

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

Hearing on “Examining Takata Airbag Defects”
December 3, 2014

ADDITIONAL QUESTIONS FOR THE RECORD
for David J. Friedman, Deputy Administrator
National Highway Traffic Safety Administration

The Honorable Lee Terry

- 1. What conversations has NHTSA had about prioritizing the flow of replacement airbag inflators? What factors have been relevant to NHTSA conversations about prioritizing certain geographic regions for replacement parts? What NHTSA personnel have taken part in any such conversations?**

RESPONSE: NHTSA has been engaged in ongoing conversations with Takata and each of the auto manufacturers involved in the recall regarding the prioritization of replacement air bag inflators. NHTSA will take all relevant factors into consideration in these discussions. Our overriding goal is the protection of the American public.

- 2. How does NHTSA determine whether to engage in its own independent testing of an auto-safety issue? What are the relevant factors that are considered? What NHTSA personnel would take part in any such conversations?**

RESPONSE: The decision whether to conduct independent testing is made on a case by case basis and involves several factors including, but not limited to, the following:

- maturity of the technology involved;
- prior NHTSA experience with the issue and its consequence including the availability of prior test data on the same or similar issue;
- severity of the consequence; and
- scope of vehicles potentially affected.

- 3. What conversations has NHTSA had over the last ten years over engaging in independent testing of air bag inflators? What relevant factors were examined in determining whether or not to conduct independent tests? What NHTSA personnel took part in any such conversations?**

RESPONSE: In 2011, NHTSA engaged contractors to test counterfeit air bags to determine if they presented a risk to safety. NHTSA continuously seeks ways to improve its safety programs, including the defects investigation program. NHTSA will use every tool available to us to address all issues that have safety implications, including engaging industry to do better in ensuring the safety of the motoring public.

- 4. When was NHTSA first informed about an incident involving a ruptured Takata airbag inflator? Was NHTSA aware of any other incident like this or was this an unusual occurrence? Did NHTSA do any follow up with Takata or any other vehicle manufacturer after hearing about the first incident? If so, please detail those communications and actions.**

RESPONSE: Takata inflator ruptures are occurring in two unique vehicle populations. Alpha incidents refer to inflator ruptures occurring in vehicle populations covered by national recalls that existed prior to the opening of NHTSA's current investigation (PE14016). Beta incidents refer to inflator ruptures from other vehicle populations.

For alpha incidents, a claim arising out of an airbag rupture occurring in a 2002 Honda Accord in May 2004 was among the claims reported by Honda to NHTSA in Honda's 2nd quarter 2004 early warning report filed with NHTSA in 2004. This report indicated that an airbag related claim had been made to Honda but did not indicate that a rupture had occurred. The agency received the first report alleging that an alpha airbag rupture had occurred through a consumer complaint (ODI # 10239965) filed in August 2008. On November 8, 2008, Honda filed a defect report with NHTSA for the first of the alpha recalls (08V-593).

- 5. After NHTSA alerted Honda to underreporting in its Early Warning Reports (EWRs) in 2012, did NHTSA conduct any further follow up with Honda in 2012? If so, please detail any steps NHTSA took in 2012 to address the underreporting. If no steps were taken in 2012, please explain why not.**
- a. Prior to 2014, was NHTSA satisfied that Honda had resolved their underreporting? If so, what was the basis for the agency's determination?**
 - b. What caused NHTSA to issue a Special Order on November 3, 2014 regarding Honda's underreporting of EWRs? Why was a Special Order addressing the EWR reporting issue not issued in 2012 or 2013?**

RESPONSE: In early January 2012, the Agency's Early Warning Division (EWD) determined that Honda had failed to report seven field incidents in EWR. NHTSA asked Honda to investigate the seven unreported incidents. In mid-January 2012, Honda explained to NHTSA that the seven unreported incidents involved verbal claims, which were not reportable under the TREAD Act. At that time, NHTSA considered Honda's explanation as fully resolving the issue. As a result, it determined that further follow-up was not needed.

NHTSA was not aware of any other issues with respect to Honda's death and injury reporting until 2014, when Honda notified the Agency of its widespread underreporting. NHTSA opened audit query AQ14-004 to investigate this issue. Honda further indicated that it had retained a law firm to prepare an audit of the EWR reporting issues and would update NHTSA on findings as the audit continued.

