

**Before the Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives**

For Release Upon Delivery
expected at
9:30 A.M. EST
Thursday
February 28, 2002
Number: CC-2002-110

Progress and Challenges in Implementing the TREAD Act

**Statement of
The Honorable Kenneth M. Mead
Inspector General
U.S. Department of Transportation**



SUMMARY

On January 3, 2002, the Office of the Inspector General (OIG) issued a report on the National Highway Traffic Safety Administration's (NHTSA) implementation of the TREAD Act. Our report included several recommendations to ensure the timely completion of the Act's requirements and to improve the operations of NHTSA. Specifically, the recommendations focused on adhering to rulemaking deadlines, improving the process for identifying potential defects and opening investigations, improving the quantity and quality of data on potential defects and mitigating the risks associated with developing a new defect information system.

Since the Act was passed, NHTSA has made progress toward completing the TREAD Act requirements, but more work remains to achieve the goals of the Act.

First, completing the TREAD Act rulemakings, most importantly the early warning reporting requirements rule, in a timely and comprehensive manner. NHTSA has already completed 3 final rulemakings including the rule requiring individuals to report to NHTSA the sale or lease of defective tires. NHTSA has been on track in issuing 9 notices of proposed rulemakings; but it still needs to complete 12 final rulemakings including 6 with statutory deadlines. Late last year, NHTSA issued its notice of proposed rulemaking specifying the early warning data that manufacturers will be required to report. Issuing the early warning final rule by June 30, 2002, will be a significant challenge for NHTSA. One of the final rules, the tire pressure warning device rule, was due on November 1, 2001. However, we understand that NHTSA and OMB are very close to resolving the issues associated with the proposed final rule.

Second, a peer review panel process is needed to ensure consistency when opening investigations. NHTSA agreed with our recommendation and has already begun using a peer review panel. We consider this a very positive step. The principal reason we recommended NHTSA establish a peer review panel and process is because we found instances where NHTSA did not open an investigation although the number of complaints, period of time, alleged defect, and potential consequences were similar to investigations that were previously opened. Further, the decision to open or not open an investigation was made by one or two persons, the basis for their decision was not readily apparent, and there was no documentation to support the decision.

Third, developing a new defect information management system to replace the currently flawed system. This is important because the success of the TREAD Act will ultimately rise or fall on the quality and usefulness of the early warning data and the capacity of the new system to process the high volume of data. Two factors currently hamper NHTSA's ability to successfully implement a new defect information system: (1) the quality of the data in the current defect database and (2) the risks associated with NHTSA's systems development efforts. In response to our recommendations to ensure that the new defect information system is completed on time and within budget, NHTSA recently hired a third party contractor to validate and verify that the new system will meet its needs and reduce development risk.

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss the implementation of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. We have identified the implementation of the TREAD Act as one of the 10 most important management challenges faced by the Department. Also, on January 3, 2002, we issued a report on the National Highway Traffic Safety Administration's (NHTSA) implementation of the TREAD Act.

Our report included several recommendations to ensure the timely completion of the Act's requirements and to improve the operations of NHTSA. Specifically, the recommendations focused on adhering to rulemaking deadlines, improving the process for identifying potential defects and opening investigations, improving the quantity and quality of data on potential defects, and mitigating the risks associated with developing a new defect information system.

In October 2000, Congress passed the TREAD Act to establish, in part, early warning reporting requirements for manufacturers so NHTSA is aware of potential defects as soon as possible. In its September 2000 hearings, Congress questioned why NHTSA, Firestone and Ford did not act sooner to prevent the 103 deaths and over 400 injuries associated with the defective tires. These numbers have since

increased to over 200 deaths and 800 injuries. Congress found the following:

- (1) NHTSA had insufficient data regarding the problems with Firestone tires, and
- (2) NHTSA did not use data it already had to spot trends related to tire failures.

Since the Act was passed, NHTSA has made progress toward completing the TREAD Act requirements, but more work remains to achieve the goals of the Act.

