30 percent of all motor vehicle deaths indicating that progress has stagnated and at times, even reversed.

The development of touch-based and/or passive breath sensor technology that detects if a driver is alcohol intoxicated holds tremendous potential to help reduce impaired driving crashes. In fact, the Insurance Institute for Highway Safety (IIHS) released research showing that impairment detection systems could save upwards of 9,000 lives each year.⁶⁹ In light of this research, NHTSA's paucity of action on this technology is indefensible. Alcohol detection technology should be required as standard equipment in all vehicle passenger vehicles. While Advocates and CFA are not opposed to NHTSA including the systems as a recommended technology in NCAP, doing so should not take precedent over or detract from completing the rulemaking as required in the Section 24220 of the IIJA.⁷⁰

Since 2008, NHTSA has been working with the Automotive Coalition for Traffic Safety (ACTS) and has spent tens of millions of dollars on the Driver Alcohol Detection System for Safety (DADSS). During those 14 years the agency has surely collected invaluable insight into developing protocols and criteria for alcohol detection technology. Alcohol impairment, which is associated with approximately a third of annual fatalities, is far too important to be left to a consumer information program alone and discretion from auto manufacturers about whether or not to provide this technology. NHTSA must address this problem by requiring appropriate safety systems in new cars without further delay.

Seat Belt Interlocks

Seat belts save lives. According to NHTSA, seat belts saved an estimated 14,955 lives in 2017.⁷¹ Yet, among vehicles occupants killed in 2021, half (50 percent) were unrestrained.⁷²

NHTSA has known for years that seat belt reminder systems can dramatically improve safety on public roads and for years has needlessly delayed regulatory action. In fact, Advocates petitioned the agency in 2007 for a rulemaking requiring rear seat belt reminders.⁷³ The NHTSA

⁶⁸ National Center for Statistics and Analysis. (2022, April). Alcohol-impaired driving: 2020 data (Traffic Safety Facts. Report No. DOT HS 813 294). National Highway Traffic Safety Administration.

⁶⁹ Insurance Institute for Highway Safety, Alcohol-detection systems could prevent more than a fourth of U.S. road fatalities (Jul. 23, 2020).

⁷⁰ Pub. L. 117-58 (2021).

⁷¹ National Center for Statistics and Analysis. (2021, August). Traffic safety facts 2019: A compilation of motor vehicle crash data (Report No. DOT HS 813 141). National Highway Traffic Safety Administration.

⁷² National Center for Statistics and Analysis. (2022, May). Early estimates of motor vehicle traffic fatalities and fatality rate by sub-categories in 2021 (Crash Stats Brief Statistical Summary. Report No. DOT HS 813 298). National Highway Traffic Safety Administration.

⁷³ Advocates for Highway & Auto Safety – Petition, Nov. 21, 2007, NHTSA-2010-0061-0002.

finally published a request for comments on the petition nearly three years later in 2010.⁷⁴ Congress, recognizing the lifesaving benefits of these safety systems, subsequently mandated NHTSA to issue a rule requiring the technology as standard equipment in all passenger vehicles in 2012 as part of the Moving Ahead for Progress in the 21st Century (MAP-21) Act.⁷⁵ NHTSA issued an Advanced Notice of Proposed Rulemaking in 2019.⁷⁶ The rulemaking was mandated to be completed by October 2015 and is now six years overdue.⁷⁷

Advocates and CFA urge the agency to complete this rulemaking without any further delay. Currently, only 20 states and the District of Columbia have primary enforcement rear seat belt laws.⁷⁸ Requiring rear seat belt reminders, similar to the European Union which made reminders mandatory in 2019, will increase seat belt use and save lives that are lost each year due to occupants failing to buckle up.

Advocates and CFA do not oppose NHTSA examining prototypes of seat belt interlock systems and related technologies as well as considering whether to include them in NCAP in the future. However, these actions cannot take precedence over completing the long overdue rulemaking to require rear seat belt reminder systems that have been proven to be effective in saving lives by increasing seat belt use in an equitable manner.

Intelligent Speed Assistance

As the agency notes in the RFC, speeding remains one of the most prevalent dangerous driving behaviors.⁷⁹ In 2021, there were 11,780 fatalities in speeding related crashes accounting for a third of all traffic fatalities.⁸⁰ As shocking as these statistics are, the agency notes that speeding is underreported “potentially to a significant degree.”

Advocates and CFA support NHTSA taking urgent action and pursuing a comprehensive approach to curb this significant public safety issue including examining technologies that can address excessive speeding. As IIHS notes, field assessments of intelligent speed assistance systems have demonstrated significant reductions in speeding.⁸¹ However, IIHS notes some technical barriers remain regarding the use of the technology.⁸² Therefore, Advocates and CFA are supportive of NHTSA examining whether to include these systems in NCAP. Once these systems are proven to be effective, they should be standard equipment on all new vehicles due to the extensive breadth and devastating impact of speeding on our nation’s roads.

⁷⁴ Federal Motor Vehicle Safety Standards; Occupant Crash Protection, NHTSA, 75 FR 37343, Jun. 29, 2010.

⁷⁵ Pub. L. 112-141 (2012).

⁷⁶ 84 FR 51076 (Sep. 27, 2019).

⁷⁷ *Id.* § 31503.

⁷⁸ Advocates for Highway and Auto Safety, 2022 Roadmap of State Highway Safety Laws (Jan. 2022).

⁷⁹ 87 FR 13506 (Mar. 9, 2022).

⁸⁰ National Center for Statistics and Analysis. (2022, May). Early estimates of motor vehicle traffic fatalities and fatality rate by sub-categories in 2021 (Crash Stats Brief Statistical Summary. Report No. DOT HS 813 298). National Highway Traffic Safety Administration.

⁸¹ IIHS, Intelligent Speed Assistance, available at: <https://www.iihs.org/topics/speed/intelligent-speed-assistance>

⁸² *Id.*

Rear Seat Child Reminder Assist

According to the national child advocacy organization, Kids and Car Safety, over 1,000 children have died in hot cars nationwide since 1990.⁸³ Tragically, there were a record number of vehicular heat stroke deaths in both 2019 and 2020.⁸⁴ Scientific studies and memory research have shown that even the best of parents or caregivers can unknowingly leave a child in a vehicle. However, these tragedies can be prevented by robust detection systems.⁸⁵

Congress, as part of the IIJA, required NHTSA to issue a rulemaking by November 2023 requiring all new vehicles to be equipped with backseat alert system.⁸⁶ Unfortunately, rear alert systems that do not detect a child fail to protect children who independently enter a car and/or who get trapped in the front seat area. In fact, reports indicate that a child sadly perished in a vehicle only equipped with a door sequencing system.⁸⁷ These substandard systems are incapable of addressing many of these tragedies and are unacceptable when superior technologies are available. Therefore, Advocates and CFA strongly urge NHTSA to adopt a comprehensive requirement reflecting current state-of-the-art technology. Absent a requirement that new cars be equipped with a system to detect occupants in the entirety of the passenger compartment, children will continue to be imperiled and families will be left with a dangerous false sense of security and a confusion about how inadequate and inferior systems work.

As with several technologies included in this section such as alcohol detection systems and rear seat belt reminder systems, occupant detection systems have been proven to save lives, have been subject to a Congressional mandate and should be standard equipment in all new vehicles. The agency should expeditiously move to issue these safety standards within the statutory deadlines. However, in the interim and before the standard becomes effective, information should be available to consumers about which vehicles are equipped with these safety systems, how they are performing and any limitations.

VIII. Revising the 5-Star Safety Rating System

NCAP's 5-star safety rating system is badly outdated and in need of a significant overhaul. Unfortunately, the current rating system has become simply a "participation award" with the vast majority of vehicles rated receiving four or five stars.⁸⁸ This "star-flation" has resulted in consumers being unable to discern whether a vehicle is deserving of its high ratings. Therefore, Advocates and CFA support NHTSA updating the rating system to provide consumers with additional meaningful information to determine the safety performance of a prospective vehicle as compared to other cars offered for sale. In addition, Advocates and CFA concur with NHTSA's assessment in the RFC that the 5-star rating system should be as accurate as possible and flexible enough to allow for enhancements to NCAP as additional safety improvements are introduced in the vehicle fleet.

⁸³ Kids and Cars Safety, Heatstroke, available at: <https://www.kidsandcars.org/how-kids-get-hurt/heat-stroke/>

⁸⁴ 87 FR 13507 (Mar. 9, 2022).

⁸⁵ Kids and Cars Safety, Heatstroke, available at: <https://www.kidsandcars.org/how-kids-get-hurt/heat-stroke/>

⁸⁶ Pub. L. 117-58 (2021).

⁸⁷ Kids and Cars Safety, Thomas Cestia, available at: https://www.kidsandcars.org/child_story/thomas-cestia/

⁸⁸ Jerry Edgerton, How safe is that car with a "5-star" crash-test rating?, CBS News (May 25, 2016).

As in previous sections of the RFC, the agency presents several possible approaches to updating the 5-star safety rating system but provides little data or a preferred approach. Nonetheless, Advocates and CFA concur with the agency that there are several benefits to NHTSA adopting a points-based system to calculate the 5-star crashworthiness rating. As noted in the RFC, this type of approach would allow the agency to better target injury criteria which is more representative of actual crashes.⁸⁹ In addition, this system aligns with those used by Euro NCAP and IIHS, allowing for easier comparison of how a vehicle is rated by different testing programs. Advocates and CFA also concur with NHTSA that a points-based system would help to address the confusion that can occur when the agency places a safety concern or injury-related footnote for a vehicle that receives a 5-star rating.

The main purpose of the 5-star rating system was to enable consumers to vote with their buying dollars for better vehicles—something that would use the power of the market to bring about continued improvements in the safety performance of vehicles. Currently, with nearly every vehicle getting a 5-star rating, its effectiveness as a marketplace changemaker has been neutered. Going forward, as mentioned above, NHTSA’s rating programs should be based on comparing, on a relative basis, all vehicles. As demonstrated by *The Car Book*, once published by NHTSA and subsequently by the Center for Auto Safety, the crash tests (and ultimately ADAS ratings) provide plenty of tests that can be indexed comparatively. By taking the various test results and indexing them so as to identify the results by percentages,⁹⁰ NHTSA not only provides consumers with an easy to understand one to 10 rating system, but also takes full advantage of competitive market forces to bring about improvements in safety performance.

Along with the points-based system, NHTSA includes brief discussions of several other approaches including two that have been examined by the agency previously: baseline risk concept and half-star ratings. Once again, Advocates and CFA are at a loss as to why the agency has not more fully developed previous proposals on this topic to provide the public with the ability to provide NHTSA with meaningful input. NCAP has been in place for decades. Many of the questions for which the agency seeks responses can be gathered through surveying the current experiences of consumers with the program. As noted above in the proposal for establishing an ADAS rating system, the agency should consider incorporating percentage grades similar to Euro NCAP and any revisions to the 5-star rating must accurately reflect which vehicles have safety technologies that achieve significant reductions in injury and fatality risks.

Lastly, the agency inquires as to whether the overall 5-star rating should continue to include rollover resistance evaluations as electronic stability control (ESC) is now standard equipment in all new vehicles. Advocates and CFA were strong proponents of equipping all vehicles with ESC and the technology has saved countless lives. ESC is effective in reducing the chance of a rollover crash but does not prevent these incidents altogether. In fact, in 2021, nearly a quarter

⁸⁹ 87 FR 13508 (Mar. 9, 2022).

⁹⁰ Creating an array of numerical performance results for each test would enable NHTSA to simply identify the top 10 percent and each subsequent percent decade of numbers enabling an easy to understand 1 to 10 rating system. As more test results are added, the dynamic nature of such a system puts constant pressure on the participants to improve.

(24 percent) of occupant fatalities (7,640) were in a crash involving a rollover.⁹¹ These striking statistics demonstrate that rollover crashes remain a serious safety problem even though ESC is an effective safety system. Therefore, NHTSA must continue to include rollover resistance evaluations in its 5-star rating system.

IX. Other Activities

Advocates and CFA are deeply concerned with the inconsistencies with self-reported data submissions for ADAS performance from vehicle manufacturers as reported by NHTSA in the current RFC. These shortcomings highlight the challenges with unverified industry data being used for a government-sponsored consumer information program like NCAP. Advocates and CFA concur with NHTSA that it is critical to maintain program credibility and public trust when utilizing self-reported data. As such, Advocates and CFA support the agency requiring that any data submitted must be provided from a test facility that is designated as a NHTSA contracted test laboratory and meet all NHTSA testing protocols. In addition, the agency must conduct more independent testing to verify the self-reported data.

