

Submitted by the expert of the United States of America

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ENFORCEMENT WORKING GROUP

WP.29 Presentation
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Working Group Concept

- Auto industry consists of global manufacturers and suppliers
- Safety problems in vehicles or equipment have ramifications across national boundaries
- National governments have a wide range of enforcement programs: type approval compliance; self-certification and compliance testing; defects investigations, etc.

Working Group Concept

- Cooperation between vehicle safety agencies has until now been limited and bilateral
- NHTSA is seeking broader, informal cooperation with enforcement colleagues in other countries
- NHTSA initiated informal dialogue at Enhanced Safety of Vehicles conference in Washington in June 2011
- More than a dozen countries met and agreed to work informally; some suggested a role for WP.29

Working Group Concept

- Today's meeting will include:
 - Presentation on U.S. enforcement program
 - Presentations on any other nations' programs (?)
 - Discussion of similarities and differences between nations' enforcement programs
 - What role of working group should be
 - What information enforcement agencies may share on recalls, pending investigations, early warning data
 - Development of terms of reference (TOR)
 - Time and venue of next working group meeting

United States Vehicle Safety Program

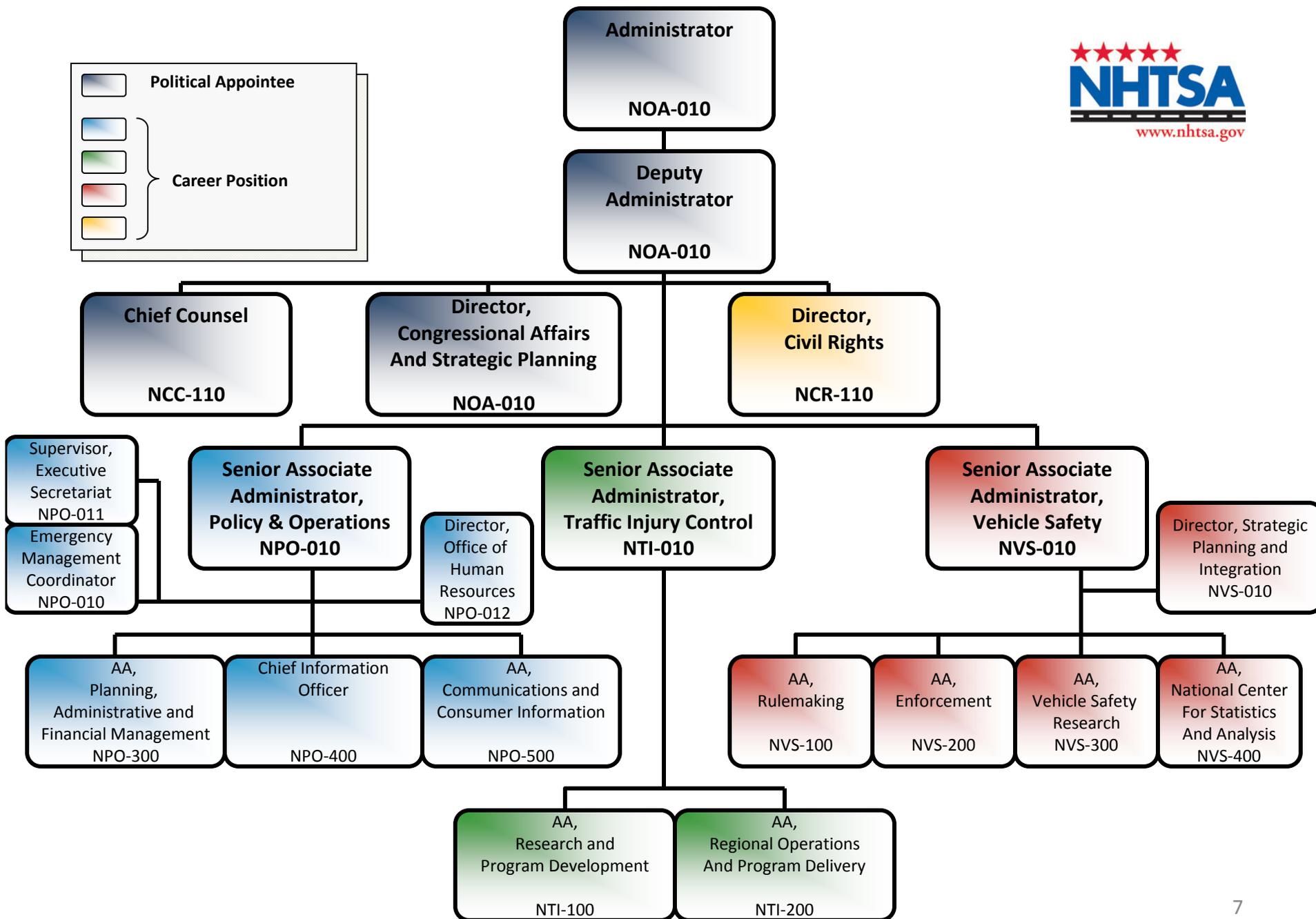
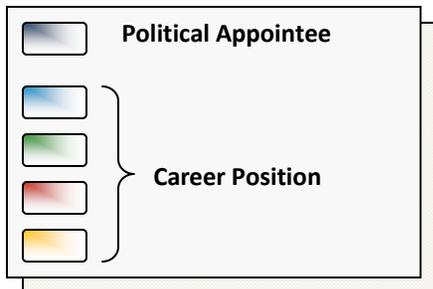
- National Highway Traffic Safety Administration (NHTSA) has authority over two large program areas: highway safety (human behavior) and vehicle safety
- Vehicle safety program is comprehensive:
 - Data: National Center for Statistics and Analysis
 - Research
 - Rulemaking (standards)
 - Enforcement