- *First, completing the TREAD Act rulemakings, most importantly the early warning reporting requirements rule, in a timely and comprehensive manner.* NHTSA has already completed three final rulemakings including the rule requiring individuals to report to NHTSA the sale or lease of defective tires. NHTSA has been on track in issuing 9 notices of proposed rulemakings; but it still needs to complete 12 final rulemakings including 6 with statutory deadlines. One of the final rules, the tire pressure warning device rule, was due on November 1, 2001. However, the rule has yet to be issued. We understand that NHTSA and OMB are very close to resolving the issues associated with the proposed final rule.

Several other rules are also complex and controversial, and have statutory deadlines for completion on or before November 1, 2002. These rules include establishing early warning reporting requirements for vehicle and equipment

manufacturers; updating the tire standards; and improving child safety restraints. The rules will be controversial because there are differing views among the affected parties and interest groups on the substance of NHTSA's proposals. The status of the TREAD Act rulemakings and other actions are presented in Exhibits A, B, and C.

We noted that factors such as differing views on the substance of a proposed rule, requirements for cost/benefit analysis, and the need to have other entities, such as the Department and the Office of Management and Budget (OMB), review a proposed rule, influenced the time required to issue a rule. Further, in our July 2000 report on the Department's rulemaking process, we noted that the Department met only 10 percent of statutory deadlines and missed the statutory deadlines by an average of 3.8 years. However, Secretary Mineta has made the timely completion of rules a departmentwide priority.

Issuing the early warning final rule by June 30, 2002, will be a significant challenge for NHTSA. Significant disagreements are likely between NHTSA and automobile manufacturers over the scope and parameters of the reporting requirements in the proposed rule. Late last year, NHTSA issued its notice of proposed rulemaking specifying the early warning data that manufacturers will be required to report. As proposed, the rule requires manufacturers to report

data quarterly starting in April 2003. The data include deaths, injuries, property damage claims, warranty claims, field reports, and consumer complaints related to potential defects in various systems or components, such as electrical systems and air bags. Also, by April 2003, manufacturers will be required to submit, on a one-time basis, 3 years of historical early warning data.

In commenting on the proposed rule, the Alliance of Automobile Manufacturers, an association of 13 domestic and foreign automobile manufacturers, stated that NHTSA “has substantially underestimated the burden imposed by the proposed rules, and the resources in terms of staff time, the cash outlays and the efforts that will be required to develop systems that can reliably generate the reports proposed in the Notice of Proposed Rulemaking.” Further, the Alliance stated that “NHTSA also underestimated the lead time that will be needed to prepare the new systems before the automatic reports can begin.”

A current example illustrating how differing views between interested parties over the substance of a proposed rule can contribute to delays in the time required to issue final rules is the draft tire pressure warning device final rule. On February 12, 2002, OMB returned the draft final rule to the Department for reconsideration. NHTSA’s draft rule proposed a standard under which all new

vehicles would require a tire pressure monitoring system. NHTSA proposed a phase-in period lasting until 2006 which generally allows for the use of a direct system or an indirect system. A direct tire pressure monitoring system has a tire pressure sensor in each tire. The sensors transmit pressure information to a receiver. According to NHTSA officials, a direct tire system would alert a driver when a tire or any combination of tires is underinflated.

In contrast, an indirect system does not actually measure tire pressure. Instead it relies on the wheel speed sensors in an antilock braking system to detect and compare differences in the rotational speed of a vehicle's wheels. Underinflated tires have smaller diameters and thus rotate faster. The indirect system relies on the anti-lock brake system which uses existing technology and is less costly than the direct system. However, according to NHTSA officials current indirect systems cannot detect when two tires on the same axle or two tires on the same side are equally underinflated.

After the conclusion of the phase-in period in 2006, NHTSA's approach would require a system that alerts the driver when the pressure in 1 to 4 tires is 25 percent below the recommended level. According to NHTSA officials, current indirect systems can only alert the driver when the tire pressure has fallen to 30 percent or more below the recommended level. To meet the standard proposed

by NHTSA would require vehicle manufacturers to install a direct tire pressure monitoring system.

OMB requested that NHTSA provide a stronger analysis of the safety issues and benefits, including a formal analysis of a regulatory alternative that would permit indirect systems after the phase-in period. OMB stated that NHTSA could analyze an option that would defer a decision about the ultimate fate of indirect systems until the potential impact on installation of anti-lock brake systems is better understood. We understand that NHTSA and OMB are very close to resolving issues associated with the proposed final rule.