Advocates and CFA also support a long overdue update of the NCAP website as the agency notes that substantial and important information cannot be included on the Monroney label due to size constraints and other limitations. In addition, NHTSA has the ability to frequently update the NCAP website with the most current data. Again, the agency should be using consumers' experience with the current NCAP website to inform it on needed upgrades and changes. The website must be promoted so consumers are aware of its existence and is able to provide consumers with easy to understand vehicle ratings and safety information in a clear and concise manner to allow for the most informed purchasing decisions. Whenever possible, this information should be consistent with that provided on the Monroney label to avoid unnecessary confusion.

Lastly, NHTSA notes that it is working to improve the agency's internal databases. The agency must institute uniform procedures for the submission, collection and analysis of data and communications in order to ensure the accuracy of NCAP data.

X. Conclusion

For over four decades, NCAP has been a critical component of ensuring safety on our nation's roads and an essential source of respected and reliable information for consumers. However, the current program is badly outdated and must be enhanced to ensure it is trustworthy and effective. Not to do so is to fail to take advantage of one of NHTSA's most powerful tools to improve automobile safety and reduce crashes, fatalities and injuries. Therefore, Advocates and CFA urge NHTSA to complete this rulemaking promptly and adopt the commonsense changes and reasonable improvements recommended in these comments.

⁹¹ NHTSA, Early Estimates of Motor Vehicle Traffic Fatalities And Fatality Rate by Sub-Categories in 2021, DOT HS 813 298 (May 2022).

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Catherine Chase

President

Advocates for Highway and Auto Safety

Joan Claybrook

Former Administrator, NHTSA

Creator of NCAP

Board Member, Advocates for Highway and Auto Safety

Jack Gillis

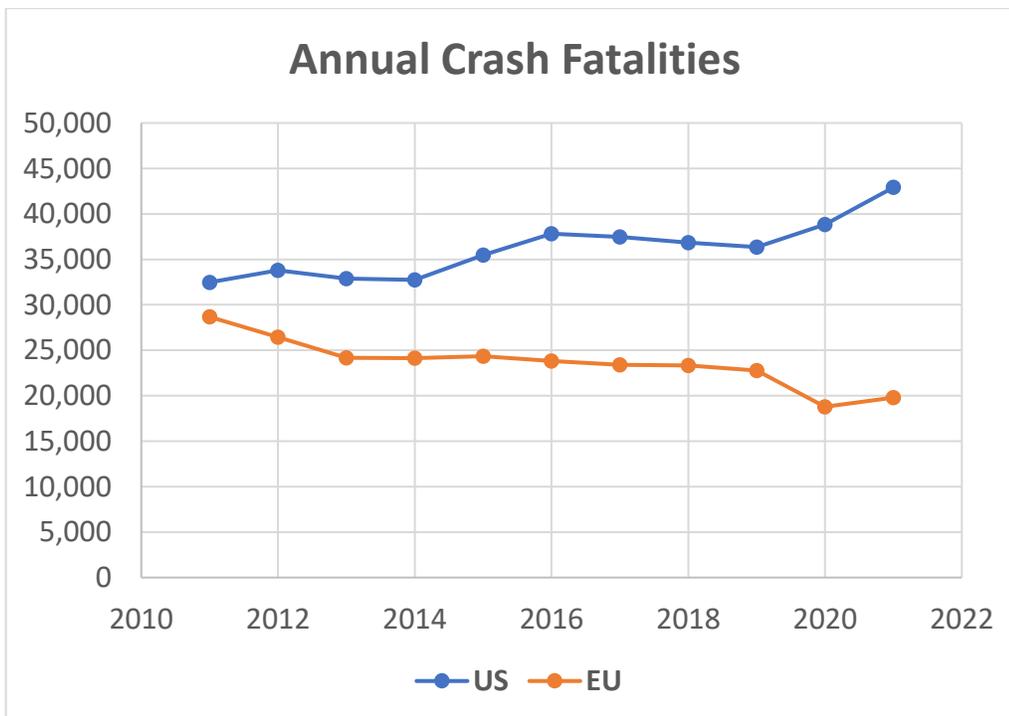
Consumer Federation of America



Comparison of the U.S. New Car Assessment Program (U.S. NCAP) and the European New Car Assessment Program (Euro NCAP)

- European Union vehicle safety regulations and the consumer information program (Euro NCAP) have surpassed those in the U.S. in areas related to advanced vehicle safety technology.
- While the U.S. has experienced recent dramatic increases in motor vehicle crash fatalities, the European Union (EU) is generally trending down, as this chart demonstrates.
- Crash deaths in the EU are far below the U.S. There were 19,800 crash fatalities in the EU in 2021 compared to 42,915 in the U.S. According to the most recent population data available, the EU has 448 million inhabitants, while the U.S. has 331 million.

Fatalities		
Year	US	EU
2011	32,479	28,671
2012	33,782	26,457
2013	32,893	24,182
2014	32,744	24,131
2015	35,484	24,358
2016	37,806	23,808
2017	37,473	23,393
2018	36,835	23,331
2019	36,355	22,755
2020	38,824	18,786
2021	42,915	19,800



The U.S. was a leader in creating the NCAP program in 1979. Euro NCAP was modeled on U.S. NCAP and launched in 1996. Despite the U.S. pioneering this consumer information tool, it has since fallen far behind in terms of its effectiveness and usefulness for new car buyers.

Comparison of safety features and crash scenarios being rated by Euro NCAP and U.S. NCAP

<i>Topic Area of NCAP Program</i>		<i>Euro NCAP</i>	<i>Specific Test</i>	<i>US NCAP</i>
Adult Occupant Protection	Frontal	✓	Full Width Rigid Barrier Crash Test	✓
		✓	Moving Progressive Deformable Barrier Test	
	Side	✓	Moving Deformable Barrier Crash Test	✓
		✓	Pole Impact Crash Test	✓
		✓	Far Side Sled Test	
	Rear Whiplash	✓	Headrest Geometry Evaluation	
		✓	Sled Tests	
Rescue and Extrication	✓	E-Call / Multi- Collision Braking		
Child Occupant Protection	Child Seat	✓	Vehicle Design	
		✓	Fit and Ease of Installation	
	Frontal	✓	Offset Deformable Barrier Crash Test	
	Side	✓	Moving Deformable Barrier Crash Test	
Vulnerable Road User Protection	Impact Protection	✓	Head Impact Test	
		✓	Upper Leg Impact Test	
		✓	Lower Leg Impact Test	
	Automatic Emergency Braking	✓	Pedestrian - Dynamic Tests	
		✓	Cyclist - Dynamic Tests	
Rollover Resistance			Static Stability Factor	✓
			Dynamic Handling	✓
Safety Assist	Forward Collision Warning / Automatic Emergency Braking	✓	AEB Car-to-Car Dynamic Tests	
	Occupant Status Monitoring	✓	Rear Seatbelt Reminder	
		✓	Driver Status Monitoring	
	Speed Assistance Systems	✓	Intelligent Speed Assist	
	Lane Support Systems	✓	Lane Departure Warning	
		✓	Lane Keeping Assist	
		✓	Emergency lane Keeping	
		✓	Blind Spot Monitoring	

Rulemaking history for updates to U.S. NCAP (2013-22):

- 2013: Request for comment (RFC) by U.S. Department of Transportation (U.S. DOT) on advanced driver assistance systems (ADAS) in NCAP.
- 2015: Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94) signed into law, including directives to add crash avoidance testing to NCAP as well requiring a “Monroney Label”

providing information about new cars, including whether they are equipped with crash avoidance technology.

- 2015: RFC and Final Decision, adding crash imminent braking (CIB) and dynamic brake support (DBS) to NCAP for Model Year 2018.
- 2018: Public meetings on proposed updates.
- 2021: Infrastructure Investment and Jobs Act (IIJA Pub. L. No. 117-58) enacted, directing U.S. DOT to complete the update of NCAP that was initiated in 2015 as well as publish a notice for public comment on consumer information on advanced crash avoidance technologies and vulnerable road user safety within one year. The law requires U.S. DOT to issue a “roadmap” every four years on plans to update U.S. NCAP to keep pace with vehicle technology.
- March 3, 2022: National Highway Traffic Safety Administration (NHTSA) releases an RFC seeking information on proposed updates to U.S. NCAP.

May 2022

NCAP at 40: Time to Return to Excellence
By Joan Claybrook and Advocates for Highway and Auto Safety
October 17, 2019



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

Introduction:

Since the inception of the United States New Car Assessment Program, or NCAP, 40 years ago it has provided essential vehicle safety performance information to the public as well as stimulated the development of safer vehicles by the motor vehicle industry. As we celebrate this important benchmark, it is important to renew and reinvigorate the U.S. program that has been neglected for too many years. It needs to be made once again dynamic, relevant and useful.

The good news is that since the mid-1990's, a number of other countries across the globe selling motor vehicles have adopted and improved the U.S. NCAP programs for vehicles sold in their countries and their programs are far more vibrant and informative than the now outdated U.S. NCAP program. They now serve as a new benchmark for the U.S. program.

This report identifies current NCAP program deficiencies that need to be addressed but were allowed for years to needlessly languish. Since the mid-1990's, other countries that copied the U.S. NCAP programs have far out-paced the U.S. by improving the safety information available to consumers and out-performed the U.S. in motivating industry innovation to advance safety. This unique vehicle safety information program was created to help consumers make vehicle purchase decisions and to push the auto manufacturers to upgrade the safety of their vehicles. It is critical that it be updated by NHTSA. The other NCAP countries have set a high bar for NHTSA to emulate. It should immediately undertake this task.

In addition, this report provides an historical overview of the early beginnings and development of this innovative vehicle safety information for consumers. It was created in 1979 under the leadership of Joan Claybrook, then Administrator of the National Highway Traffic Safety Administration (NHTSA or the Agency), the agency within the U.S. Department of Transportation (DOT) responsible for regulating the auto industry for safety and fuel economy.

International NCAPs Race Ahead While U.S. Program Stagnates

There are currently eight (8) New Car Assessment Programs in the world.

ANCAP	Australia NCAP
ASEAN NCAP	Southeast Asian Countries NCAP
C-NCAP	China NCAP
EURO NCAP	European NCAP
JNCAP	Japan NCAP
KNCAP	Korea NCAP
LATIN NCAP	Latin American and the Caribbean
US NCAP	United States NCAP

While the U.S. NCAP was the first of its kind, many other countries have replicated the program and have vastly expanded and improved upon the evaluations performed in the U.S. The other NCAP programs are located in the Southeast Asian Countries, Australia, China, Europe (the most advanced), Japan, Korea and Latin America including the Caribbean. Other countries and regions in the process of developing NCAP programs are India and Africa.

Presently, the U.S. NCAP only includes five tests in its ratings:

- full width rigid frontal barrier test to test frontal occupant protection,
- side impact moving deformable barrier test,
- side impact rigid pole test to examine occupant side impact protection,
- measurement of the vehicle's static stability factor, and
- dynamic handling test to evaluate rollover resistance.

For comparison, the Euro NCAP, while only having started in 1997, as compared to the U.S. NCAP in 1979, has a total of 21 tests. Listed below are the Euro NCAP tests used in its ratings but **not performed in the U.S.:**

- offset deformable barrier crash test,
- rear seat occupant protection in frontal crashes,
- far side impact protection,

- rear impact whiplash protection,
- child seat installation and occupant protection (4 tests), and
- pedestrian head and leg impact protection (3 tests).

Additionally, the Euro NCAP also evaluates driver assistance systems not covered by U.S. NCAP ratings such as:

- forward collision warning,
- automatic emergency braking (AEB),
- seatbelt reminders,
- speed assistance systems,
- lane departure warning (LDW),
- lane keeping assist, and
- emergency lane keeping systems.

Many of the additional tests being conducted by the Euro NCAP have been replicated in other NCAPs despite not having been adopted in the U.S. The frontal impact deformable barrier test is conducted in six other programs. Rear whiplash, child occupant protection, and vulnerable road user impact protection are being evaluated in four other programs. Child occupant protection and seatbelt reminders are evaluated in three other NCAPs. Thus, depending on the area of safety considered, the U.S. NCAP appears to be falling behind a number of other programs.

While there have been attempts by the U.S. DOT in recent years to update the program, that early progress appears to have slowed considerably. At the end of 2015, the DOT issued a request for comments on a sweeping proposal to update the U.S. NCAP to cover a number of the areas covered by rival programs such as Euro NCAP. However in 2018, the DOT issued a significantly scaled back notice requesting comments on general questions about improving the program, not about specific tests.¹ Meanwhile, the Euro NCAP in 2017 issued a roadmap of improvements through 2025 which included not only improvements in the areas already tested but additional areas of testing and the timeframes in which they are expected. The U.S. DOT

¹ On October 16, 2019, the day before the issuance of this report, NHTSA yet again indicated that the agency was going to propose major upgrades to NCAP in 2020.

should emulate the comprehensive Euro NCAP program, including the process of preparing public roadmaps for future improvements and meeting those deadlines.