NHTSA decided to issue this Special Order for a number of reasons. The Agency determined that Honda needed to provide a full accounting by a specific date. NHTSA also decided that Honda should be compelled to respond to questions or issues that might not otherwise be addressed by Honda or its auditors. In addition, compelling Honda to respond to questions under oath would provide a better foundation for demanding civil penalties.

- 6. On November 26, 2014, NHTSA sent Takata a letter issuing a recall request for driver's side airbags due, in part, to "mounting data" demonstrating the existence of a safety defect. Please describe the "mounting data" NHTSA has acquired that supports its request to expand the regional field action to a national recall?**

RESPONSE: Acting in the interest of public safety and based on NHTSA's policy that all recalls should be national in scope unless an automaker can demonstrate that it should be otherwise, the Agency called for the expansion of the regional action for driver's side air bags because it identified additional driver's side inflator ruptures outside of the high absolute humidity regions encompassed by the existing recall. Two incidents were involved, one with a Honda vehicle in California and another with a Ford vehicle in North Carolina. These failures indicated that a regional action was not sufficient to address the existing risk. NHTSA's investigation of these incidents is ongoing.

- 7. Does NHTSA employ an expert on chemicals such as those used in Takata's propellant? If yes, how long has the expert(s) been employed by NHTSA? If not, why not? If not, does NHTSA plan to hire a chemical expert who specializes in propellant?**

RESPONSE: Several NHTSA employees have previous experience working with air bag propellants and/or fuse/igniter mechanisms from their prior careers at other federal agencies, as well as a number of air bag experts with field analysis and industry experience. NHTSA has also contracted with an industry expert in the specific inflator propellant chemistry used by Takata in its air bags.

- 8. Is NHTSA currently investigating why the agency closed an investigation into Honda in May 2010 after it had been opened in November 2009? If so, is there anything NHTSA can share today about why that investigation was closed only after 6 months?**

- a. There is an email chain from May 2010, shortly after this investigation was closed, between Takata and NHTSA where Takata representatives outline additional documentation they were compiling to send to NHTSA to supplement their original responses when they received the Closing Resume for the investigation. Did NHTSA consider reopening the investigation to review additional materials submitted by Takata or Honda back in 2010?

RESPONSE: NHTSA closed the investigation because Honda recalled all covered vehicles as part of that investigation. Takata provided what appeared to be an adequate explanation of the cause of the defect. At that time NHTSA had no evidence to indicate to the contrary.

NHTSA is currently investigating Honda and Takata, including issues covered by earlier investigations and recalls, including the 2010 recall. As we have findings and determine appropriate next steps, we will share them with the Committee.

- 9. Was NHTSA contacted about the three accident reports that occurred in Honda vehicles from May to August of 2007? If yes, what follow up, if any, did NHTSA perform at that time with Honda or Takata?**

RESPONSE: These three incidents were not reported to NHTSA at the time Honda initiated its recall (08V-593) in 2008.

- a. NHTSA has indicated, in light of the most recent rupture cases in California and North Carolina, that two rupture incidents are evidence of a trend worthy of a national recall—is this a new NHTSA standard? And why didn't the three reported 2007 ruptures trigger a similar response from NHTSA?

RESPONSE: NHTSA's policy is that all recalls are national in scope unless an automaker can demonstrate it should be otherwise. NHTSA therefore only accepts regional recall actions where both the specifics of the defect issue (the failure mechanism) and the field data support that a regional approach is reasonable. The two failures noted above occurred outside the region, indicating that the regional approach was no longer appropriate.

10. When did NHTSA become aware of the airbag inflator rupture in Santa Monica, California (which occurred in a 2005 Honda vehicle)? When did NHTSA become aware of the airbag inflator rupture in North Carolina (which occurred in a 2007 Ford Mustang)?

RESPONSE: For the 2005 Honda Accord incident in California, NHTSA received a consumer complaint (ODI #10605877) on June 25, 2014 and then ensured that Honda expanded its recall to cover the entire state of California; and for the 2007 Ford Mustang incident in North Carolina, NHTSA received a consumer complaint (ODI #10651492) on October 30, 2014 and then called for the national recall. All 5 automakers with affected driver-side Takata air bags have now moved forward with national recalls.

11. Please provide a timeline showing when NHTSA became aware of the CA and NC ruptures referenced above, what actions it took in response to those ruptures, and when it completed its investigation of the CA and NC ruptures.