In January 2002, we recommended that NHTSA begin reporting to Congress on a routine basis the milestone dates, budget estimates, and actions required to complete the TREAD Act rules. In December 2001, NHTSA provided Congress with a TREAD Act follow-up report, as required by the Act. NHTSA told us that they will provide additional reports when specifically requested by Congress. *Given the heavy lifting that lies ahead for the TREAD Act rulemakings, NHTSA should begin reporting on a routine basis, the status of its rulemakings to Congress.*

- *Second, a peer review panel process is needed to ensure consistency when opening investigations.* NHTSA agreed with our recommendation and has already begun using a peer review panel. We consider this a very positive step. The principal reason we recommended NHTSA establish a peer review panel and process is because we found instances where NHTSA did not open an investigation although the number of complaints, period of time, alleged defect, and potential consequences were similar to investigations that were previously opened. Further, the decision to open or not open an investigation was made by one or two persons, the basis for their decision was not readily apparent, and there was no documentation to support the decision. For example,

Over a 4-month period, NHTSA received six complaints alleging airbags failed to deploy in a 1998 sedan after a frontal crash. All of the complaints noted injuries and one complaint stated the driver was seriously injured. An investigation was not opened, despite a recommendation by the defects analysis staff. Within 1 year the number of complaints quadrupled from 6 to 24 complaints, but NHTSA still did not open an investigation.

In another example, NHTSA received three complaints over a 4-month period alleging front suspension torsion bar breakage in 1993-1994 minivans. This alleged defect could cause the driver to lose control of the vehicle and increase the risk of a crash. Although the defects analysis staff recommended an investigation; one was not opened. In contrast, NHTSA opened an investigation of three complaints received over a 1-year period alleging front suspension coil spring breakage in a different vehicle that could pose a potential compromise to the driver's ability to control the vehicle.

To ensure consistency and transparency in NHTSA's processes, we recommended the use of a peer review panel to discuss potential defects as a

group, make decisions as to whether or not an investigation should be opened, and to document the decision. We recommended that the panel consist of the Chiefs of the Defects Analysis and Investigation Divisions, as well as defects analysis and investigative staff.

NHTSA agreed to implement this recommendation and we consider this a very positive step. We recognize that it is not possible to define criteria that will identify every potential defect. But a panel of experts drawing on the institutional knowledge of the staff and bringing management together to identify cases for investigation will ensure consistency in NHTSA's decision making process.

Since November 2001, NHTSA has held six peer review panel meetings. According to NHTSA officials, the use of the panels has increased the percent of investigations opened. Of the 38 cases of potential defects considered for investigation, the peer review panel approved the opening of 34 investigations.

Establishing a peer review panel is a significant step forward; however, it is not an end state. In addition to the steps already taken we recommend the NHTSA Administrator should ensure that (1) protocols for the panel process are written, (2) decisions are documented, and (3) the panel receives and

reviews information when the defects analysis staff determine that an investigation should not be opened.

- ***Third, developing a new defect information management system to replace the currently flawed system.*** *This is important because the success of the TREAD Act will ultimately rise or fall on the quality and usefulness of the early warning data and the capacity of the new system to process the high volume of data.* Two factors currently hamper NHTSA's ability to successfully implement a new defect information system: (1) the quality of the data in the current defect database and (2) the risks associated with NHTSA's systems development efforts.

We reported that NHTSA's existing defect database, the primary tool it uses to identify potential safety-related defects in vehicles and equipment, significantly understates the number of potential safety defects. For example, NHTSA's database contains substantially less complaints than consumers make to manufacturers. In one case, we found that the manufacturer received 1,411 complaints regarding transmission failures resulting in the loss of fluid and increasing the risk of fire, while NHTSA received 32 complaints.

Further, the defect database contains incomplete and incorrectly recorded information regarding potential defects. For example, we found complaints in which consumers described problems with failed brakes that led to accidents where the airbags did not deploy. However, only the airbags and not the brakes were recorded as problems in the database.

The existing data in the defect database will serve as the foundation for the new information system. Therefore, it is particularly important that NHTSA review and edit the existing data in the defect database, including the descriptions of complaints, for accuracy and completeness before transferring the data to the new information system. In response to our recommendation, the NHTSA Administrator stated that the data will be reviewed for improperly or inconsistently recorded data and corrected before being transferred to the new system.