Euro NCAP			Introduced, Updated	US NCAP			Introduced
Adult Occupant Protection	Frontal	Full Width Rigid Barrier Crash Test	2015	Adult Occupant Protection	Frontal	Full Width Rigid Barrier Crash Test	1979
		Offset Deformable Barrier Crash Test	1997, 2015				
	Side	Moving Deformable Barrier Crash Test	1997, 2015		Side	Moving Deformable Barrier Crash Test	1997
		Pole Impact Crash Test	2001, 2015			Pole Impact Crash Test	2011
		Far Side Sled Test	2018, 2020				
	Rear Whiplash	Headrest Geometry Evaluation	2009				
Sled Tests		2009					
Child Occupant Protection	Child Seat	Vehicle Design	1997, 2016				
		Fit and Ease of Installation	2013, 2016				
	Frontal	Offset Deformable Barrier Crash Test	1997, 2016				
	Side	Moving Deformable Barrier Crash Test	1997, 2016				
Vulnerable Road Users	Impact Protection	Head Impact Test	1997, 2013				
		Upper Leg Impact Test	1997, 2015				
		Lower Leg Impact Test	1997, 2014				
				Rollover Resistance		Static Stability Factor	2001
						Dynamic Handling	2004
Driver Assistance Technologies	Forward Collision Warning (FCW) Automatic Emergency Braking(AEB)	City - Dynamic Test	2014, 2018				
		Interurban - Dynamic Test	2014, 2018				
		Pedestrian - Dynamic Test	2016, 2018				
		Cyclist - Dynamic Test	2018				
	Seatbelt Reminders		2002, 2018				
	Speed Assistance Systems (SAS)		2009, 2018				
	Lane Support Systems (LSS)	Lane Departure Warning (LDW)	2014, 2018				
		Lane Keeping Assist	2014, 2018				
Emergency Lane Keeping		2014, 2018					

A list of tests by other countries (other than EURO NCAP) which the U.S. NCAP does not include follows:

Frontal Offset Deformable Barrier Test: ANCAP, ASEAN NCAP, C-NCAP, JNCAP, LATIN NCAP

Rear – Whiplash Evaluation: ANCAP, C-NCAP, JNCAP, KNCAP

Child Occupant Protection: ANCAP, ASEAN, C-NCAP, LATIN NCAP

Vulnerable Road Users Impact Protection: ANCAP, C-NCAP, JNCAP, KNCAP

Forward Collision Warning / Automatic Emergency Braking: ANCAP, ASEAN, C-NCAP

Seatbelt Reminders: ASEAN, JNCAP, LATIN NCAP

Speed Assistance Systems: ANCAP

Lane Departure Warning / Lane Keeping Assist: ANCAP, ASEAN

Reforming NCAP and Reclaiming Leadership

The U.S. NCAP, although it inaugurated the concept, is now seriously behind the NCAPs of other countries. A list by type of tests and a further comparison of the U.S. and Euro NCAP programs can be found in Appendix A. Today, the Euro NCAP program is the most advanced.

NCAP must be updated to guarantee the effectiveness of the program as it has fallen woefully behind international counterparts in robust and comprehensive ratings of vehicle safety. Implementing several essential commonsense improvements will greatly enhance the effectiveness of NCAP in the future. Currently available safety technologies that have already been proven to have substantial safety benefits should be included in the NCAP ratings to further facilitate their widespread dissemination into new vehicles. Research conducted by the Insurance Institute for Highway Safety (IIHS) has demonstrated that current advanced driver assistance systems (ADAS) such as Automatic Emergency Braking (AEB), Lane Departure Warning (LDW), Blind Spot Detection (BSD) and rear automatic braking have safety benefits by reducing crashes (See Appendix B). Moreover, the National Transportation Safety Board (NTSB) has recommended that forward collision avoidance systems such as AEB be included in the NCAP ratings instead of simply informing consumers if the vehicle is equipped with such technologies.

Crash testing must also be enhanced. NHTSA should adopt, as needed, updated anthropomorphic test device (ATDs) in crash tests conducted as part of NCAP to ensure that the tests are accurately capturing the injuries and risk of injury observed in today's vehicles.

Additionally, NHTSA should use ATDs placed in the rear seats of vehicles during crash testing

to better assess the performance of vehicles in protecting occupants in the rear seats of vehicles. The Agency should also develop testing methods and injury and performance criteria for use in NCAP to ensure that the failure of seatbacks in rear impact crashes do not increase injury risk for rear seat occupants while offering optimal protection for front seat occupants. NCAP should also include crash tests, similar to those already conducted by Euro NCAP, which address additional crash modes beyond current U.S. NCAP requirements, including additional tests for adult and child occupant protection.

NCAP must also place greater focus on the safety of vulnerable users who share the roads with motor vehicles. Ratings should include the evaluation of the performance of pedestrian crash avoidance systems as well as those designed to reduce injuries to pedestrians, bicyclists, children and other vulnerable road users, particularly those injuries resulting from head and leg impacts against a vehicle's stiff hood, windshield or bumper. The NTSB recommended such action in a 2018 special investigation report on pedestrian safety.

As the American population ages, NCAP should include a separate "silver rating" for older adults. This new rating should use modified injury criteria to address the specific injury patterns suffered by older occupants. NHTSA should also develop an ATD representative of older occupants for use in safety testing.

The public must have better access to NCAP ratings and be given more opportunities to provide input to NHTSA on how to best enhance the program. As such, the Agency should improve ease of use of the NCAP public website so consumers can better access vehicle ratings as well as hold public meetings biennially to allow stakeholders to provide input on needed updates to NCAP. Lastly, in order to keep pace with rapidly evolving vehicle safety technology and provide clarity to all stakeholders, NHTSA should publish a five-year roadmap detailing plans to update the program as is done with Euro NCAP.

Fortunately, given the meager state of the U.S. NCAP program, other organizations funded by the U.S. insurance industry provide substantial support in promoting consumer awareness and protection. For example, Advocates for Highway and Auto Safety (Advocates) is a coalition of public health, safety, and consumer organizations, insurers and insurance agents that promotes

highway and auto safety through the adoption of safety laws, policies and regulations. Claybrook helped to establish this organization in 1989. Advocates has supported the U.S. NCAP since the organization's founding. For many years, Advocates and other safety groups fended off numerous attempts to cut funding for NCAP that would have certainly curtailed the effectiveness of the program or meant its outright end. Additionally, IIHS is a research organization that undertakes studies, evaluates highway and auto safety programs and conducts vehicle crash tests as well assigns crash ratings. The organization makes their data and research findings on driver behavior, roadway infrastructure and vehicle design and safety publicly available. This is also an important source of highway and auto safety information for consumers. IIHS was founded in 1959 by three major insurance associations representing 80 percent of the U.S. auto insurance market. At first, the Institute's purpose was to support highway safety efforts by others. In 1979, IIHS transitioned into an independent research organization. In 1992, IIHS opened its Vehicle Research Center where it performs the crash tests that form the basis of its vehicle ratings.

A New Program Empowers Consumers and Challenges Industry

In 1979, NHTSA inaugurated a new vehicle safety program named NCAP. This year, 2019, is the 40th anniversary of this ground-breaking consumer safety information program. It consists of making available to the public NHTSA crash test data and other tests of new vehicles. The crash tests are generally conducted at 5 miles per hour (mph) higher than the relevant Federal Motor Vehicle Safety Standard (FMVSS). Most, but not all, federal crash test standards are conducted at 30 mph. This approach determines whether vehicle manufacturers are designing their safety systems substantially higher than the minimum government performance standard or are just on the edge of passing it.

With the development of the internet, the information is now available online on the NHTSA website and on the websites of U.S. automakers and many auto dealers.²

When first inaugurated, the U.S. NCAP challenged automakers to upgrade safety in their vehicles beyond the minimum government requirements. With NHTSA publicly releasing the

² www.safercar.gov

new vehicle test results, all manufacturers became mindful as they needed to design new cars to improve their NCAP crash test results. This shift shows the power of factual, well-distributed consumer information. In fact, NCAP forced U.S. manufacturers for the first time in the early 1980s to admit that "safety sells," something the industry had denied for over 70 years. Thus, NCAP created a "consumer market" for safety performance.

The idea of using consumer information to encourage the car buying public to purchase vehicles that are the safest and consequently, to reward manufacturers that build the safest vehicles, has now spread around the globe. Currently eight NCAP or similar non-government programs provide ratings for both crashworthiness and crash avoidance. For example, Australia NCAP was launched in 1993, followed by Japan NCAP in 1995, Euro NCAP in 1997, Korean NCAP in 1999, China NCAP in 2006, Latin NCAP in 2010 and the NCAP for Southeast Asian Countries (ASEAN NCAP) in 2012. Two others, in India and Africa, are now being created. In parallel, IIHS, founded in 1959, began its crashworthiness ratings in 1995. The effectiveness of NCAPs has been recognized by the United Nations General Assembly, and its Secretary General Antonio Guterres has called on all Member States to participate in NCAPs.³

To serve as a platform for cooperation among various NCAPs, the Global NCAP was launched in 2011. Funded by Bloomberg Philanthropies and the FIA Foundation, Global NCAP has provided funding and technical support to new NCAPs in emerging markets including ASEAN and Latin NCAP as well as established pilot NCAPs in India and Africa. Led by its President and CEO David Ward, who previously played a leading role in the creation of Euro NCAP, Global NCAP has strongly promoted the combination of "regulatory push" through the application of minimum UN vehicle safety regulations and "demand pull" through consumer safety rating programs such as NCAP.

Around the world the NCAP model has proven to be powerfully effective. Providing the public with essential information about the safety performance of new vehicles has clearly influenced buying decisions which have contributed to significant declines in vehicle occupant deaths in the

³ United Nations General Assembly, Improving global road safety-Note by the Secretary General A/72/359. Recommendation 101(c) (Aug. 24, 2017)

European Union over the last twenty years.⁴ In 2003, it was estimated that cars awarded five stars by Euro NCAP “have a 36% lower intrinsic fatal accident risk than vehicles which are simply designed to meet the legal standard”⁵ and had brought “forward the benefits of new legislation by 5 years”⁶ by encouraging manufacturers to advance and exceed regulatory requirements thus accelerating the entry into the fleet of safer vehicles. In 2017, it was estimated that Euro NCAP had saved over 78,000 lives.⁷ Since 2009, its testing protocols have been subject to successive updates making it the most technically advanced NCAP in the world.⁸

In emerging markets, NCAP initiatives have been similarly successful even in regions where vehicle regulations are oftentimes either absent or only partially in effect. For example, ASEAN NCAP, which is based in Malaysia, has now tested models covering 90% of the regional market, and 90% of these achieved ratings of four and five stars which is far above any regulatory requirements, according to Global NCAP. Latin NCAP has similarly seen a marked increase in the availability of cars with four and five stars. A prime example is the region’s best-selling Chevrolet Onix which has improved from a zero star rating to five stars and been recognized with an award for meeting the UN standard for pedestrian protection.⁹

A Determined Administrator, A Defective Gas Tank, and a Decision to Inform Consumers

In 1977, President Jimmy Carter selected Joan Claybrook to lead NHTSA, the then 11-year old auto and highway safety regulatory agency. In 1966, she worked in the U.S. Congress for Members deeply involved in the creation of the new regulatory agency. It was there that she met Ralph Nader and helped to adopt some of his ideas into successful enactment of the nation’s first

⁴ Global NCAP.

⁵ European Road Safety Action Programme: Halving the number of road accident victims in the European Union by 2010: A Shared Responsibility, Commission of the European Communities, June 2, 2003.

⁶ Priorities in EU Road Safety, Progress Report and Ranking of Actions, Commission of the European Communities, Mar. 17, 2000.