Summary of Authorizing Legislation

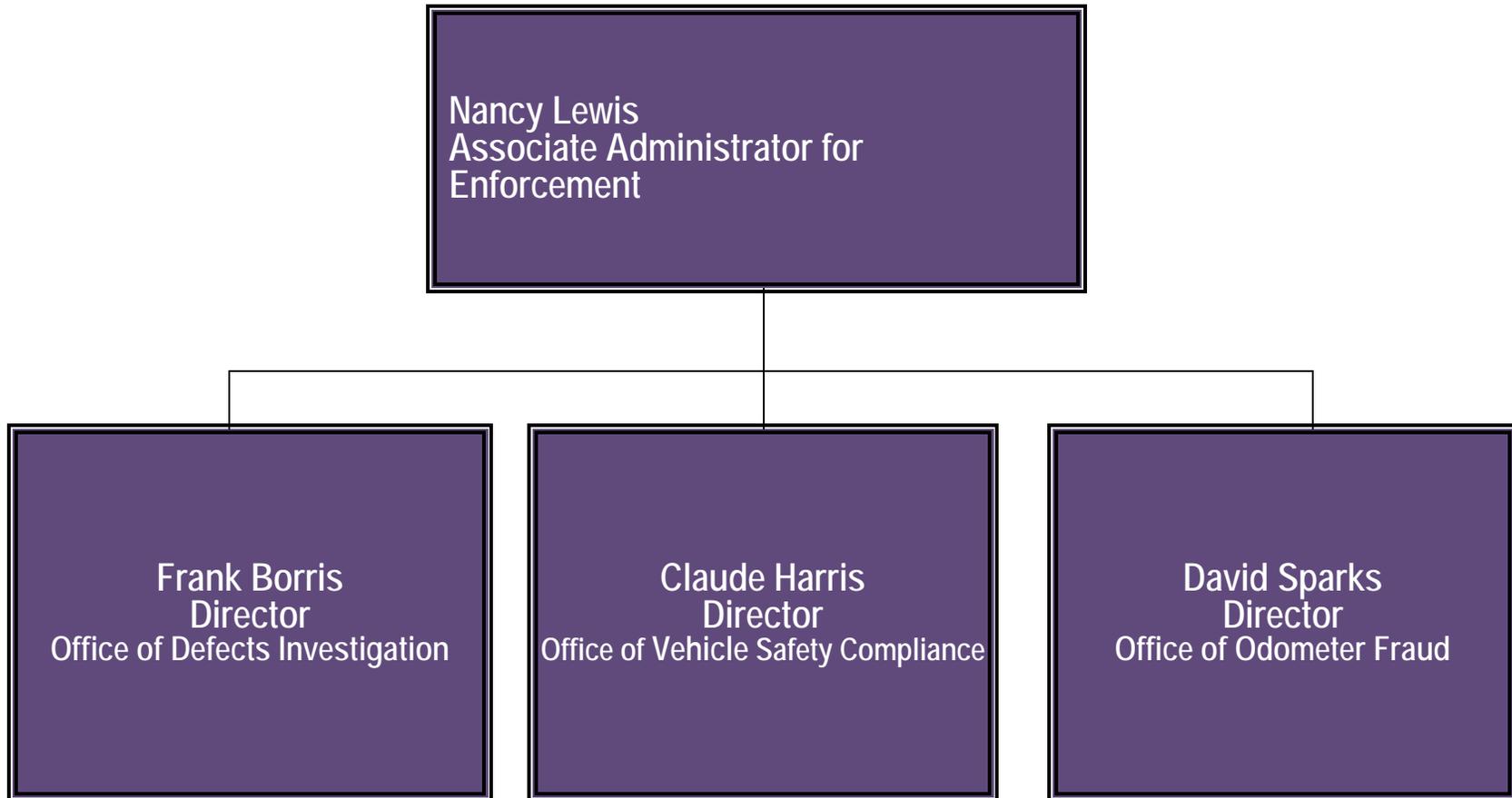
- Primary statute: The National Traffic and Motor Vehicle Safety Act (1966), 49 USC Chapter 301
 - Establish and enforce safety standards for new vehicles and equipment and conduct related research
 - Recall and remedy of noncompliant or defective vehicles and equipment

