



July 15, 2019

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor, Room W12-140
Washington, DC 20590

Submitted electronically via www.regulations.gov

RE: Notice of Proposed Rulemaking; Record Retention Requirement; Docket Number NHTSA–2019-0035

The Center for Auto Safety (Center) appreciates the opportunity to comment on the National Highway Traffic Safety Administration’s (NHTSA) Notice of Proposed Rulemaking (NPRM) extending the time manufacturers must retain records related to safety defects pursuant to 49 CFR Part 576. As the Center has maintained for two decades, the current requirement that manufacturers only retain such records for five years is woefully inadequate and outdated. Accordingly, the agency’s current proposal to extend the record retention period does only the bare minimum to improve NHTSA’s enforcement efforts, and at a time of record recalls, deaths, and injuries on our roads, the bare minimum is not good enough.

The Center, founded in 1970 and headquartered in Washington, D.C., is a membership-driven non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy. Records submitted by manufacturers to inform NHTSA defect investigations play a critical role in the agency’s enforcement authority under the Safety Act and have resulted in countless recalls that removed dangers from US roads. The Center has long worked to ensure that such information, when submitted to the Office of Defects Investigation (ODI) pursuant to a defect investigation or otherwise, is accurate and complete. Unfortunately, the proposed 10-year period is insufficient to ensure that important information related to safety defects is preserved for review by NHTSA investigators.

The NPRM Understates NHTSA ODI’s Actual Investigative Needs

In the NPRM, the agency states, “It is NHTSA’s experience that in the vast majority of cases, the records most pertinent to a defect investigation will be those generated in the previous ten years because those are the records more likely to show an emerging defect

trend.”¹ This statement ignores the value of records older than 10 years, which have significantly impacted previous defect investigations and led to important recalls, and highlights the shortsightedness of this proposal.

Limiting the record retention policy to 10 years serves to restrict ODI’s purview on vehicles 5 years and older to the post-design stage, thus hindering the agency’s ability to properly probe design defects. Design documents relevant to a defect investigation may be produced years before a vehicle or equipment is manufactured and sold to the public, a fact which makes the current proposal untenable. The agency’s ability to achieve its own goal of “show[ing] an emerging defect trend” is ultimately reliant on a determination that a defect exists, which generally requires evidence of a design or manufacturing defect that may have arisen well over a decade ago. This isn’t about records; this is about safety.

For example, under a 10-year record retention policy, General Motors could have tossed out records related to the detent plunger change that resulted in hundreds of ignition-switch related deaths and injuries, and Takata could have destroyed all records related to the design of exploding airbag inflators. Moreover, 44% of NHTSA’s current 43 active Defect Petitions, Preliminary Evaluations, Engineering Analysis investigations, involve vehicles or equipment that began production more than 10 years ago.² If the proposed limitation is promulgated the incentive for manufacturers to “run out the clock” on reporting only increases.

The NPRM Overstates Manufacturer Burden

Manufacturers routinely preserve decades-old documents for use in product liability defense, and the agency has produced zero evidence that a record retention requirement of 15, 20, or more years would place additional burdens on manufacturers. NHTSA admits that “the costs of electronic storage attributable to this proposal [are likely] to be minimal,”³ yet argues without evidence that there is no justification for extending the record retention requirement beyond 10 years. Until the agency documents the current record retention practices of vehicle and equipment manufacturers, there is no basis on which to assert that any burden exists on manufacturers required to retain records for longer periods of time, as they are likely already doing so.

Continued NHTSA Indifference and Inaction

By proposing to require the preservation of less information than is necessary for robust enforcement of federal auto safety laws and regulations, NHTSA once again places the considerations of multi-billion-dollar corporations over the safety of the motoring public. Despite calls for reform of the record retention requirement during the Ford/Firestone debacle in 2000, NHTSA has only now moved to extend this requirement to 10 years, and solely because Congress issued a mandate requiring the agency to do so. Fitting the

¹ Record Retention Requirement, 84 Fed. Reg. 21,741 (May 15, 2019) (to be codified at 49 C.F.R. Part 576).

² See Appendix A: NHTSA Open Defect Investigations of 10-Year and Older Vehicles.

³ Record Retention Requirement, 84 Fed. Reg. 21,741 (May 15, 2019) (to be codified at 49 C.F.R. Part 576).

agency's recent form, this NPRM comes three years after the deadline promulgated by Congress, and unsurprisingly NHTSA has opted to institute the bare minimum number of years required by law to meet this mandate.