⁷ Euro NCAP Marks 20th Anniversary of Life-Saving Crash tests, Euro NCAP, Feb. 2, 2017, available at <https://www.euroncap.com/en/press-media/press-releases/euro-ncap-marks-20th-anniversary-of-life-saving-crash-tests/>

⁸ See: <https://www.euroncap.com/en/press-media/press-releases/euro-ncap-launches-road-map-2025-in-pursuit-of-vision-zero/>

⁹ See: <https://www.latinncap.com/en/media-area/new/85d7a4df7c8e87/latin-ncap-latest-results-from-zero-to-hero-new-onix-plus-scores-five-stars-for-both-adult-and-child-occupants-and-advanced-award-for-pedestrian-protection-chery-disappoints-badly-with-zero-stars-result>.

auto safety laws. She then worked for the first Administrator, Dr. William Haddon, Jr, M.D., for four years. During her second and third years as Administrator of NHTSA, Claybrook spearheaded the creation of NCAP for several important reasons. One of the key motives was to create an incentive for automakers to improve the safety performance of their vehicles outside of the traditional federal government regulatory process.

An example of the effectiveness of incentivizing auto industry safety designs was the Air Bag/Passive Restraint rule which was developed by NHTSA, was issued in 1977 by the Secretary of Transportation and was in need of strengthening.¹⁰ First developed in the late 1960s, the speed of the air bag crash test was 30 mph.¹¹ However, highway speeds far exceeded that number by the mid-1970s despite the imposition in 1973 of the national 55 mph speed limit, established in the height of the energy crisis to conserve fuel.¹² In fact, the greatest societal benefit from limiting speeds to the 55 mph program was saving thousands of lives during the 1970s and 1980s.¹³ The conundrum facing the Agency was how to increase the effectiveness of air bags at higher speeds without amending the standard. At the time, the Air Bag/Passive Restraint rule was very controversial and it would have been difficult, if not impossible, to make any substantive changes until after it fully took effect in 1984 and all litigation was consummated. Therefore, NCAP testing vehicles at 5 mph higher than the air bag safety standard required was extremely helpful to evaluate and ascertain manufacturers' performance.

Another factor that influenced the establishment of NCAP was a conversation Claybrook had with Pete Estes, President of General Motors, in early 1978. He contacted NHTSA because of his concerns about NHTSA's investigation of the Ford Pinto defective gas tank. A *Mother Jones* magazine article in late 1977 cited internal Ford "cost-benefit" calculations showing that the company knowingly allowed its Pinto gas tank to be susceptible to fuel leakage in rear end

¹⁰ 42 F.R. 34289; July 5, 1977.

¹¹ Kahane, C, An Evaluation of the 1998-1999 Redesign of Front Air Bags, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Report No. DOT HS 810 685, p. vii (Aug. 2006).

¹² Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, Sec. 154 (1975).

¹³ Johnson, P, et. al, The Effectiveness of the 55 MPH National Maximum Speed Limit as a Life Saving Benefit, NHTSA, Report No.: DOT HS 805-811 (Jan. 1981).

crashes because of the cost of making it stronger.¹⁴ Clarence Ditlow, Executive Director of the Center for Auto Safety, asked for a NHTSA investigation.¹⁵

Claybrook insisted that NHTSA conduct crash tests of the Pinto to determine if the fuel tank claims were true. Normally in such tests, a Stoddard solvent, which does not catch fire, is used to protect the proving ground workers who measure the amount of leakage. Because of the urgency to correct the gas tank vulnerability and to demonstrate the severity of the defect, Claybrook insisted the Agency use real gasoline to show real world results. The newly issued federal rear safety crash test was set at 30 mph and the Pinto test was conducted at a proving ground at 29.9 mph, a speed less than what was required by the federal standard. The fuel poured out of the gas tank because the filler neck separated from the tank and sharp edges in the underbody pierced the fuel tank when it was hit from the rear by a Chevrolet Impala in the tests. As a result, the Pinto burst into flames.

NHTSA provided the films to the media which shocked the auto companies, infuriated Ford, and influenced public opinion so strongly that it essentially stopped sales of the Pinto. It also put needed pressure on Ford to redesign the vehicle, something the company resisted doing until the Agency pressed forward with a safety defect investigation and demanded company internal documents. As a result, Ford was forced to turn over damaging materials including its infamous and shocking “cost-benefit” memo comparing the cost to Ford of fixing the Pinto to the number of lives that would be lost and horrible burn injuries suffered.

GM President Estes was aware of Ford’s public relations debacle. He called Claybrook to ask if NHTSA was investigating the fuel tank of GM’s Vega, a vehicle similar in size and price to the Pinto. According to Claybrook, Estes said GM did not want a “Pinto situation with the Vega.” She informed him that NHTSA had recently completed a rear end crash test that showed the Vega also had a deficient fuel tank. Claybrook then asked him about the speed at which GM normally tested its vehicles to assure conformity with the federal 30 mph rear end crash safety standard and he replied “at 31 mph”.

¹⁴ Mark Dowie, *Pinto Madness*, Mother Jones (Sep./Oct. 1977).

¹⁵ Robert D. McFadden, Clarence M. Ditlow III, 72, *Crusader for Auto Safety Who Forced Big Recalls*, NY Times (Nov. 11, 2016).

This was new information to Claybrook and other agency staff. Due to variations during manufacturing, in order to assure all vehicles meet a designated minimum federal standard, it was assumed that manufacturers routinely tested at a speed that is three or four mph higher. But, the Detroit manufacturers apparently had no fear that NHTSA would catch them in violation of a crash test safety standard. At the time, crash test safety standards were relatively new. However, an Agency test of the GM Vega's fuel tank integrity showed it also failed thereby leading Mr. Estes to recall the vehicle.¹⁶

Learning that automakers were not robustly testing the safety performance of their vehicles caused Claybrook and Agency staff to conclude that it was necessary to increase the crash test speed for air bags despite the challenges of doing so. Also, highway deaths were climbing steadily, from 44,525 in 1975 to 51,093 in 1979.¹⁷ The Agency needed to take strong and immediate steps to address this carnage.

Testing the Auto Industry and Informing the Public

At this point, a talented NHTSA crash testing engineer named James Hackney along with Dr. Kennerly Digges, who directed NHTSA's crash test research program in this area, suggested NHTSA conduct for comparison, a series of frontal crash tests at 35 mph involving different makes and models. There was no specific funding for this new venture so money from NHTSA's safety standard enforcement program was used. If a vehicle passed at 35 mph, no further enforcement testing was necessary. But if it failed, which many did initially, NHTSA would retest it at 30 mph to be sure each vehicle, at least, complied with the minimum safety standard.

It became apparent that there were many variations in the test results among different makes and models. Claybrook felt compelled to publicize the crash test results so consumers could use this safety information to make the best purchasing decisions. Among other interesting discoveries, the crash tests showed that the small cars manufactured by U.S. automakers were significantly safer than the Japanese small cars. This was particularly important because with fuel shortages

¹⁶ Larry Kramer, Nader: Vega's Gas Tank As Dangerous as Pinto's, WaPo (Aug. 31, 1978).

¹⁷ Traffic Safety Facts 2016, National Highway Traffic Safety Administration, Report No.: DOT HS 812 554 (May 2018).

in the U.S. in 1979, small fuel-efficient Japanese cars were very popular and challenging domestically manufactured vehicles. At this point, given the many makes and models involved and the differing results, a decision was made to create a program to organize the results of Agency crash tests and give it a name. The “New Car Assessment Program” (NCAP) was selected because it was a non-controversial name for a very controversial consumer information program.

The auto industry was infuriated that the government was informing consumers about the actual crash performance of its vehicles by make and model. For years, the industry leaders had publicly claimed that safety did not sell, but in truth it did. Because of the complexity of conveying the crash test results to consumers, in 1980, Claybrook decided, with resistance from NHTSA’s top engineering staff, to create a booklet with the crash test information for all makes and models tested by NHTSA. She did not know who in the Agency could be charged with developing such a booklet and sought out a professional staff person who had experience with marketing. Jack Gillis, who worked in the fuel economy office, was selected. Claybrook asked Gillis if he could do the job with the help of a contractor he could select, and he took on the challenge.

Initially, Claybrook wanted to educate readers by providing information about crash safety up front. However, Gillis wisely urged that a focus group be conducted before publication. Unanimously the focus group wanted the hard data, namely which vehicle makes and models passed or failed the government crash tests, at the beginning of the booklet. As a result, the book was organized so that in the very front is a four page “Purchasing Guide” organized by car size (Large, Intermediate, Compact and Subcompact). For each grouping, information is listed by make and model on how the vehicle performed in crash tests, safety belt comfort and convenience, fuel economy, preventive maintenance costs, repair costs, accident repair costs and insurance costs. The heart of the booklet was brand new information listing the crash testing results by make and model conducted with belted instrumented dummies at 35 mph, five mph higher than the safety standards from which the tests were developed.

Six test results were listed: two involved instrumented dummies with a driver and passenger in a full width barrier frontal crash test (used to test the air bag standard, No. 208 measuring results

affecting the head, chest and upper legs); frontal crash windshield retention test to measure whether the windshield remains attached to the car which prevents occupant ejection, the most deadly outcome in a car crash; windshield zone intrusion in which parts of the car could travel through the windshield in a frontal crash; fuel leakage after a frontal collision; and, fuel leakage after a rear end collision.

Within less than five months, Gillis produced a potent and provocative booklet named, “**The Car Book, A Consumer’s Guide to Car Buying.**” It was a substantial 68 pages long. No one had ever seen such data by make and model before. While the auto manufacturers and NHTSA conducted research crash tests regularly, the auto industry information was kept secret and the government test results were never formally organized for publication or made easily available to the public. **The Car Book** made it possible for consumers to make better decisions in purchasing a car. It also saved the Agency millions of dollars because staff did not have to individually answer requests from consumers with information about crash test data in the era before personal computers and the internet. And, auto dealers were unprepared for consumers coming into their showrooms loaded with such powerful information.

To publicize the release of **The Car Book**, Claybrook asked Phil Donohue, a national talk show host with a huge television audience, to invite her as a guest to his show to discuss NCAP and offer **The Car Book**, free of charge, to his viewing audience. As a result, NHTSA was overwhelmed when 450,000 people watching The Phil Donohue Show ordered the booklet. The U.S government publication office in Pueblo, Colorado that handles the distribution of all U.S. government publications said it was the largest response in a single day in their history, and the record has never been broken. News articles and electronic media coverage followed. *Consumer Reports*, a consumer magazine with a circulation of over 4 million, immediately published the information.

Several of the large domestic auto companies were incensed. They immediately secured a meeting with then-Secretary of Transportation Neil Goldschmidt to complain about NCAP and hopefully to stop publication of **The Car Book**. The industry’s major criticisms were that the NCAP program was “neither fish nor fowl” -- that it was not a safety standard and was not

otherwise authorized by law. Furthermore, they argued that the test results should not be released to the public because they were based on only one crash test per vehicle.

The Secretary immediately called Claybrook to his office to explain what NHTSA was doing. She informed the Secretary that NHTSA's crash test information had always been publicly available, but the information was difficult to convey, and it was expensive to respond to each consumer inquiry individually. Also, the DOT communications office had approved NHTSA's press release announcing the publication before her appearance on The Phil Donohue Show.

Changes in Administrations Result in Changes to Consumer Information

When President Jimmy Carter lost the presidential election in November 1980 to former California Governor Ronald Reagan, Claybrook's tenure as NHTSA Administrator ended, as did that of the Secretary of Transportation and other politically appointed staff in the department.

President Reagan was philosophically opposed to government regulation and spoke out during his election campaign against air bags. He appointed Raymond A. Peck Jr., a former attorney in the coal industry, to head NHTSA who quickly announced that the Agency would stop publication of **The Car Book**. However, under Congressional pressure he eventually decided to continue the NCAP crash testing program because it focused on informing the consumer and helping to make the marketplace work.

When the announcement was made that publication of **The Car Book** was being discontinued, Gillis was discouraged and decided to leave NHTSA and publish **The Car Book** privately. Subsequently, Gillis worked with Clarence Ditlow, Executive Director of the Center for Auto Safety, to independently publish a second edition of **The Car Book** in 1982 using the publicly available NCAP crash test data NHTSA was still generating. It was a difficult and risky personal and professional decision by Gillis to leave the agency and self-publish **The Car Book**. Shortly thereafter, Gillis became the Communications Director at the Consumer Federation of America (CFA), an umbrella association of state and local consumer organizations across America. In 2019, he became CFA's Executive Director. He continues to publish **The Car Book** today with the Center for Auto Safety. 2019 marks the 39th edition of its private publication. It remains enormously popular with significant annual sales even without the support of a major company

with serious resources to promote publication. Gillis accomplished this with his media savvy and skills coupled with his dedication and determination to put this valuable information in the hands of consumers. In 2018, for the first time, **The Car Book** was available on the internet.