RESPONSE: The timeline is included in the response to question 10. Our investigation regarding the Takata air bag inflators is still ongoing. We are reviewing these two incidents as a part of our continuing investigation.

12. What should NHTSA have done differently in the case of Honda's failure to report incidents involving death or injury in its EWRs?

- a. **What should NHTSA have done differently to better address the rupturing airbag inflator problem in 2005 when Takata first learned of the ruptured airbag in Alabama?**
- b. **Is there anything NHTSA could have done to accelerate a resolution to the rupturing airbag issue between 2008 and 2011 when Honda was conducting recalls of its vehicles with Takata airbags? Could NHTSA have done anything to prevent further airbag ruptures after discovering that the bad stamp press was not the root cause?**

- c. Could NHTSA officials have noticed a pattern suggesting that Takata's evolving explanations for airbag ruptures were inadequate? What changes could be made to NHTSA—other than additional funds—such that NHTSA would be better positioned to perceive such a pattern?**

RESPONSE: NHTSA continuously seeks ways to improve its safety programs, including the defects investigation program. We will make all necessary improvements to help ensure the safety of the motoring public. The specific issues raised in this inquiry are related to the ongoing Takata investigation and as we have findings and determine appropriate next steps, we will share them with the Committee.

- 13. On November 26, 2014, NHTSA issued a recall request letter urging a national recall of driver side airbags to Takata. In their December 2, 2014 response, Takata questioned NHTSA's decision to direct this demand to the manufacturer of original equipment. Why did NHTSA send the recall request letter to Takata rather than the motor vehicle manufacturers? Has NHTSA ever sent a recall request letter to a manufacturer of original equipment? If so, please provide a detailed explanation of each instance in which the agency took this action. If not, please provide a detailed explanation why the agency did so in this instance and who made that determination.**

RESPONSE: NHTSA is currently investigating Takata regarding the air bag inflators. NHTSA issued the November 26, 2014 recall request letter to Takata in part because Takata is responsible for the common design and manufacturing elements present in the driver's side inflators provided by Takata to various automakers and because of Takata's previous initiation of recalls for inflator defects involving improperly manufactured propellant or defects stemming from exposure to high absolute humidity.

It is unusual for NHTSA to send recall request letters to original equipment manufacturers, but such action was appropriate to protect drivers from air bag ruptures.

- 14. Do you believe that NHTSA has the authority to compel a manufacturer of original equipment to conduct a recall for a safety-related defect? If so, please provide the basis for this determination and provide a list of any previous examples where the agency exercised this authority.**

RESPONSE: Yes. However, because NHTSA's investigation into this matter is ongoing, I respectfully decline to respond in detail on the record because it would involve public disclosure of issues and Agency positions that may figure prominently in the case of any litigation with Takata.

- 15. NHTSA first only identified Florida, Hawaii, Puerto Rico, and the U.S. Virgin Islands as areas of high absolute humidity in its request to motor vehicle manufacturers to participate in a regional field action to collect potentially defective Takata airbag inflator parts. Has NHTSA modified that original list of states and territories to include other states and territories? If so, when and why did NHTSA make that determination and based on what measurement?**

RESPONSE: Our investigation regarding the Takata air bag inflators is still ongoing, including issues related to areas of high absolute humidity. At present time, NHTSA has

identified the Gulf coast region (parts of Georgia, Alabama, Mississippi, Louisiana, and Texas) as well as Guam and the Mariana Islands as additional areas of high absolute humidity.

The Honorable Gregg Harper

1. **Mr. Friedman, at the November 20 Senate Commerce Committee hearing, you said NHTSA “acknowledged” a plan authorizing dealers to disable potentially defective passenger side air bags where replacement parts were unavailable, as long as they also tell customers not to put someone in the passenger seat. Is NHTSA’s “acknowledgment” of this approach an endorsement, and should it be an option for all manufacturers of vehicles with passenger-side air bags subject to recall? As the nation’s top highway traffic safety official, can you tell this subcommittee that you will put into writing the legal and policy basis supporting the disabling of recalled air bags until replacement parts are available?**

RESPONSE: The Safety Act does not authorize NHTSA to “approve” or “endorse” remedies. When a manufacturer implements a recall, they are required to notify the Agency of the recall and the remedy. The acknowledgement referred to above is standard NHTSA policy to confirm with the automaker that it has received such a notice.