The Center calls on NHTSA to extend the record retention period to a minimum of twenty years to ensure that the agency is able to effectively evaluate safety defects, whether they are in new or older vehicles, in order to properly support the agency's recall and enforcement authority, and to help remove these dangers from America's roads.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levine". The signature is written in a cursive style with a large, sweeping initial "J".

Jason Levine
Executive Director

Appendix A: NHTSA Open Investigations of 10-Year and Older Vehicles

NHTSA ID	Vehicle/Equipment	DESCRIPTION
EA14002	2011-2013 Kia Sorento	Spontaneous Sunroof Breakage
EA15001	2001-2011 Various Models With Takata Airbag	Air Bag Inflator Rupture
EA16001	2014 Freightliner M2	CNG Fuel System Integrity
EA16003	2002 and later ARC Airbag inflators	Air Bag Inflator Rupture
EA17001	2015-16 Freightliner Cascadia	Wiper Motor Failure
EA17002	2011-2017 Ford Explorers	Ford Explorer Exhaust Odor
EA17004	2010 Ford Fusion	Power Steering Failure
EA18001	2009 Nissan Murano	Extended Braking Distances
EA18002	2006-2012 Ford Fusion, Lincoln MKZ, 2006-11 Mercury Milan	Extended Braking Distance
EA18003	2010-14 VW Models	Air Bag Clockspring Failure
EA18004	2013-16 Ranger Rover/RR Sport	Door Latch Open While Driving
EA18005	2018 Tiguan	Seat Belt Webbing Failure
EA18006	2008-2013 Toyota Highlander	Upper Steering Column Separation
EA19001	2010-19 Various Models	Air Bag ACU Electrical Overstress
PE16014	2013-16 Ram 1500, 2014-16 Dodge Durango	Vehicle Rollaway
PE16015	2012-14 Land Rover Evoque, Jaguar XF	Powered vehicle rollaway
PE17009	1996-2003 Goodyear G159 Tires	Goodyear G159 Tires
PE18003	2011 Hyundai Sonata, 2012-13 Kia Forte	Air bags may be disabled during crash
PE18004	2011-16 Freightliner Cascadia	PNDB Electrical Power Distribution
PE18007	2013 Ford Escape	Loss of Motive Power
PE18010	2015-16 Ford E350/450 Buses	Internal Transmission Failure
PE18011	2017 Ford Superduty F250/350	Power tailgate opens uncommanded
PE18012	2014-16 GM Pickups and SUVs	Brake Vacuum Pump Failure
PE18013	2013 Nissan Altima	Rear Suspension Control Arm Failure
PE18014	2012-14 Range Rover Evoque	Loss of Brake Power Assist
PE18015	2011-16 Navistar IC Bus	Lap seat belts fail to latch
PE18016	2015-16 Ram 2500	Steering loss due to linkage separation
PE19001	2004-05 Cadillac XLR	Roof Skin Separation
PE19002	2018-19 K1600 Motorcycle	Steering Oscillation
PE19003	2011-2014 Hyundai Optima, Santa Fe	Non-crash Vehicle Fires
PE19004	2011-14 Kia Optima, Sorento 2010-15 Soul	Non-crash Vehicle Fires
PE19005	2012-15 Isuzu NPR	Unintended Acceleration
PE19006	2010-13 Mazda CX-9	Inadvertent Curtain Air Bag Deployment
PE19007	2008-2018 Thomas Built Buses	Rear Leaf Spring Fractures
DP13001	2004-09 Toyota Prius	Steering intermediate shaft failure
DP14001	2008 Chevrolet Impala	Passenger Air Bag OCS Algorithm
DP15004	2010 Chevy Tahoe	Rollover Side Curtain Air Bags
DP16002	2007-08 Nissan Sentra	Scope of Recalls 08V311 and 09V431
DP17002	2007 Jeep Patriot	Engine stall after refueling
DP18001	2001-2002 Honda Passport, 2002-2004 Isuzu Axiom, 2001-2004 Isuzu Rodeo	Fuel Tank Retention Failure
DP18002	2002-2006 Toyota 4Runner	Frame Corrosion
DP18004	2018 Jeep Wrangler	Frame Weld Deficiencies
DP19001	2017-18 Nissan Rogue	False Automatic Emergency Braking