NHTSA's decision to discontinue publishing **The Car Book** was a precursor of the attacks on safety regulations and NHTSA consumer information initiatives from 1981 to 1992 during the administrations of President Ronald Reagan and President George H.W. Bush. Unfortunately, throughout this period the Agency only issued one new safety standard and took no actions to expand the safety tests performed by NCAP.¹⁸ A 1982 government report issued during the Reagan Administration entitled "Actions to Help Detroit" included plans to cut back existing safety and clean air standards to financially assist the domestic auto industry despite the lack of any statutory authority to justify these actions. As a result, several Agency rules were eliminated, including a major conspicuity safety standard to improve the driver's field of view that took 10 years to develop, as well as other consumer information rules issued in the late 1960s.¹⁹ The NCAP program continued but with no new tests developed for over 14 years.

Over the years Congress has directed the U.S. DOT to improve its methods of informing consumers about NCAP.²⁰ Under the new Clinton Administration, NHTSA undertook a major effort to make the crash test ratings easier for consumers to understand. A star rating system (using up to 5 stars with 5 being the best) was adopted to grade the performance of the various make and models tested based on crash test dummy injury risk measures. Originally **The Car Book** used a tough pass/fail designation that the auto industry vehemently opposed. Claybrook's alternative preference was to use a rating system of letter grades, A to F, which she believed the public would better comprehend since it was similar to grading in U.S. schools. The Agency instead adopted the star system beginning with Model Year (MY) 1994 vehicles and it has since been used by NCAPs in other countries as well.

¹⁸ 49 F.R. 28962 (Jul. 17, 1984).

¹⁹ Michael Decourcy Hinds, Administrator Who Rescinded Auto Safety Rules Resigns Suddenly, N.Y. Times (Apr. 23, 1983).

²⁰ Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106-414 (Nov. 2000).

Since enactment of the National Traffic and Motor Vehicle Safety Act in 1966, the U.S. DOT's work on auto safety has garnered incredible attention in the media including newspapers, magazines and television.²¹ The public, again and again, saw films of actual crash tests and learned about the importance of built-in lifesaving vehicle safety systems. In the late 1980s and early 1990s, following increased public attention to the NCAP ratings, several auto companies dropped their resistance to NCAP and in fact, started advertising the safety of their vehicles based on the NCAP test results. This, in turn, resulted in a dramatic increase in consumer concern and knowledge about the importance of motor vehicle safety.

In more recent years, NCAP has been given distinct funding in the U.S. DOT budget. Additionally, program improvements were made including the addition of side impact tests and ratings. The first ratings for side impact safety began with MY1997 using a moving deformable barrier test.²² The NCAP expanded testing and rating vehicles for side impact using the vehicle-to-pole test for MY2010.²³ The new side impact Motor Vehicle Safety Standard with a pole test was issued in 2007.²⁴

Additional improvements have been adopted since NCAP was created to cover additional vehicles. Originally some tests only applied to passenger cars, but then beginning with MY1983, NHTSA expanded NCAP to include light trucks, vans and sport utility vehicles (SUVs).²⁵ In order to better assess the safety performance of vehicles, test dummies were also upgraded.

Tire Defect Gives New Life to NCAP

In 2000, the Ford Motor Company and Firestone Tire Company were publicly accused of equipping Ford's popular Explorer with defective Firestone tires resulting in hundreds of deaths when these vehicles rolled over on high speed highways.²⁶ At the time, approximately 10,000 people were being killed annually in rollover crashes, then the most dangerous type of vehicle

²¹ Pub.L. 89-563 (1966).

²² NHTSA, NHTSA Releases Side Crash Test Results in New Consumer Information Program, Doc. No. 21 -97 (Apr. 11, 1997).

²³ 73 F.R. 40016 (Jun. 11, 2008).

²⁴ 72 F.R. 51908 (Sep. 11, 2007).

²⁵ Hershman, L, The U.S. New Car Assessment Program: Past, Present and Future, NHTSA, Paper 390.

²⁶ Matthew L. Wald, Tread Failures Lead to Recall Of 6.5 Million Firestone Tires, N.Y. Times (Aug. 10, 2000).

crash.²⁷ The Ford/Firestone case dominated the news during the summer and fall, with several major Congressional hearings and new federal legislation pushed by consumer groups. Within two months of being introduced, the Transportation Recall Enhancement, Accountability and Documentation, or “TREAD,” Act of 2000 became law.²⁸

Among many safety provisions, it required a new dynamic rollover test to be developed for consumer information, and it covered not only passenger cars but also SUVs and light trucks. The Secretary of Transportation also was instructed to conduct a rulemaking to determine how to best disseminate the test results to the public. This new law supported expansion of NCAP to include rollover and required the development of the first NCAP test not based on an existing federal motor vehicle safety standard.

The NCAP rollover resistance evaluation includes: (1) a measurement of the vehicle’s static stability factor (SSF) and, (2) performance evaluation in the fishhook driving maneuver. According to NHTSA, the rating based on SSF alone began with MY2001 vehicles.²⁹ This evaluation is based on the probability of a rollover per single vehicle crash as a function of SSF. The dynamic vehicle test (fishhook) was added to the rating system for MY2004.³⁰ This evaluation is based on two different curves relating probability of a rollover per single vehicle crash as a function of SSF. One curve is for vehicles that tip-up during the fishhook maneuver, and the other is for vehicles that do not tip-up during the maneuver. The final rule establishing the rollover standard was issued in 2007.³¹ This standard uses a slightly different test scenario known as the sine with dwell which is a dynamic handling test. The measures for performance in this standard are yaw rate and lateral displacement.

Consumer Information Enters the 21st Century

In 2004, NHTSA launched a new web page called Safercar.gov. This important step assisted consumers in searching for critical information about vehicle safety information in one place.

²⁷ Traffic Safety Facts 2016, National Highway Traffic Safety Administration, Report No.: DOT HS 812 554 (May 2018).

²⁸ Pub. L. 106-414 (2000), amending Sec 30117 of Title 49, USC.

²⁹ 66 F.R. 3388 (Jan. 12, 2001).

³⁰ 68 F.R. 59250 (Oct. 14, 2003).

³¹ 72 F.R. 17236 (Apr. 6, 2007).

Although putting consumer information about the crashworthiness of cars on NHTSA's website was an important development, it still wasn't enough. Ideally, consumers need safety information in the dealer showrooms when they are contrasting and comparing different makes and models before making a purchase decision. At that time, before the advent of smart phones, accessing the crash test results on the NHTSA website was difficult if not impossible at the point of sale but essential to making an informed choice. This changed with the enactment of yet another federal auto safety law pushed by Claybrook and Advocates for Highway and Auto Safety (Advocates), a nonprofit lobbying organization based in Washington, D.C.

In 2005, Congress passed a comprehensive surface transportation bill with federal funds for states to build and repair highways and bridges and support public transit services. The bill was called SAFETEA-LU or the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.³² In addition to funding for the states, it included provisions advancing auto safety. Two significant provisions required: (1) NHTSA to issue rollover prevention as well as rollover protection safety standards; and, (2) NCAP information to be placed directly on the vehicle's window sticker listing the price of the vehicle.

Upgrading rollover protection was initially proposed by U.S. Senator John McCain (R-AZ) who chaired the Senate Commerce, Science, and Transportation Committee. Senator McCain had a long and distinguished history of supporting auto safety improvements and had originally been a sponsor and champion of the TREAD Act in 2000. Senator McCain's version of the auto safety title was not enacted and in a subsequent Congress he rotated off the Senate Commerce Committee as required by Republican Party rules. His replacement as Chair was Senator Ted Stevens (R-AK). The new Chair of the Subcommittee with jurisdiction over NHTSA was a conservative Senator from Mississippi, Senator Trent Lott (R-MS), who was formerly the Senate Republican Leader. Initially uninterested in working with consumer groups, he was persuaded to support SAFETEA-LU after meeting with Claybrook and Jackie Gillan, President of Advocates. Consumer organizations, families who had lost loved ones in rollover crashes and other public health and safety groups organized grassroots and rallied media support for the safety rulemakings to be required by the law. In an amazing legislative feat and show of leadership,

³² Pub. L. 109-59(2005).

Senator Lott was able to get the auto safety provisions in SAFETEA-LU passed by the U.S. Senate and enacted into law in just six months.

Another provision enacted in the SAFETEA-LU law resulted in a significant advance in consumer information. Senator Michael DeWine (R-OH) believed that consumer knowledge is essential to make the market work. He authored a provision requiring NHTSA to put the NCAP Star ratings on the vehicle price sticker (Monroney Label) that by law must be adhered to the window of every new car being sold. During the legislative debate on the bill, it was called “Stars on Cars”. The regulation became effective November 13, 2006, and the auto industry had to comply by September 1, 2007.³³ The window sticker label was a critical step in assuring that the buying public was informed at the point of sale before deciding which car to buy. It was cost effective, consumer-friendly, and did not require any new distribution system by manufacturers or dealers for dissemination of the NCAP test information.

Better Consumer Information with Better Crash Test Data

Under the Obama Administration, which began in 2009, a new federal safety standard for rear visibility was issued and additional improvements were adopted and proposed for the NCAP program. On July 29, 2011, NHTSA published a final decision notice in which it described NCAP improvements it was adopting, but these were not new tests to broaden the NCAP ratings.³⁴ These include:

- For the frontal crash program—modifying the frontal NCAP rating system to reflect updated test dummies, expanded injury criteria, and the inclusion of all body regions that are covered by FMVSS No. 208;
- For the side crash program—modifying the side NCAP rating system to reflect new side impact test dummies, new injury criteria, the inclusion of nearly all of the body regions that are covered by FMVSS No. 214, as well as a new side pole crash test using a small female crash test dummy;

³³ 71 F.R. 53572 (Sep. 12, 2006).

³⁴ 76 F.R. 45453 (July 29, 2011).

- A new overall vehicle score based on frontal crash, side crash, and rollover resistance test results; and,
- A new program that will provide consumers with information concerning the availability of advanced crash avoidance technologies that meet NHTSA's performance criteria and that have been shown to reduce crashes. However, these are still not factored into the NCAP rating.

In December 2015, the Obama Administration announced with great fanfare plans to significantly update the 5-Star NCAP ratings.³⁵ The proposal included rating a vehicle on three separate categories: crashworthiness, crash avoidance, and pedestrian safety. The crashworthiness rating would combine front and side impact crashworthiness as well as add additional tests and crash dummies to assess the performance of the vehicle. The new crash avoidance technology rating would be based on whether the vehicle was equipped with several developing crash avoidance technologies such as forward collision warning, crash imminent braking, lane departure warning (LDW) and blind spot detection (BSD) systems. Finally, the pedestrian safety rating would consist of both a pedestrian impact protection test, as well as the availability of pedestrian crash avoidance technology in the vehicle.

Also, in 2015, NHTSA began informing consumers if vehicles were equipped with automatic emergency braking (AEB) technology to help prevent or reduce the speed of impact in rear end crashes starting in MY2018.³⁶ However, AEB is not included in the NCAP rating and no safety standard was issued listing the performance requirements for an emergency braking test (and a petition by consumer groups for issuance of such a standard was denied).³⁷ In 2016, automakers committed to comply with a voluntary agreement by 2022. A “voluntary agreement,” instead of a FMVSS mandating AEB technology setting minimum requirements, was vigorously opposed by some leading consumer groups. They disagreed with the voluntary approach which was weak and unenforceable, urging again for the issuance of a mandatory minimum performance standard.

³⁵ 80 F.R. 78522 (Dec. 16, 2015).

³⁶ 80 F.R. 68604 (Nov. 5, 2015).

³⁷ 82 F.R. 8391 (Jan. 25, 2017).

While many of the revisions and upgrades to the NCAP program had merit, unfortunately these NHTSA proposals in 2015 were never adopted and still languish today under current DOT Secretary Elaine Chao. Since the commencement of the Trump Administration in January 2017, no further improvements have been made to NCAP, although as this report indicates, many are needed. In 2018, NHTSA held a meeting on updating NCAP to seek public input and sought additional comments to the federal docket.³⁸

Time for Action Now

The NCAP program not only lacks better information about safety systems, expanded crash tests and more accurate ATDs, but this crucial consumer information program also lacks sufficient funding and political leadership. These last two problems – inadequate funding and committed leadership - will continue to haunt and hinder any meaningful progress and improvements unless immediately addressed.

For example, from Fiscal Year (FY) 2011 through FY 2015, NCAP was funded at about \$10 million annually. Over the years there were minimal increases in funding from about \$13.7 million in FY 2016 to \$16 million in FY 2019 despite steady increases in new car and light truck sales. Last year, there were approximately 17.2 million new cars and light trucks sold in the United States.³⁹ For the FY 2020 federal budget the Trump Administration submitted to Congress, the Secretary of Transportation has incredibly proposed cutting NCAP funding in half - to only \$8 million annually. This represents a paltry 46 cents spent for every car and light truck sold in the United States for essential consumer information that could make a life or death difference for families.