The Safety Act prohibits manufacturers and dealers from disabling properly functioning safety equipment. Defective air bags do not function properly and there is therefore no prohibition on disabling them.

The Honorable Adam Kinzinger

1. **As reported in a November 15, 2014 article in the *Detroit Free Press*, a young woman driving a 2006 Cobalt with a salvage title that her parents had bought for her died in a crash caused by one of GM's faulty ignition switches. Regrettably, the parents had gone to a dealership to get any outstanding recall issues on the vehicle remedied. The article highlighted that the dealership informed the consumer that they did not work on any car under a salvaged title.**

Does NHTSA agree that automakers are required to apply their recall campaigns equally to vehicles with both clean and salvage titles? Does NHTSA agree that automakers must remedy recalls (through replacement parts, fixing or buying back recalled parts) for all vehicles regardless of title?

RESPONSE: NHTSA discourages any consumer from driving a vehicle with a salvage title.

2. **During recent testimony you stated:
“...I asked 12 major auto makers. I called them to Washington to talk to them about the need for a new normal when it comes to recalls. No more hiding information. No more hiding behind attorney/client privilege. No more waiting to prove beyond a shadow of a doubt**

there's a problem. No more fighting us when we have clear evidence of defects. They need to act much more quickly.”

Would NHTSA agree to convening a meeting of automakers and professional automotive recyclers to address issues critical to ensure the safety of our nation's roads and vehicles?

RESPONSE: NHTSA is committed to taking all steps to ensure the safety of the motoring public.

The Honorable Jan Schakowsky

1. In the November 26, 2014, Recall Request Letter to Takata, NHTSA states that it may begin proceedings to seek penalties and remedies available by law. These civil penalties could be up to \$7,000 per violation, i.e., per vehicle that would have been subject to a national recall.

a. Please confirm that the maximum penalty NHTSA will be able to obtain from Takata for the airbag rupture defect is \$35 million.

RESPONSE: Under 49 U.S.C. § 30165(a), the maximum penalty for a related series of violations is limited to \$35,000,000.

b. The Vehicle Safety Improvement Act of 2014 would increase the penalty per violation and eliminate the maximum penalty cap. NHTSA has testified before this Subcommittee in support of being able to impose higher penalties. Is this situation with Takata airbags a good example of how higher penalties could be a better deterrent to manufacturers who do not follow auto safety law?

RESPONSE: Takata's most recent annual report stated that the company's sales for North and South America exceeded \$500,000,000 in each of the 4 quarters of the company's fiscal year, or more than \$2 billion in annual revenues. Auto manufacturers have annual revenues in the billions of dollars. The current penalty cap, which limits the maximum penalty to \$35,000,000, prevents NHTSA from demanding penalties that would influence the behavior of companies of this size based on financial impact. For this reason, the Administration is seeking to increase this amount to \$300,000,000 in the GROW AMERICA Act.

c. What is NHTSA's process for obtaining civil penalties? If Takata does not cooperate, approximately how many months until Takata will actually pay penalties for the airbag rupture defect?

RESPONSE: With very few exceptions, NHTSA has historically obtained civil penalties under the Safety Act through an informal process in which manufacturers are presented with the Agency's position and offered an opportunity to resolve NHTSA's claim without further proceedings.

In this case, NHTSA has made an informal request asking Takata to recall driver's side air bag modules nationwide. If Takata continues to deny the existence of a

defect in these modules and NHTSA determines a fine is warranted, NHTSA will have to complete a number of procedural steps and make a final determination that a defect exists. Once such a determination has been made, the Agency may then be able to demand civil penalties based on Takata's failure to conduct a recall when it knew, or should have known, the air bag modules were defective. If Takata refused to respond to that demand, NHTSA would then have to refer the matter to the Department of Justice. If Takata were to continue to maintain that the driver's side modules were not defective, the issues would have to be resolved through litigation in Federal court.

2. In response to NHTSA's Special Order to Honda regarding Honda's Early Warning Reporting (EWR) failures, Honda revealed that it failed to report more than 1,700 claims involving deaths or injuries. There have been reports that NHTSA advised Honda of discrepancies in January 2012. But NHTSA's Special Order to Honda was not issued until November 3 of this year.

a. Why did NHTSA not follow up with Honda after the Agency alerted Honda to these problems in 2012? And why did it take until the end of 2014 to have this underreporting resolved?

