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DOT Docket No. NHTSA-2016-0098

Docket Management Facility, M-30
U.S. Department of Transportation
West Building, Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

**General Motors LLC, Receipt of Petition To Amend Takata DIR Schedule
Receipt of Petition
81 Federal Register 64575, September 20, 2016**

Advocates for Highway and Auto Safety, the Center for Auto Safety, and the Consumer Federation of America (safety groups) file these comments in opposition to the petition by General Motors LLC (GM, Petitioner) to delay the defect information report (DIR) filing scheduled for December 31, 2016 by 1 year (petition).¹ Safety groups are convinced that the Petitioner has failed to provide sufficient evidence to support the petition for modification of the DIR schedule.

Dangerous and seriously flawed Takata airbag inflators present a momentous danger to public safety. More than 65 million Takata airbags² are either already under recall or are subject to recall under the NHTSA-Takata Consent Order.³ Given the unparalleled nature of this safety threat, its pervasiveness in the vehicle fleet and its prominence in public and media attention, the NHTSA should not revise, amend or adjust its publicly announced plan to address the recall and repair of millions of Takata airbag inflators unless there is an extremely urgent reason to do so that is supported by clear necessity and strong evidence.

Standard of Proof

On July 22, 2016, the NHTSA published a notice outlining the procedure for petitioning the agency for modification or amendment of the DIR schedule established in the May 4,

¹ General Motors LLC, Receipt of Petition To Amend Takata DIR Schedule, Receipt of Petition, 81 FR 64575 (Sep. 20, 2016). (Petition Notice).

² U.S. Department of Transportation expands and accelerates Takata air bag inflator recall to protect American drivers and passengers, NHTSA, May 4, 2016.

³ Consent Order of November 3, 2015, In re: EA15-001 Air bag Inflator Rupture.

2016 amendment to the November 3, 2015 consent order with TK Holdings Inc. (Takata)
The standard of proof requires that:

the written data, information, and arguments regarding the petition and other available information demonstrate, by a preponderance of the evidence, that either:

- (i) there has not yet been, nor will be for some period of years in the future, sufficient propellant degradation to render the inflators contained in the particular class of vehicles unreasonably dangerous in terms of susceptibility to rupture; or
- (ii) the service life expectancy of the inflators installed in the particular class of vehicles is sufficiently long that they will not pose an unreasonable risk to motor vehicle safety if recalled at a later date.⁴

The agency provides limited details on the specific criteria it plans to use in determining whether the available evidence satisfies the preponderance of evidence standard of proof. However the notice does include a list of items which might be included in such evidence including inflator diffusion rates, booster and propellant moisture content (over time), wafer diameter, and closed-bomb test data. The agency notes further that the number of inflators tested, the age of the inflators tested, and the history of the vehicles from which the inflators were removed would be scrutinized. The agency also states that if predictive modeling were submitted as evidence, it would be required to be reviewed by NHTSA's expert.⁵ Finally, the agency makes clear that a petition will be denied if there has been a rupture incident in the field or in testing that involves the inflator type installed in the particular class of vehicles.⁶

Safety groups are concerned that the evidence provided by the Petitioner in support of the petition is insufficient. Petitioner states that it is not aware of any cases of rupture in the subject vehicles, but fails to state how many vehicles the prospective recall covers. The petition indicates that the Petitioner has examined more than 1,000 inflators "taken from older (MY 2007-2008) GMT900 vehicles, almost all of which were recovered from the high-risk Zone A region," and that no rupture was observed. The Petition does not state, however, what percentage of the total number vehicles and inflators covered in the upcoming Takata DIR the 1,000 inflators represent.⁷ Further, Petitioner provides no background on whether and how the 1,000 inflator sample (of 613 PSI-L YD and 385 SPI YP inflators) is representative of the unspecified number of inflators still in operation. The petition does indicate that an estimated 44,000 inflators had previously deployed in the field without rupture, suggesting that a substantially much larger number of these

⁴ NHTSA Enforcement Guidance Bulletin 2016-03; Procedure for Invoking Paragraph 17 of the May 4, 2016 Amendment to the November 3, 2015 Takata Consent order, Notice, 81 FR 47854 (Jul. 22, 2016). (Enforcement Notice).

⁵ *Id.*, at 47856.

⁶ *Id.*

⁷ General Motors LLC's Petition To Amend Takata DIR Schedule, p. 7.

suspect inflators, inflators that would be subject to recall as part of the next Takata DIR, remain on the road.