It is important on this 40th Anniversary of NCAP to celebrate its creation and early achievements. However, a critical review and assessment of one of the most successful consumer information programs created by the federal government is merited and being released today. Unfortunately, the U.S. NCAP is destined to become irrelevant and inconsequential

³⁸ 83 F.R. 38201 (Aug. 3, 2018).

³⁹ www.statista.com, Light vehicle retail sales in the United States from 1978 to 2018 (in 1,000 units).

compared to other international NCAPs unless the public demands change and Congress legislatively directs actions by the agency and its leaders (See Appendix F).

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Appendix A: Detailed Comparison of the U.S. NCAP Tests with Euro NCAP Tests

Frontal Full Width Rigid Barrier Crash Test

In this test, a vehicle is crashed into a rigid barrier wall at a given speed. Test dummies are placed in the vehicle and instrumentation estimates the injuries sustained.

Euro NCAP – 31 miles per hour (mph) impact speed, test dummies included are small stature females in the front driver's seat and rear passenger's seat

US NCAP – 35 mph impact speed, test dummies included are an average stature male in the front driver's seat and a small stature female in the right front passenger's seat.

Frontal Offset Deformable Barrier Crash Test

Euro NCAP – In this test, a vehicle is crashes into a crushable barrier, simulating the front of another vehicle, mounted on a rigid wall. The front of the vehicle overlaps the crushable barrier by 40%. The test is conducted at a 40 mph impact speed. Test dummies included are average stature males in the front driver's and right front passenger's seats, and child dummies representing a 6 year-old and a 10 year-old are placed in child restraints (car seats) in the rear outboard seating positions.

US NCAP – No equivalent test.

Side Moving Deformable Barrier Crash Test

In this test, a simulated vehicle (moving deformable barrier, MDB) with a crushable barrier face to simulate the front of a vehicle, crashes into the side of the vehicle being tested at a specific speed.

Euro NCAP – 31 mph impact speed, test dummies included are an average stature male in the front driver's seat, and child dummies representing a 6 year-old and a 10 year-old are placed in child restraints (car seats) in the rear outboard seating positions.

US NCAP – 38 mph impact speed, test dummies included are an average stature male in the front driver's seat and a small stature female in the rear driver's side seat.

Side Pole Impact Crash Test

In this test, a vehicle crashes sideways into a pole at a specific speed.

Euro NCAP – 20 mph impact speed, test dummy included is an average stature male in the front driver’s seat.

US NCAP – 20 mph impact speed, test dummy included is a small stature female in the front driver’s seat.

Far Side Sled Test

Euro NCAP – In this test, a vehicle body is placed on a sled and accelerated in a way to replicate 1) the side moving deformable barrier crash test, and 2) the side pole impact crash test. An average stature male dummy is placed in the front driver’s seat. Injury measures are captured from the dummy. Excursion (movement) of the dummy across the vehicle is compared against the maximum intrusion of the far side of the vehicle as measured in the side moving deformable barrier and side pole impact crash tests. Note that this test is in an evaluation phase for 2019 and will be fully adopted in 2020, however manufacturers must perform the test to receive scores for the pole impact crash test.

US NCAP – No equivalent test.

Rear Whiplash Geometry Evaluation

Euro NCAP – The relative position of the head rest is examined to ensure that it can be positioned to prevent excessive head movement and provide effective support in a rear impact collision. The position is calculated relative to the head position of an average stature male

US NCAP – No equivalent test.

Rear Whiplash Sled Tests

Euro NCAP – In this test a mockup of the driver seating position using the subject vehicle set is placed on a sled. The sled is accelerated simulating low, medium, and high severity rear impact crashes. An average stature male dummy is used for the test to measure injury criteria.

US NCAP – No equivalent test.

Child Seat Vehicle Design and Fit

Euro NCAP – This assessment involves checking the vehicle for availability of appropriate technology for child restraint system (CRS, child seat) installation such as marking of tether locations, and isofix positions available. The assessment also examines various child restraint systems (child seats, CRS) for their ease of installation in different seating positions, using different methods of installation (belt versus isofix) in the subject vehicle.

US NCAP – No equivalent test.

Child Seat Frontal Offset Deformable Barrier Crash Test

Euro NCAP – This assessment makes use of the Frontal Offset Deformable Barrier Crash Test in which a dummies representing a 6 year old and a 10 year old are placed in appropriate child seats in the rear outboard seating positions during the test. The test examines injury measures to different body parts of the dummies as well as head excursion.

US NCAP – No equivalent test.

Child Seat Side Moving Deformable Barrier Crash Test

Euro NCAP – This assessment makes use of the Side Moving Deformable Barrier Crash Test in which a dummies representing a 6 year old and a 10 year old are placed in appropriate child seats in the rear outboard seating positions during the test. The test examines injury measures to different body parts of the.

US NCAP – No equivalent test.

Vulnerable Road Users Impact Protection Head / Upper Leg / Lower Leg Impact Tests

Euro NCAP – In these tests, dummy components representing a head, upper leg, and lower lag are impacted against multiple locations of the bumper and hood to examine injury measures for these body parts.

US NCAP – No equivalent test.

Rollover Resistance

Static Stability Factor

Euro NCAP – No equivalent test.

US NCAP – This assessment simply measures the track width of the vehicle and the height of the center of gravity and calculates the static stability factor as the track width divided by two times the height of the center of gravity.

Dynamic Handling

Euro NCAP – No equivalent test. Electronic stability control was part of the testing regime until 2016, was discontinued after ESC was made mandatory in 2014.

US NCAP – This assessment has the test vehicle perform a driving maneuver, called a fishhook, which simulated an evasive maneuver where the steering wheel is turned in one direction at a given rate and period of time, followed by a short dwell, and then a similar turning of the wheel in the other direction followed by a dwell at that angle. The vehicle is evaluated for whether it tips up during the maneuver and this information is used in conjunction with the static stability factor to estimate rollover resistance.

Forward Collision Warning / Automatic Emergency Braking

Euro NCAP – In these tests the ability of the vehicle's automatic emergency braking and/or forward collision warning systems to identify objects in the vehicle path under different scenarios is examined, to warn the driver of the impending collision and/or to automatically apply the brakes of the vehicle to mitigate or avoid the collision. Rating is based on the warning provided and/or the predicted impact speed reduction or the avoidance of the collision all together.

City – The subject vehicle approaches a stopped lead vehicle at speeds between 6 mph and 31 mph. These tests are conducted with the test vehicle and target vehicle aligned as well as in conditions with the vehicles offset to the left or the right by as much as 50% of vehicle width.

Interurban – The subject vehicle is examined as it approaches any of three scenarios; 1) a stopped lead vehicle, 2) a slower moving lead vehicle, and 3) a vehicle moving at the same speed that then decelerates. In the stopped lead vehicle scenarios, the subject vehicle is tested at speeds between 19 mph and 50 mph, with overlaps of up to 50%. In the slower

moving lead vehicle scenarios, the subject vehicle is tested at speeds between 19 mph and 50 mph approaching a target vehicle moving at 12 mph. These tests are also conducted at overlaps of up to 50%. In the lead vehicle braking scenarios, the vehicles are both travelling at 31 mph, and the lead vehicle brakes at either 0.2 g or 0.6 g, at a lead distance of 39 ft or 131 ft.

Pedestrian – The subject vehicle is examined as it approaches a variety of simulated pedestrians under different scenarios at speeds between 12 mph and 37 mph; 1) adult pedestrian running, crossing from the far side of the vehicle with an impact point at the center of the vehicle front; 2 and 3) adult pedestrian walking, crossing from the nearside of the vehicle with an impact point 25 percent or 75 percent offset from the vehicle centerline, 4) child pedestrian running, crossing from the nearside, obstructed by other vehicles, with a centerline impact point; and 5 and 6) an adult pedestrian walking, parallel to the vehicle path, in line with the centerline or 25% offset.

Bicyclist – The subject vehicle is examined as it approached a simulated bicyclist under different scenarios at speeds between 12 mph and 37 mph; 1) bicyclist crossing from the nearside, with an impact point at the centerline of the vehicle; and 2 and 3) bicyclist travelling, parallel to the vehicle path, in line with the centerline or 25% offset

US NCAP – No equivalent test.

Seatbelt Reminders

Euro NCAP – This assessment evaluates the availability, activation, notification (alerts type and location / volume / duration), and functionality of vehicle seatbelt reminders.

US NCAP – No equivalent test.

Speed Assistance Systems

Euro NCAP – This assessment evaluates whether the vehicle has a speed limit information function which relates the local speed limit to the drive. The assessment also examines the ability of the vehicle to warn the driver when they exceed the local speed limit, and the availability and functions of an automatic system for preventing a vehicle from exceeding the local speed limit.

US NCAP – No equivalent test.

Lane Support Systems

Lane Keeping Assist (LKA) / Emergency Lane Keeping (ELK) / Lane Departure Warning (LDW)

Euro NCAP – This testing evaluates the ability of the lane support systems to warn the driver, gently re-direct the vehicle, or forcefully re-direct the vehicle at the limit, when the vehicle is approaching a lane or road boundary (lane line or road edge) while travelling at 45 mph with lateral velocities between 0.5 mph and 1.5 mph. Emergency Lane Keeping systems are tested in lane / road departure scenarios with solid lane lines, dashed lane lines, and an unmarked road edge as well as in scenarios with oncoming traffic and passing traffic. Lane Keeping Assist systems are tested on road edges, dashed lines and solid lines. Lane Departure Warning systems are tested on dashed lines and solid lines. These tests are conducted with a range of lateral velocities.

US NCAP – No equivalent test.

Appendix B:



Real-world benefits of crash avoidance technologies

IIHS and HLDI study the effects of crash avoidance features by comparing rates of police-reported crashes and insurance claims for vehicles with and without the technologies. (May 2018)

Forward collision warning

- ▼ 27% Front-to-rear crashes
- ▼ 20% Front-to-rear crashes with injuries
- ▼ 9% Claim rates for damage to other vehicles
- ▼ 16% Claim rates for injuries to people in other vehicles

Forward collision warning plus autobrake

- ▼ 50% Front-to-rear crashes
- ▼ 56% Front-to-rear crashes with injuries
- ▼ 13% Claim rates for damage to other vehicles
- ▼ 23% Claim rates for injuries to people in other vehicles

Lane departure warning

- ▼ 11% Single-vehicle, sideswipe and head-on crashes
- ▼ 21% Injury crashes of the same types

Blind spot detection

- ▼ 14% Lane-change crashes
- ▼ 23% Lane-change crashes with injuries
- ▼ 7% Claim rates for damage to other vehicles
- ▼ 8% Claim rates for injuries to people in other vehicles

Rear automatic braking

- ▼ 62% Backing crashes
- ▼ 12% Claim rates for damage to the insured vehicle
- ▼ 30% Claim rates for damage to other vehicles

Rearview cameras

- ▼ 17% Backing crashes

Rear cross-traffic alert

- ▼ 22% Backing crashes

Added costs

Lower crash rates are a clear benefit of these technologies, but some features can lead to higher repair costs in the crashes that do happen. That's because sensors and other components are often located on the vehicle's exterior. For example, in the case of forward collision warning without autobrake, the average payment per claim for damage to the insured vehicle goes up \$109 for vehicles equipped with the feature.

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Appendix C:

FAIRWARNING REPORTS

Star Safety Ratings, Long Helpful to Car Buyers, Now Languish in the Breakdown Lane

By [Eric Kulisch](#) on September 4, 2019

Grade inflation in school makes it difficult to distinguish who is actually achieving in the classroom. The federal government's vehicle safety rating system suffers the same problem.

Today, 98 percent of all vehicles tested receive four or five stars for crashworthiness. Consumer advocates and safety experts say it's time to raise the bar for the New Car Assessment Program, which hasn't been updated in nearly 10 years.

"There is no comparative value in the system anymore. It's the equivalent of handing out candy at Halloween: Everybody gets some," said Jason Levine, executive director of the nonprofit Center for Auto Safety based in Washington, D.C.

The rating system was created 40 years ago as a tool to help car buyers make informed purchasing decisions and encourage automakers to exceed minimum safety standards. The program, managed by the National Highway Traffic Safety Administration (NHTSA), rates cars and light-duty trucks on a scale from one to five stars for performance in crash and rollover tests. It's a market-based approach—automakers don't want bad publicity—that lets buyers quickly compare the safety of new vehicles. The score is printed on the window sales sticker and more details can be found on [NHTSA's website](#).