RESPONSE: In early January 2012, the Agency's Early Warning Division (EWD) determined that Honda had failed to report seven field incidents in EWR. NHTSA asked Honda to investigate the seven unreported incidents. In mid-January 2012, Honda explained to NHTSA that the seven unreported incidents involved verbal claims, which were not reportable under the TREAD Act. At that time, NHTSA considered Honda's explanation as fully resolving the issue. As a result, it determined that further follow-up was not needed.

NHTSA was not aware of any other issues with respect to Honda's death and injury reporting until 2014, when Honda notified the Agency of its widespread underreporting. NHTSA opened audit query AQ14-004 to investigate this issue. Honda further indicated that it had retained a law firm to prepare an audit of the EWR reporting issues and would update NHTSA on findings as the audit continued.

b. Briefly describe how the Early Warning Reporting system currently works and how EWR reports are useful to NHTSA's mission.

RESPONSE: In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Pub. L. No. 106-414. Up until the TREAD Act's enactment, NHTSA relied primarily on analyses of complaints from consumers and technical service bulletins (TSBs) from manufacturers to identify potential safety related defects in motor vehicles and motor vehicle equipment. Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects or information related to foreign recalls and safety campaigns.

NHTSA implemented the TREAD Act through regulations requiring that motor vehicle and equipment manufacturers provide certain early warning data. 49 CFR part 579, subpart C. The EWR rule requires quarterly reporting of early warning

information on certain classes of vehicles, trailers, tires and child restraints, including production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports and product evaluation reports) involving specified systems or components.

The EWR information NHTSA receives is stored in a database, called Artemis, which also contains additional information (e.g., domestic and foreign recall details and complaints filed directly by consumers) related to defects and investigations. The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes a huge volume of early warning data and documents submitted by manufacturers. Using its traditional sources of information, such as consumer complaints from vehicle owner questionnaires (VOQs) and manufacturers' own communications, and the additional information provided by EWR submissions, ODI investigates potential safety defects. These investigations often result in recalls.

- c. Eight of the unreported claims were of seven injuries and one death from Takata airbag ruptures. However, the other 1,721 unreported claims must include claims of other failures, such as failures of brakes, tires, locks, etc. Will NHTSA be reviewing the other 1,721 unreported claims for other possible safety issues? When will that review be completed?**

RESPONSE: Yes, NHTSA is reviewing this information and is seeking further information from Honda regarding the incidents described in Honda's response to NHTSA's Special Order. If NHTSA determines there are any potential safety issues based on this new data, the Agency will take appropriate action to protect public safety.

- d. Is NHTSA pursuing civil penalties against Honda for its failure to comply with the TREAD Act? Would those penalties also be subject to a maximum cap as discussed in the previous question?**

RESPONSE: Honda and the Agency have entered into a Consent Agreement in which Honda has agreed to pay civil penalties in the amount of \$70 million dollars for two separate violations of the TREAD Act reporting requirements. Honda agreed to pay the maximum civil penalty of \$35 million dollars for failing to report claims of death and injury incidents and the maximum civil penalty of \$35 million dollars for failing to report warranty data required by NHTSA's TREAD regulations. Were the \$35 million dollar maximum cap not in force, the fines would likely have been higher.

- e. Honda has announced that it will conduct a national recall of driver's side airbags. If it did not do so, and NHTSA was forced to seek penalties and remedies available by law, would NHTSA be able to seek penalties for the failure to recall as a separate series of violations, distinct from Honda's underreporting under the TREAD Act, or would those be considered a "related series of violations" and combined under the same maximum penalty cap?**

RESPONSE: The Agency considers any failure to make a timely determination that a

safety related defect exists to be a separate and distinct violation or series of violations from any failure to report information required under the TREAD Act.

- 3. Takata, the automakers, and you testified that the root cause of the airbag ruptures is still unknown. Takata claims that high humidity, high temperature, and the age of the vehicle are factors contributing to the ruptures. What is NHTSA doing to ensure that the new airbags currently being installed into cars in Florida will not have the same problems in five or 10 years?**

RESPONSE: Our investigation regarding the Takata air bag inflators is still ongoing, including issues related to the appropriateness of remedies. Our goal is to ensure the safety of occupants of vehicles with defective Takata air bags and we will take appropriate steps if we determine that the new air bags being installed into cars do not appropriately remedy the risk of rupturing air bags.