We also reported that NHTSA's project with Volpe National Transportation Systems Center (Volpe) to replace its current database with a new information system by the fall 2002 was significantly at risk of not meeting quality, cost, and schedule goals. Historically, the Department's systems development projects, including those using commercial off-the-shelf software as a basis, have been plagued by cost overruns and implementation delays. While the

Federal Aviation Administration (FAA) problems in developing software intensive systems are well known, the Department and NHTSA have experienced their share of problems with software development as well.

For example, DOT had incurred contract costs of at least \$26 million to develop a new financial management system using commercial off-the-shelf software. However, 1 year after the original implementation date, the system was still not fully operating as intended. Also, the costs of NHTSA's National Advanced Driving Simulator, which involved software development, grew to almost twice the original estimate and the simulator was completed 3 years later than originally estimated.

NHTSA describes its new information system efforts as an acquisition of commercial off-the-shelf software. However, the software will require modifications and involve systems development work. The National Institute of Standards and Technology outlines procedures to ensure that software development efforts are successful. One of these procedures includes having an independent third party validate and verify that the system will meet the user's needs. *We recommended that NHTSA obtain the services of an independent third party to assess the contractor's progress, reduce development risk, and advise NHTSA of its findings.*

In response to our recommendations to ensure that the new defect information system is completed on time and within budget, NHTSA recently hired a third party contractor to validate and verify that the new system will meet its needs and reduce development risk. The contractor will provide NHTSA with weekly status reports and monthly assessment reports. *We will monitor the contractor's findings and the corrective actions taken by NHTSA.*

This concludes my statement. I would be pleased to answer any questions.

**TREAD Act Completed Rulemakings
As of February 12, 2002**

Sale or Lease of Defective Tires requires individuals to report to the Secretary when knowingly and willfully selling or leasing for use on a vehicle a defective or noncompliant tire when having actual knowledge that the manufacturer has notified dealers of such defect or noncompliance. A rulemaking with a statutory deadline of 01/29/01 was required by the TREAD Act and the final rule was issued 07/23/01.

Safe Harbor precludes individuals from receiving criminal punishment if the person (1) at the time of the violation, did not know that the violation would cause death or serious injury and (2) corrects the improper report or failure to report within a reasonable time. The Secretary shall establish by regulation what constitutes reasonable time and sufficient correction. A rulemaking with a statutory deadline of 01/29/01 was required by the TREAD Act and the final rule was issued 07/24/01.

Civil Penalties amends the regulations to reflect changes in the National Traffic and Motor Vehicle Safety Act regarding civil penalties. A rulemaking with no statutory deadline was required by the TREAD Act and the Final Rule was issued 11/14/00.

**TREAD Act Rulemakings to Be Completed
As of February 12, 2002**

Early Warning requires manufacturers to report claims data, warranty data, customer satisfaction campaigns and recalls, and any incidents of serious injuries or fatalities (allegedly or proven to be caused by a possible defect in systems or components) for which the manufacturer receives actual notice. A rulemaking with a statutory deadline of 06/30/02 is required by the TREAD Act. A Notice of Proposed Rulemaking was issued 12/21/01.

Tire Pressure Warning Device requires a warning system in new vehicles to indicate to the driver when a tire is significantly under-inflated. The requirement will become effective 2 years after the completion of the rulemaking. A rulemaking with a statutory deadline of 11/01/01 is required by the TREAD Act and the Office of Management and Budget (OMB) returned the final draft rule to NHTSA for reconsideration on 02/12/02.

Tire Standards requires the Secretary to update the tire standards (Standards 109 and 119). A rulemaking with a statutory deadline of 06/01/02 is required by the TREAD Act. A Notice of Proposed Rulemaking was sent to OMB on 12/14/01.

Improved Tire Information requires the Secretary to improve the labeling of tires to assist consumers in identifying tires that may be subject to a recall. A rulemaking with a statutory deadline of 06/01/02 is required by the TREAD Act. A Notice of Proposed Rulemaking was issued 12/19/01.

Safety of Child Restraints requires the Secretary to draft regulations for improving the safety of child restraints, including minimizing head injuries from side impact collisions. The Secretary must consider several criteria, therefore resulting in multiple rulemakings. A rulemaking with a statutory deadline of 11/01/02 is required by the TREAD Act. A Notice of Proposed Rulemaking was sent to OST on 12/03/01.