By all accounts, the program has been successful in getting manufacturers to offer safer vehicles and incorporate enhanced safety features. But critics argue that it has not kept pace with advances in safety technology. Features such as automatic emergency braking and forward collision and lane departure warnings are not included in the ratings. As a result, people are buying cars based on a decade-old measuring system and manufacturers aren't incentivized to reach further for safety.

Over the years, NHTSA made tests more stringent, added new evaluation criteria and improved how results were shared with consumers. The agency appeared close to updating the rating system in 2016, but appeared to halt the effort when the Trump administration took power.

In an email response to questions, NHTSA said that "over the years, numerous improvements have been initiated to the program. Currently, NHTSA is considering various approaches to enhancing NCAP so that it will continue to provide useful comparative vehicle safety information."

Sean Kane, president of Safety Research & Strategies, a research and advocacy group in Rehoboth, Mass., said “the...program would be better served if there were a regular evaluation to it every few years.”

Diminishing Value

When grades artificially skew higher in school because of easy assignments and lenient grading, students are typically less motivated to work hard and appear more high-achieving, while teachers look more effective than they are.

The same characteristics apply to automakers, who years ago figured out how to achieve a good safety score and simply apply the same template for each new model.

NHTSA spent nearly two years during the Obama administration trying to refine the program so that only truly exceptional vehicles received 4-and 5-star ratings. [The proposal](#) would have strengthened criteria for measuring crashworthiness, and added safety ratings for new crash avoidance and pedestrian protection features.

But the agency ran out of time getting approvals before the Trump administration took office and “couldn’t quite get it over the finish line,” Mark Rosekind, the NHTSA administrator at the time, told FairWarning.

Under President Trump, NHTSA shelved its proposal. In September 2018, it held a public meeting to gather stakeholder input but the [notice](#) signaled little interest in following the Obama-era recommendations. It mostly sided with industry concerns raised in 2015 over program and technology costs, and whether there was sufficient data showing any changes would provide meaningful benefits.

Nearly a year later, NHTSA has remained silent about next steps.

The agency has been widely attacked as a weak regulator. At a hearing in May, Rep. Frank Pallone (D-NJ), chairman of the House Energy and Commerce Committee, criticized NHTSA agency for letting the rating system stagnate.

“The very integrity and value of the 5-Star Safety Rating is undermined if the certification does not draw meaningful distinctions between the safety of different vehicles. It is also not meaningful if this safety certification fails to include crucial safety technologies already deployed on automobiles,” such as forward collision warning, lane departure warning and blind spot detection, he said.

Automaker Indifference

There is no apparent urgency at NHTSA to update the ratings system, with a White House that tends to side with business on nearly every issue and unwinds Obama-era policies with zeal, especially when the auto industry seems indifferent about reform.

Automakers generally have been lukewarm about the rating system because it challenges them to compete on the basis of an independent, unbiased safety assessment. Manufacturers that provide advanced safety features currently don’t receive any benefit in the rating system compared with rivals who withhold such systems from consumers. Companies that are out

front developing technology are happy to boast about it, but the rest are nervous about any change, according to Rosekind and Will Wallace, manager of safety policy at Consumer Reports. And many prefer maintaining NHTSA's current system of recommending certain crash avoidance technologies to consumers rather than testing and rating them.



A handful of manufacturers, notably Honda Motor Co., voiced general support for significant upgrades during the Obama administration, but most companies seem content with the status quo, according to official comments submitted by trade associations and individual firms.

The Association of Global Automakers, representing foreign brands in the U.S., last year offered qualified support for NHTSA's earlier proposal, while the Alliance of Automobile Manufacturers, a trade group for a dozen vehicle makers, said the recommendations were not ready to implement.

"It is important that any new additions to [the rating system] significantly increase real-world safety. If not, they will only increase vehicle cost without any commensurate real-world safety benefit," the Alliance said in comments filed with NHTSA. The program "should avoid forcing differentiation for differentiation's sake."

Auto Alliance spokesman Wade Newton said the group agreed with NHTSA's withdrawal of the 2016 proposed updates "since they lacked valid test procedures" and adequate proof of benefits.

The government affairs offices of Honda Motor Co, Toyota North America, Mazda USA, General Motors and Hyundai Motor Co either did not respond to requests for comment or referred questions to the two trade groups. Hyundai vehicles already perform at higher standards in third-party safety evaluations. spokeswoman Laura Bonavita added.

No Urgency

The ratings system isn't challenging enough for car shoppers to trust right now, Wallace said.

"When almost every car gets a four or five-star rating it makes it almost impossible for consumers to tell which vehicles actually provide a better-than-average level of safety, or a lower level of safety," he said. "And that's tremendously concerning to us because this is a program that has tremendous power when it is at its best.

"It was so successful it was emulated around the world," but now "has been allowed to languish. And that is such a shame, not only for consumers, but for everyone on our roads."

Wallace blamed leadership at NHTSA and its parent, the Department of Transportation, for not pursuing upgrades, noting that the staff dedicated a great deal of time developing an extensive proposal. And, he suggested, there are signs of a possible split among senior NHTSA officials about the value of the star ratings in an era when the private sector, through organizations such as the Insurance Institute for Highway Safety and Consumer Reports, already rate vehicles for safety.

Those groups can supplement NHTSA's work, but should not be a substitute for comprehensive, impartial evaluation conducted by the government, Wallace stressed.

Although it's normal for a new administration to take a second look at existing policies, Levine said the Trump team's new request for feedback "seems like a cynical ploy to ensure the process is bogged down in regulatory red tape for the purpose of locking things in place or to make sure nothing happens too quickly."

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Appendix D:

From “Pedestrian Safety,” Special Investigation Report, NTSB/SIR-18/03, PB2018-101632:

To the National Highway Traffic Safety Administration, *“Incorporate pedestrian safety systems, including pedestrian collision avoidance systems and other more-passive safety systems, into the New Car Assessment Program. (H-18-43)”*

From “The Use of Forward Collision Avoidance Systems to Prevent and Mitigate Rear-End Crashes,” Special Investigation Report, NTSB/SIR-15/01, PB2015-104098:

To the National Highway Traffic Safety Administration, *“Expand the New Car Assessment Program 5-star rating system to include a scale that rates the performance of forward collision avoidance systems. (H-15-6)”* and *“Once the rating scale, described in Safety Recommendation H-15-6, is established, include the ratings of forward collision avoidance systems on the vehicle Monroney labels. (H-15-7)”*

Appendix E:



AUTO ALLIANCE
DRIVING INNOVATION®

To: President-elect Donald J. Trump Transition Team
From: Mitch Bainwol, President and CEO
Date: November 10, 2016
Subject: **The Automobile Sector -- Forging Public Policy for Even Safer, Cleaner and More Transformative Mobility**

INTRODUCTION

These are heady times for the auto industry and mobility in the U.S. New vehicle sales are strong, employment is growing, safety technologies are now making it possible to prevent crashes instead of just surviving them, research is ambitious and consequential, and technological innovations are re-defining mobility as we know it. We have a keen understanding that what we do – build vehicles that move America (and the world) – is critical to public safety, ensures there is a growing economy and also helps to better protect our environment. Now more than ever, sound public policy for the automotive industry is essential not only for our sector’s continued success but for this country’s economic growth.

Sound public policy provides certainty so businesses can plan; it mitigates chaos so that rules are clear and fair and equitably enforced; it relies on a commitment to established regulatory practices like rigorous cost/benefit analysis; it provides timely and harmonized government responses both within agencies and between agencies; and it recognizes the importance of vehicle affordability for consumers as well as the corresponding efficiency and safety benefit to the traveling public.

It’s in that spirit that we reach out to your Transition Team. This memorandum has two sections. The first outlines the **context** for our industry as we head into 2017. The second offers some policy **recommendations** for the Transition team to consider as you reflect on next year.

CONTEXT

GROWTH

2015 marked an unprecedented sixth year of sales growth and an all-time record for new vehicles sales (17.5 million). 2016 could - potentially - be the seventh year of increased sales. The combination of an aging fleet (average age of a car is now 11.5 years old), coupled with attractive

incentives from manufacturers, low interest rates and longer financing terms has generated the strength of this recovery. Yet we are a cyclical industry. Accordingly, we do not view growth as an entitlement. Sustainable growth requires the development of compelling product on our part, favorable economic conditions (including healthy disposable income, readily available and inexpensive financing) and a regulatory framework that is securely grounded in common sense at both the state and federal level.

PLANTS

Since 2008, four new manufacturing plants have been launched in the U.S. and there has been substantial, multi-billion-dollar reinvestment in existing plants. New plants are located in: Greensburg, IN (Honda), West Point, GA (Kia), Blue Springs, MS (Toyota), and Chattanooga, TN (Volkswagen). Also, Volvo is slated to open its new plant in South Carolina in 2018. More broadly, over the last decade (including 2005), six manufacturing plants opened in the U.S. while one plant opened in Canada and five plants opened in Mexico. Given our highly competitive industry, plant location choices reflect trade rules, sales patterns, port and infrastructure access, and cost structure.

PRODUCT

Americans view automobiles manufactured today as significantly improved relative to a decade ago, according to the Auto Index national tracking poll conducted monthly by the Alliance. Ratings (better vs. worse) for quality (79-12), technology (93-2), safety (85-7) and fuel economy (88-3) all are up profoundly. Especially in a low gas-price context, the types of vehicles that Americans buy continues to evolve, reflecting functional lifestyle needs. As you can see below, over the past fifteen years, CUVs (Crossovers) have picked up market share from each of the other segments, with traditional passenger cars now accounting for just over 40% of new vehicle purchases.

Year	2015	2010	2005	2000
Car	43.3	48.7	45.2	50.6
CUV	30.0	24.5	12.9	3.5
Pickup	14.2	13.9	18.8	18.3
SUV	7.2	6.9	14.5	17.2
Van	5.3	5.9	8.7	10.3

For more information about the automotive industry, please visit: www.autoalliance.org/



SAFETY

From the 1970's through 2014, fatalities on the road as a share of vehicle miles traveled (VMT) fell dramatically. Viewed through the lens of a longer vantage point - the half century dating from the passage of the National Traffic and Motor Vehicle Safety Act in 1966 through 2014 - fatalities as a share of miles travelled are down about 80 percent. Yet far too many individuals are losing their lives on our roadways (35,092 in 2015). As NHTSA notes, 94% of all crashes are attributable to driver choices and human error, including impaired driving, lack of seat belt use, speeding, and distraction. Vehicle defects are a factor in less than 1% of these fatalities and our industry is working to reduce that number even more. A bright spot is the rapidly emerging technologies that mitigate human error and help save lives by preventing crashes from happening.

Still, and unfortunately, in 2015 fatalities rose 7.2%. It will take additional time for the Department of Transportation and other stakeholders to determine why this occurred. Increased VMT explains part of the rise, but that still leaves a significant part resulting from other causes, including distraction on the part of both drivers and pedestrians and potentially higher bicycle and motorcycle fatalities. Our preliminary look at the data suggests the vehicle factor share is unchanged at under 1%.

ENVIRONMENTAL

Smog-forming pollutants have been virtually eliminated from passenger cars, down over 99% since the 1960s. We are now complying with policies designed to mitigate the last 1% of these pollutants. Meanwhile, cars are far more efficient than they were even a decade ago as automakers down-weight and deploy new technologies to reduce carbon emissions. The increases in fuel economy have occurred in recent years even as the combination of low gas prices and higher conventional engine efficiency has resulted in declining market share of alternative powertrain vehicles and, as noted, growing market share of light trucks versus cars.

	2005	2012	2013	2014	2015
Adjusted Fuel Economy (MPG)	19.9	23.7	24.3	24.3	24.7 (p)
Hybrids	205,828	427,676	498,054	452,507	378,402
Hybrid %	1.21%	2.96%	3.21%	2.75%	2.18%
Plug-in Hybrid	0	38,585	48,957	55,441	43,458
Plug-in Hybrid %	0.00%	0.27%	0.32%	0.34%	0.25%
Electric	0	13,941	47,595	64,772	70,823
Electric %	0.00%	0.10%	0.31%	0.39%	0.41%
Alt Total	205,82	480,20	594,61	572,72	492,68
Total	8	7	6	2	3
Percent All Volume	1.21%	3.33%	3.83%	3.48%	2.83%

Source: Wards Auto/ EPA Trends Report for Adjusted Fuel Economy



INNOVATION

We are in the midst of an incredibly dynamic time in the history of our industry. Change and disruption is rapid; new players are entering our sector; new business collaborations are being established; and new models of mobility are emerging.

