

NATIONAL WHISTLEBLOWER CENTER

OFFICE OF THE EXECUTIVE DIRECTOR

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June 26, 2016

The Hon. Anthony Foxx
Secretary of Transportation

Mr. Carlos Monje Jr.
Acting Under Secretary for Policy

U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Motor Vehicle Safety Whistleblower Act Rulemaking

Dear Secretary and Acting Under Secretary:

Attached please find the formal proposal and rulemaking comments submitted Pursuant to subsection (i) the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. § 30172, the Department of Transportation must complete the rulemaking process and publish final rules on the whistleblower law within 18 months of the enactment of the law.¹ The National Whistleblower Center hereby files with this letter its initial rulemaking proposal.

The NWC's proposal like the Motor Vehicle Safety Whistleblower Act ("Act") itself, is modeled on the whistleblower reward laws covering the IRS and the SEC. As explained by Senator John Thune, the principle sponsor of the Act, in the press release issued by his office when the Act was originally introduced, "The legislation is modeled after existing statutory whistleblower protections that encourage individuals to share information with the Internal Revenue Service and the Securities and Exchange Commission."²

In 2010-11 the SEC conducted a historic rulemaking proceeding on its whistleblower reward program. It carefully reviewed hundreds of detailed proposals, and after extensive proceedings the Commission published its final rules on May 25, 2011.³ These rules properly address almost all of the issues for which the Department of Transportation should address in its auto safety whistleblower rulemaking. They set forth fair and logical rules for filing claims, clear definitions of original information and appropriate procedures for an internal appeal of claim denials. We

¹ 49 U.S.C. § 30172(i) ("Not later than 18 months after the date of enactment of this section, the Secretary shall promulgate regulations . . .").

² Office of John Thune Press Release, "Thune, Nelson Introduce Legislation to Help Prevent Auto Injuries, Deaths From Faulty Parts by Incentivizing Whistleblowers," (November 20, 2014), <http://www.thune.senate.gov/public/index.cfm/2014/11/thune-nelson-introduce-legislation-to-help-prevent-auto-injuries-deaths-from-faulty-parts-by-incentivizing-whistleblowers>.

³ See <http://www.sec.gov/about/offices/owb/reg-21f.pdf>.

have based the NWC's proposal on these SEC rules, and have modified them to take into consideration the specific requirements of the Act, the fact that these rules concern auto safety, and various lessons learned since the implementation of the SEC rules.

Although at the time the SEC rules were published there was some controversy over their efficacy, after almost six years of experience, the SEC program has proven to be a success. The Chair of the Commission has publicly praised the operation of the program and the contributions made by whistleblowers. *See* Chair Mary Jo White, "The SEC as the Whistleblower's Advocate," Ray Garrett, Jr. Corporate and Securities Law Institute-Northwestern University School of Law Chicago, Illinois (April 30, 2015).⁴

As part of the SEC's program, the Commission established a Whistleblower Office within its Office of Enforcement. That Office is respected and professionally managed. It provides whistleblowers with critical information necessary to file proper claims and understand their rights. It also operates a claims filing process that ensures the confidentiality of whistleblowers. We strongly recommend that the Department of Transportation study the operation of that office, and establish a similar office to ensure the proper implementation of the Act.⁵

By building on the success of the SEC program, and using its positive attributes as a foundation for the Department's final rules on the whistleblower program, we believe that the Department can finalize its whistleblower rules prior to the mandatory 18 month cut-off date. It is in the public interest, and consistent with the legislative intent behind the law, for the Department to have a fully functioning whistleblower program as quickly as possible. The public needs to be assured that the automobiles sold in the United States are safe. Congress has recognized that an effective whistleblower incentive program will play a key role in ensuring public safety. We therefore request that the Department publish proposed rules (based on the SEC model), and approve final rules as quickly as permissible under the Administrative Procedure Act.

We request an opportunity to meet with the Secretary of Transportation and the relevant staff members involved in the rulemaking process to fully explain our position on this critical safety issue.

Respectfully submitted,
/s/
Stephen M. Kohn
Executive Director

Enclosure: Proposed Auto Safety Whistleblower Rules

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⁴ *See* <http://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html>.

⁵ *See* <http://www.sec.gov/whistleblower>.