Federal Motor Vehicle Safety Standards (FMVSS):

- Must meet a safety need
- Be practicable (technologically and economically)
- Objectively measurable compliance
- Performance-oriented (not design restrictive)
- Appropriate for each vehicle type



Enforcement



Enforcement Responsibilities

Three primary types of enforcement:

- **Vehicle safety**: recalls for **defective** or **noncompliant** vehicles or equipment
- **Fuel economy**: civil penalties for violations of CAFE standards by manufacturers
- **Odometer fraud**: criminal prosecution of offenders

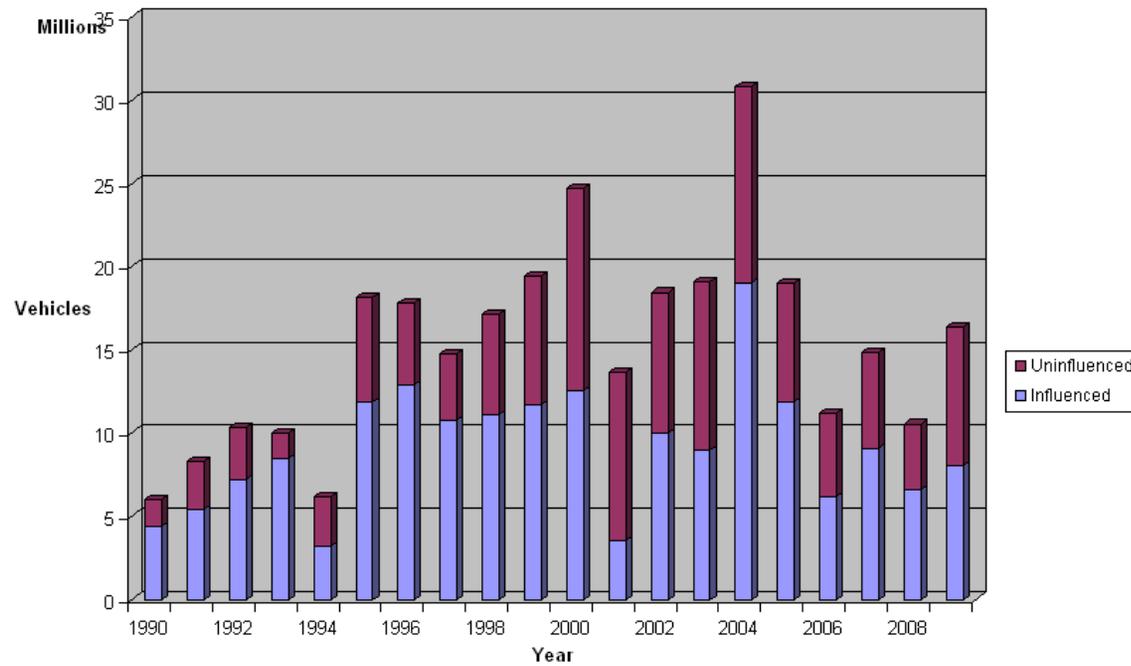
Vehicle Safety Enforcement

- Basic principles:
 - **Self-certification:** manufacturers must certify that their vehicles and equipment comply with the Federal Motor Vehicle Safety Standards (FMVSS).
 - **Prohibition:** a person may not manufacture for sale, offer for sale, introduce into commerce, or import a noncompliant vehicle or equipment.
 - **Importers are manufacturers:** Statutory definition of “manufacturer” states this, so importers share duties of manufacturers.

Vehicle Safety Enforcement

- Basic principles (continued):
 - **Duty to recall:** a manufacturer must do a recall (i.e., notify owner and provide remedy for the entire population of affected vehicles or equipment) if it learns of a safety defect or noncompliance or if NHTSA decides there is a defect or noncompliance.
 - **NHTSA may order a recall.**
 - **Defect** that creates an unreasonable risk to safety warrants a recall.
 - **Fully compliant vehicles or equipment may contain safety defects.**

Vehicles Recalled 1990-2009



Other Enforcement Tools

- **Civil penalties**
 - Current limits: \$6,000 per violation with a maximum of \$17,350,000 for a related series of violations
 - Chief Counsel issues penalty demand letter, negotiates with respondent, and considers statutory criteria (gravity of violation, size of business) and litigation risk in determining amounts
- **Injunctive relief** for violations of statute is available, but statute encourages NHTSA to provide notice and an opportunity to remedy the defect or noncompliance before seeking relief
- **Criminal penalties** are available for false reporting with intent to mislead NHTSA about defects that have caused death or serious injury (supplements basic false statement statute, 18 USC 1001)