Moreover, the Petition states that only 12 inflators (six of each type) were actually subject to testing after artificially aging the units. While no ruptures were observed this raises two concerns regarding the evidence submitted in support of the petition. First, the Petitioner indicates that the aging conditions used were established by leaving a “vehicle outside in Miami, Florida – facing south, exposed to direct sunlight, during the hottest part of the year – and collected temperature and humidity measurements from sensors”.⁸ This information, however, fails to delineate whether or how the measurements taken during this apparently single trial are representative of the temperature and humidity cycling conditions experienced by all vehicles on the road. It is unreasonable to assume that the conditions measured in the single trial by the Petitioner represents the average case, let alone the extreme case, which could lead to the failure of a Takata inflator. Second is the collateral question of whether just six inflators of each type can be statistically representative of all similar inflators considering there is no information as to the total number of units still on the road.

The Petition states that a stress-strength analysis was performed which indicated that a rupture is unlikely based on measured propellant degradation.⁹ However, the Petitioner readily admits that it lacks the data to support the “Energetic Deployment Curve” (failure curve).¹⁰ The Petitioner has provided no evidence that the estimated failure curve based on other inflators is applicable to the inflators in question. Due diligence requires the Petitioner to continue to age inflators until rupture is observed in order to establish the failure curve. This was not done.

These four items, field data, ballistic testing of field parts, ballistic testing of aged parts, and stress-strength interference modeling, falls short of the evidence necessary to prove that the high bar of preventing even a single rupture over the next year has been met. Thus, while the Petition has met the “has not yet been” a rupture element of the first basis for seeking a delay, the petition does not meet the “nor will be for some period of years in the future,” element of this factual requirement. The information presented provides neither a conclusive nor reliable basis to believe that a rupture will not occur for a period of years.

In addition to the four items discussed above, GM also indicated that it has hired an outside lab to conduct a study to estimate life-expectancy of the subject inflators.¹¹ This study could be used to satisfy the second option for the burden of proof as established by NHTSA. However the Petition indicates that this study will not be completed until approximately August, 2017, just 3 months before the next phase of the DIR schedule is

⁸ *Id.* at 9.

⁹ *Id.* at 9.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 3.

to be met.¹² The agency should not consider pending research that has not been completed as evidence when evaluating the petition. In addition, should the petition be granted but the research study be delayed, the Petitioner may then, a year hence, request a further delay of the DIR to await those results. As the study is not, and will not, be completed at least until August, 2017, it has no bearing on the petition at hand.

Additionally, the NHTSA indicated that predictive modelling would be independently verified by the agency's expert.¹³ The public should be provided with a report of the analysis conducted by the independent agency expert before the petition is considered. Given the serious safety and public interest issues at stake and the highly abbreviated comment period provided, the public deserves to have that expert analysis available for review before the agency makes a decision as to the petition.¹⁴

Finally, the Enforcement Notice states that "a petition will be denied if there has been a rupture incident in the field or in testing that involves the inflator type contained in the particular class of vehicles."¹⁵ This statement is indicative of the concern which the NHTSA and the public have regarding the dangerous and unpredictable nature of the Takata inflators. While no ruptures may have occurred as *yet*, it is possible that a rupture could occur in the affected vehicles during the year delay sought in the petition.

Conclusion

The Petitioner has failed to provide sufficient evidence to support the petition for modification or amendment of the DIR schedule. The petition provides no analysis indicating that the sample of inflators used in ballistic testing is representative of the general population of inflators on the road. Moreover, the Petitioner failed to prove that the ageing process it conducted is representative of the most extreme case possible for those inflators that are still being used by the public. The stress-strength analysis lacked a defined failure criterion and, as such, provides no confidence for the conclusion drawn. Finally, the life-expectancy study has yet to be completed and should, therefore, have no bearing on the agency's decision of whether to grant the petition. In sum, the agency has established a high bar of a single failure being enough to invalidate any petition, and the petition as submitted does not provide reasonably reliable evidence that a failure will not occur during the delay requested. For the foregoing reasons the petition should be denied.

¹² *Id.*

¹³ Enforcement Notice at 47856.

¹⁴ The Enforcement notice established that the deadline for the comment period would "not be less than 14 days after the Federal Register notice." This does not require that the agency seek public comment in the minimal amount of time. In the present case, the petition was filed on the last possible date for submission of the petition, but now the public is expected to review the lengthy 263 page submission, in only 10 working days.

¹⁵ Enforcement Notice at 47856

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