The future holds vast and diverse opportunities. We know there will be more ride sharing entrants and programs and that the traditional models of vehicle ownership are evolving. We know that new cars will take over more and more of the driving duties, ultimately achieving full autonomy, but that a majority of the fleet will not be self-driving for more than a generation. We know that technology, while not perfect, offers the promise of reducing crashes, injuries and fatalities on American roadways. With wider deployment of crash avoidance technologies, we will achieve a range of other social objectives including reduced fuel consumption, lower carbon emissions and higher productivity rates. Autonomy is destined not only for automobiles but also for large trucks and buses. And long term, autonomy will present far-reaching implications for everything from urban land use to public transportation and infrastructure requirements.

Due to the rapid change that is occurring in the auto sector, our industry has proactively established an Automotive Information Sharing and Analysis Center (Auto-ISAC) to facilitate the exchange of important cyber threat information – and countermeasures – in real time. In addition, the Alliance and our members established the consumer data Privacy Principles that apply to the collection, use, and sharing of covered information in association with vehicle technology and services available on cars and light trucks sold or leased to individual consumers for personal use in the United States.

As current NHTSA Administrator Mark Rosekind often notes, the pace of technological change in safety has far outstripped the pace of regulatory action. That’s not an indictment of the agency. Rather, it is reflection of rapid global innovation, much of it in the U.S., fueled by marketplace competition to achieve safety, social, environmental and other outcomes never before imagined.

The current Administration deserves credit for working to promote the adoption of semi-autonomous and fully autonomous technologies. The Secretary and NHTSA Administrator both understand that the benefits to society are so profound that it is vital to take an approach that maximizes the deployment rate in order to maximize safety. And both recognize that the traditional regulatory approach is less than ideal.



RECOMMENDATIONS

As the Trump Administration prepares to take office in late January, we are pleased to offer the following recommendations to consider as you develop your agenda, especially for the first 100 days.

I Harmonize and Adjust Fuel Economy and GHG Emission Standards:

The Corporate Average Fuel Economy (CAFE) and Greenhouse Gas (GHG) Emission Standards that were adopted in 2012 by the EPA, NHTSA, and the California Air Resources Board (CARB) via a Joint Final Rule pose a substantial challenge to the auto sector due to the steeper compliance requirements for Model Years (MY) 2017-2025. As part of the Mid-Term Review process that kicked off this summer with release of the Draft Technical Assessment Report (TAR), the EPA, NHTSA, CARB and the auto sector are in the process of re-evaluating the assumptions that shaped those original standards. Automakers have outlined concerns that call into question the viability of the modeling used in the draft TAR. In short, we believe the TAR over-projects technology efficiencies and inadequately accounts for consumer acceptance and marketplace realities. These market factors are absolutely critical since automakers are ultimately judged by what consumers take out of showrooms across America, rather than what automakers put into those showrooms. The combination of low gas prices and the existing fuel efficiency gains from the early years of the program is undercutting consumer willingness to buy the vehicles with more expensive alternative powertrains that are necessary for the sector to comply with the more stringent standards in out-years.

When the EPA, NHTSA and CARB established the 2012 Joint Final Rule creating “One National Program,” one primary aspect was to “harmonize” the three sets of fuel economy regulations at the federal and state level as fully as possible to provide greater consistency and certainty for automakers as they develop their products for sale across the U.S. The Administration’s 2012 Regulatory Announcement highlighted the value of harmonization: *“Continuing the National Program **ensures** that auto manufacturers can build a single fleet of U.S. vehicles that satisfy requirements of **both** federal programs as well as California’s program.”*

But significant inconsistencies continue to exist.

Since 2012, it has become increasingly clear that many automakers may be in compliance with the EPA program, yet subject to fines in the NHTSA program. This regulatory friction is already occurring, driving up vehicle costs, and will become even more counterproductive as the regulatory requirements become more stringent in future Model Years. Potentially billions of dollars in fines under the NHTSA CAFE program are anticipated.

We recommend that the White House lead efforts with EPA, NHTSA, CARB and the automakers on finding a pathway forward regarding the standards for 2022 MY and beyond prior to publishing the NPRM and preliminary determination.



We also recommend that the Trump Administration support the administrative and legislative reforms necessary to achieve harmonization. This includes approving the petition that the Auto Alliance filed with EPA and NHTSA on June 20, 2016 regarding certain harmonization gaps that exist that can be addressed administratively.

II Include Zero Emission Vehicle (ZEV) Mandate Cost in Mid-Term Review:

Under a waiver granted by EPA, California’s ZEV requirement (followed by nine other states), forces GHG-reducing solutions (heavy electrification) into the market rather than allowing the “technology-agnostic” approach that EPA and NHTSA relied upon in the One National Program. This additive ZEV requirement grows to over 15% of vehicle sales by 2025 in the ten states that together account for roughly one-third of all light-duty vehicle sales in the United States. The benefits of the ZEV program are factored into the Draft Technical Assessment Report, but the costs of the ZEV program are ignored.

And while EPA argues that substantial electrification is not required for compliance with the federal program, that point is academic if it is separately required for the ten relevant states.

We recommend that the cost of the ZEV mandate be factored into the Mid-Term Review due to the much more expensive compliance pathway that will increase costs for consumers nationally.

In addition, the 9 states that have adopted the California ZEV requirements have not provided comparable and needed incentives for consumers to be willing to purchase the highly electrified vehicles in their markets. This is leading to dramatically different consumer acceptance of electrified products in the Northeast states compared to California. The Administration should engage as appropriate to help address these ZEV issues – especially to help avoid the creation of a patchwork of requirements that will frustrate the overall intent of the “One National Program”.

III Regulatory and Organizational Reforms are Critical:

The number of government regulators (state and federal) who are interested in or currently oversee the automobile sector (U.S. DOT, NHTSA, FCC, FTC, DHS, NTIA, U.S. Department of Commerce, CFPB, EPA and California ARB) continues to grow. A robust examination of the combined impact of such uncoordinated regulatory oversight on the auto industry and the American consumer is warranted. As car prices rise, it becomes vital to look at the full cost of regulatory initiatives. Well-meaning regulatory action risks increasing compliance costs to the point that additional safety and fuel-efficiency technologies put new vehicles out of financial reach of the average new car purchaser.



To maximize affordability for all Americans, it therefore makes sense to assess a range of ideas that can lead to even more thoughtful regulatory approaches, including:

- **Comprehensive Regulatory Review.** Undertake a comprehensive review of all regulations (final and proposed), interpretations of regulations, guidance, information disseminations, information collections, that were promulgated or issued since September 1, 2016 to ensure that these are consistent with the policy objectives of the new administration.
- **Ensure that the EPA does not issue any Proposed Determination on whether the Model Year 2022-2025 Greenhouse Gas Light Duty Vehicle standards are appropriate under section 202(a) of the Clean Air Act.**
- **Establish a New OMB Requirement for “Whole Car Cost Analysis.”** To ensure that the overall health and vitality of the auto sector is not jeopardized by the cumulative costs of new vehicle regulations/policies, agency proposals for new car requirements should be accompanied by a *Whole Car Cost Impact Statement* that aggregates compliance expenses.
- **Impose a “Shot Clock” for Agency Responses to Industry Submissions/Petitions.** To encourage prompt responses to requests for regulatory actions, and prevent federal agencies and departments from sitting on such waivers and petitions that may help spur additional innovation, the timelines established in statute must be made meaningful and binding.
- **Revise OMB Guidance for Federal Agencies and Departments.** OMB ought to establish clear thresholds regarding the use of non-regulatory guidance to ensure that quasi-regulatory efforts do not circumvent the traditional rulemaking process.
- **Establish a Presidential Advisory Committee to Coordinate Auto Sector Regulators.** Such an advisory committee would help reduce regulatory friction and confusion among federal agencies and departments and could potentially result in recommendations for a new paradigm for vehicle regulation. The committee also could identify opportunities to streamline and improve the efficiency of multiple federal and state agencies by eliminating duplication of effort and more efficiently allocating responsibilities by agency area of expertise.

IV Autonomous Vehicles:

We will be filing soon a detailed response to the recent Administration proposal regarding autonomous vehicles. Our technical experts are busy at work evaluating that proposal and formulating our reaction. We will share it with you upon its submission. But the test of policy at



a conceptual level should be: how do we save the most lives by promoting the rapid deployment of these technologies while also maximizing public safety and building public support for their adoption?

SUMMARY

The future of mobility is bright and offers the long-term promise of great manufacturing jobs and mobility that increases national productivity while generating significantly improved safety and environmental outcomes. We live at a moment where technology and change are swamping the regulatory capacity to manage our emerging reality. Reform is imperative.

The question at the end of the day is what kind of reform? There will be those who argue against change and for a traditional regulatory paradigm that in effect slows down the march of technology. And there may be those who argue that public policy should stay out of the way. Neither of these choices is our view. We believe that to maximize consumer acceptance of new mobility patterns and opportunities, the public and private sectors must work in a more coordinated and cooperative fashion. It is in that spirit, and with a commitment to keeping cars safe, clean and affordable for Americans, that we offer these recommendations and our pledge to work with you to achieve the great social outcomes that are within grasp.



Appendix F:

New Legislation to Update the U.S. New Car Assessment Program

The U.S. New Car Assessment Program (NCAP) is an invaluable tool in helping to ensure Americans have the information they need in order to purchase safe vehicles that will protect them, their families and those who share the road with them. The program, celebrating its 40th anniversary, is administered by the National Highway Traffic Safety Administration (NHTSA) and provides essential safety information to consumers when purchasing a new vehicle. In addition, the program can serve as an important incentive for automakers to place the latest safety technologies into their vehicles as well as encourage them to exceed current standards. However, the NCAP must be updated in order to guarantee the effectiveness of the program as it has fallen woefully behind international counterparts in robust and comprehensive ratings of vehicle safety. While NHTSA has proposed to generally upgrade NCAP in recent years, the agency has issued no new tests for eight years. This legislation is necessary now.

A summary of critical provisions of a bill to update NCAP is below:

Title: Stars on Cars Act of 2019

Rulemaking: Directs NHTSA to complete rulemaking within two years of enactment to improve NCAP. The update shall include the following upgrades:

Advanced Driver Assistance Systems: Require that currently available technologies that have already been proven to have substantial safety benefits are included in the NCAP ratings to further facilitate their widespread dissemination into new vehicles. Research conducted by the Insurance Institute for Highway Safety (IIHS) has demonstrated that current advanced driver assistance systems (ADAS) such as Automatic Emergency Braking (AEB), Lane Departure Warning (LDW), Blind Spot Detection (BSD) and Rear Automatic Braking have safety benefits by reducing crashes. The National Transportation Safety Board (NTSB) has recommended that forward collision avoidance systems such as AEB be included in the NCAP ratings.

Crash Testing:

- Direct NHTSA to adopt, as appropriate, updated dummies in crash tests conducted as part of NCAP to ensure that the tests are accurately capturing the injuries and risk of injury observed in today's vehicles. Additionally, direct NHTSA to use, as appropriate, dummies representing different age groups placed in the rear seats of vehicles during crash testing to better assess the performance of vehicles in protecting occupants in the rear seats of vehicles.

- Require NHTSA to develop testing methods and injury and performance criteria for use in NCAP to ensure that the failure of seatbacks in rear impact crashes do not increase injury risk for rear seat occupants while at the same time offering optimal protection for front seat occupants.

- Require NCAP to include crash tests, similar to those already conducted by Euro NCAP, which address additional crash modes beyond current U.S. NCAP requirements, including additional tests for adult and child occupant protection.

Vulnerable Road User Safety: Require that safety ratings include whether the vehicle is equipped with pedestrian crash avoidance systems and their relative performance, and is designed to reduce injuries to pedestrians, bicyclists, children and other vulnerable road users particularly those resulting from head and leg impacts against a vehicle’s stiff hood, windshield or bumper. The NTSB recommended such action in a 2018 special investigation report on pedestrian safety.

“Silver Rating”: Require NHTSA to include a rating using modified injury criteria to address the specific injury patterns suffered by older occupants. Results of these tests would be used to develop a separate rating specific to older occupants. Also require NHTSA to develop an anthropomorphic test device (ATD, crash test “dummy”) representative of older occupants for use in safety testing.

Consumer Information: Direct NHTSA to improve the ease of use of NCAP public website so consumers can better access vehicle ratings.

Public Input: Require NHTSA to hold public meetings in Washington, D.C. and selected other cities biennially to allow stakeholders to provide input on needed updates to NCAP.

Roadmap: In order to keep pace with rapidly evolving vehicle safety technology and to provide clarity to all stakeholders, require NHTSA to publish a five-year roadmap detailing plans to update the program.