Office of Defects Investigation

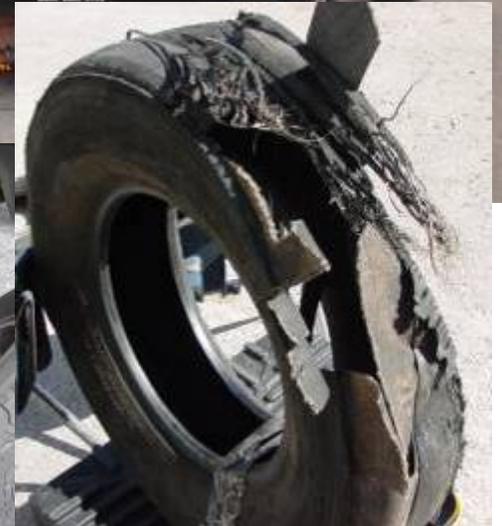
- “Defect related to motor vehicle safety” is a problem in performance, construction, a component, or material that creates an unreasonable risk to safety
- Nearly all recalls are voluntary: manufacturer either initiates recall on its own or is influenced to do so by NHTSA’s investigation.
- NHTSA can order manufacturer to conduct recall after an opportunity for a hearing.
- NHTSA can seek enforcement of its order in court, where NHTSA must prove existence of a defect that creates an unreasonable safety risk.

Defects Enforcement

- Office of Defects Investigation screens many sources of information about possible defects to identify likely candidates for investigation:
 - Complaints (nearly 50,000 per year): Auto Safety Hotline, letters, e-mail, vehicle owner questionnaire on Internet
 - Manufacturer notices, bulletins, advisories
 - Foreign recall reports
 - Early warning reports (death or injury incidents, damage claims, warranty claims, consumer complaints, field reports): huge volume of data
 - Petitions from public

Defects Enforcement

- Mechanical or electronic failures posing a safety risk
- Examples:
 - Stalling
 - Brake light switch
 - Fires
 - Tire failures
 - Fuel leaks
 - Ball joint fracture



Office of Vehicle Safety Compliance

- Manufacturers must comply with nearly 60 motor vehicle and equipment standards covering subjects such as crashworthiness (air bags, roof crush, etc.) and crash avoidance (brakes, ESC)
- OVSC purchases new vehicles and equipment and tests them for compliance with the FMVSS
- Requests and reviews manufacturer's certification data (manufacturers have duty to certify that their vehicles or equipment comply with standards)
- In the event of an apparent noncompliance, OVSC conducts investigations that may lead to a safety recall campaign and could result in the collection of civil penalties from the manufacturer
- OVSC also plays a vital role in rulemaking by developing compliance test procedures for inclusion in safety standards

Fuel Economy Enforcement

- OVSC administers CAFÉ fuel economy enforcement program
- Energy Policy and Conservation Act of 1975 (49 USC Chapter 329) authorizes NHTSA to collect civil penalties for violations of CAFE standards
- Penalty formula: $[\$5.50] \times [\text{each } 1/10 \text{ of a mile per gallon by which the fuel economy standard exceeds the mileage achieved by the manufacturer's fleet}] \times [\text{the number of vehicles in that fleet}]$
- Penalties can be offset by credits earned for exceeding the standard
- NHTSA bases penalty and credit determinations on final reports submitted by EPA
- Limited bases for compromising penalties: prevent insolvency; act of God, strike, or fire; FTC makes finding on effect on competitiveness
- Collect CAFE civil penalties (about \$13 million each year)

Office of Odometer Fraud Investigation

- Conduct criminal investigations concerning possible violations of odometer fraud laws
- Investigators are law enforcement officers who work closely with Department of Justice prosecutors
- Investigations have resulted in more than 250 convictions, plus millions of dollars in court ordered restitution

Enforcement Priorities

- Develop formal and informal cooperation with foreign governments on enforcement issues of mutual interest
- Continue efforts to educate foreign manufacturers of responsibilities for meeting applicable FMVSS , CAFÉ regulations, and defect recalls for unregulated equipment items
- Continue special emphasis on import safety
 - Equipment (tires, lighting, helmets, and child restraints)
 - Implement risk based selection protocol for imported motor vehicles/equipment items
- Deploy advanced data mining and analytics software to better identify emerging defect trends
- Increase international awareness of NHTSA's compliance and defects recall programs
- Identify new issues with electronic odometer fraud tampering

Possible Areas of Working Group Collaboration

- Sharing data on recalls
- Sharing information on pending investigations; conference calls and emails
- Sharing information on investigative techniques, including compliance testing and defects investigations process
- Development of Terms of Reference
- Venue for next meeting