Ratings Program requires the Secretary to establish by regulation a child restraint safety rating consumer information program. A rulemaking with a statutory deadline of 11/01/02 is required by the TREAD Act. A Notice of Proposed Rulemaking was issued 11/06/01.

**TREAD Act Rulemakings to Be Completed
As of February 12, 2002**

Report on Defects in Foreign Countries requires manufacturers to report within 5 working days when conducting a safety recall or other safety campaign in a foreign country for an identical or substantially similar vehicle as a vehicle offered for sale in the United States. A rulemaking with no statutory deadline is required by the TREAD Act. A Notice of Proposed Rulemaking was issued 10/11/01.

Acceleration of Remedy permits the Secretary to require manufacturers to accelerate the remedy program if the Secretary finds that there is a risk of serious injury or death and that the acceleration can be reasonably achieved by expanding the sources of replacement parts, authorized repair facilities, or both. A rulemaking with no statutory deadline is required by the TREAD Act. A Notice of Proposed Rulemaking was issued on 12/11/01.

Reimbursement Prior to Recall requires manufacturers to include in their remedy programs a plan for reimbursing owners who incurred the cost of the remedy within a reasonable time in advance of the manufacturers' notification of recalls. The Secretary may establish by regulation what constitutes a reasonable time and other reasonable conditions for the reimbursement plan. A rulemaking with no statutory deadline is required by the TREAD Act. A Notice of Proposed Rulemaking was issued on 12/11/01.

Sale of Replaced Tires requires manufacturers to include in remedy programs a plan for how manufacturers will prevent replaced tires from being resold and how to limit disposal of replaced tires in landfills. Manufacturer will include information about the implementation of the plan in each quarterly report to the Secretary. A rulemaking with no statutory deadline is required by the TREAD Act. A Notice of Proposed Rulemaking was issued on 12/18/01.

Sale of Replaced Equipment prohibits the sale or lease of any vehicle equipment (including tires) for installation on vehicles when the equipment is subject to a recall. An exception exists if the defect or noncompliance is remedied before delivery. A rulemaking with no statutory deadline is required by the TREAD Act. A Notice of Proposed Rulemaking was issued 07/23/01.

Certification Label requires intermediate or final stage manufacturers, for vehicles built in more than one stage, to certify that they complied with specifications provided by the first manufacturers or that they have elected to assume responsibility for complying with the Federal Motor Vehicle Safety Standards. A rulemaking with no statutory deadline is required by the TREAD Act. NHTSA is drafting a Rulemaking Support Paper.

**TREAD Act Non-Rulemaking Actions
As of February 12, 2002**

Insurance Study requires the Secretary to determine the capability and benefits of obtaining aggregate information regarding insurance claims. A study with a statutory deadline of 03/01/01 was required by the TREAD Act and the study was completed on 03/05/01.

Follow-Up Report requires the Secretary to report to Congress on the implementation of the TREAD Act and provide recommendations for additional amendments. A report with a statutory deadline of 11/01/01 is required by the TREAD Act and the report was transmitted to Congress on 12/14/01.

Recall Criteria requires the Secretary to review and update all standards, criteria, procedures, and methods for determining whether to open a defect or noncompliance investigation. The Secretary shall report findings to Congress. A report with a statutory deadline of 11/01/01 is required by the TREAD Act and was transmitted to Congress on 01/31/02.

Education Program requires the Secretary to develop a 5-year strategic plan to reduce deaths and injuries, caused by failure to use booster seats, by 25% among 4 to 8 year olds. A program with a statutory deadline of 11/01/01 is required by the TREAD Act and the draft plan was sent to OST on 02/04/02.

Booster Seat Study requires the Secretary to study the use and effectiveness of booster seats and submit the results to Congress. A study with a statutory deadline of 11/01/01 is required by the TREAD Act and the draft report is undergoing final Agency review.

Rollover Tests Ratings Program requires the development of a dynamic test on rollovers by the statutory deadline 11/01/02 and creation of a consumer information program. The Secretary shall conduct a rulemaking to determine how best to disseminate test results. The request for comments was published on 07/03/01.