



ADVOCATES  
FOR HIGHWAY  
& AUTO SAFETY

May 12, 2016

The Honorable Michael C. Burgess, M.D.  
Chairman  
Committee on Energy and Commerce  
Subcommittee on Commerce, Manufacturing and Trade  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Burgess:

Thank you for the opportunity to testify before the Subcommittee on Commerce, Manufacturing and Trade regarding oversight of the National Highway Traffic Safety Administration (NHTSA) on April 14, 2016. Below, please find my answers to the additional questions for the record.

The Honorable Michael C. Burgess, M.D.

**In your testimony you state that the defective airbags are still killing drivers long after they should have been removed and replaced. How can we ensure that all defective airbags are, in fact, being replaced? And how can we ensure that they are not being replaced with airbags that may also be defective?**

There are several remedies available to address the public safety crisis created by the defective air bags manufactured by Takata that have resulted in millions of vehicle recalls and have caused at least 10 deaths and 100 injuries.<sup>1</sup>

First, the agency has yet to identify every vehicle that contains these dangerous devices. This seemingly never-ending nightmare will not be resolved until the agency recalls every vehicle that contains a deadly Takata airbag and they are replaced with airbags that have been proven to be safe. NHTSA must order the vehicle manufacturers and dealers to locate each and every vehicle equipped with a potentially defective Takata airbag and to personally contact the owner, by telephone, email or in person to ensure that information regarding the serious nature of the safety defect has been communicated directly to the vehicle owner. Moreover, vehicle manufacturers and dealers should be obligated to provide, free of charge, loaner/rental vehicles to owners who do not want to use the vehicle with the defective Takata airbag while awaiting the airbag replacement remedy. While this procedure goes beyond the usual contact requirements of the Motor Vehicle Safety Act, the danger posed by the defective Takata airbags are so grievous that an extraordinary effort by the auto industry is necessary to ensure that all vehicle owners are made personally aware of the danger presented and the options to obtain a remedy. Used vehicles that contain these airbags should not be permitted to be sold to consumers before being remedied. Under federal law, new vehicles subject to a recall may not be sold to consumers. Moreover, the FAST Act prohibits automobile dealers from renting any vehicles that are subject to a safety recall until they are fixed.<sup>2</sup> However, there is no such restriction on the sale of “used” vehicles even when they have the exact same defects such as malfunctioning airbags. The problem of selling these dangerous used cars is

widespread. According to CarFax, the company that provides vehicle history reports to the public, 5 million vehicles with an open recall were bought and sold by consumers in 2014. Congress needs to close the loophole that allows auto dealers to sell used vehicles to consumers that have unrepaired recalls.

Second, NHTSA must be given the authority to take immediate action when the agency determines that a defect involves a condition that substantially increases the likelihood of serious injury or death if not remedied immediately. This “imminent hazard” power is needed to protect the public, by allowing the agency to take immediate action to direct manufacturers to ground, recall and immediately notify consumers a defect and remedy without delay. In this case, such authority may have allowed the Department of Transportation to move more quickly to address the problems with the defective Takata airbags. Sadly, far too many Americans have been killed by a defect in their vehicle they did not know existed. As serious motor vehicle recalls continue to come to light, this critical reform will, in the future, give NHTSA a powerful tool to expedite remediating the danger posed by defective motor vehicles.

Third, by entering into voluntary agreements with manufacturers to recall defective vehicles instead of issuing official recalls enforced by a federal court, NHTSA is encouraging manufacturers to slow-walk recalls with deadly consequences as demonstrated by the ongoing fiasco involving Takata airbags. On March 24, 2016, BMW informed NHTSA that it will be unable to meet its March 31 deadline to acquire a sufficient supply of remedy parts for a Takata inflator under recall. The alternate inflator that BMW’s supplier had developed failed during recent testing. NHTSA has now given BMW until August 31, 2016, to replace the defective air bags.<sup>3</sup> Also, on February 12, 2016, BMW, Daimler Vans, Ford, Honda, Mazda, Mercedes-Benz and Volkswagen expanded their Takata recalls to include vehicles equipped with driver-side air bag inflators that Takata has declared defective.<sup>4</sup>

At this time, we do not have confidence nor adequate assurance from NHTSA that Takata replacement airbags manufactured are completely safe and free of similar defects. In order for NHTSA to ensure that the replacement airbags are safe the agency must require that the devices contain a chemical that is not susceptible to environmental conditions, such as humidity, that could degrade the active ingredients in the airbag module. In addition, because of the Takata airbag fiasco, federal motor vehicle safety regulations must include testing of equipment under a wide range of environmental and other operating conditions foreseeable in the life cycle of a vehicle to ensure that failures related to these aspects do not place the public at unnecessary and unreasonable risk. In the context of the current, ongoing recall, this means that the NHTSA should order special, additional life-cycle testing of the design and chemical formula used in the replacement airbags to ensure those airbags are free of any safety defect. Unfortunately, NHTSA is allowing Takata to fill existing contracts to supply airbags to manufactures with the same defective design until December of 2018. That decision by NHTSA will also potentially result in many of these vehicles at some future date being recalled for replacements.

**Ms. Gillan, you state that NHTSA has failed to adequately protect a child in a rear seat when the front seatback falls or collapses in a crash. What can the industry and NHTSA do to remedy this?**

NHTSA and the industry can adopt safer occupant protection requirements for seatbacks that will prevent many of the seatback failures experienced in the existing passenger vehicle fleet.

According to the Center for Auto Safety (CAS), since 1990, nearly 900 children seated behind a front-seat occupant or in a center rear seat died in rear impacts of 1990 and later model-year cars.<sup>5</sup> Yet, the safety standard for seatback performance has not been upgraded since it was first adopted in 1967 – nearly 50 years ago. Regulatory compliance rear impact crash tests for fuel system integrity conducted by NHTSA to upgrade Federal Motor Vehicle Safety Standard (FMVSS) 301 in 2003 revealed that almost every seatback fails, allowing a front seat occupant to be propelled into the rear seating area. Seat belt systems that are effective in frontal crashes are not designed to keep front seat occupants from slipping out of the belt system when the seatback collapses, leading to an increase in the risk of injury to the front seat occupant, including paraplegia or quadriplegia.

The Children’s Hospital of Philadelphia (CHOP) has determined that collapsing seatbacks are a serious threat to children seated behind adult occupants in the front seats. Many children were found to have been injured in crashes in which seatbacks collapse or there is excessive seat deformation. The failure of a seatback directly in front of a child places the child at risk, and when there is an occupant in the seat that fails there is double risk of injury to the child.<sup>6</sup> NHTSA noted in a 1997 study that an examination of the interaction between front seatback failures and injuries to rear seat occupants may be important to assess the entirety of the occupant protection implications of seatback failure.<sup>7</sup> Additionally, NHTSA has stated that the weight of a passenger when added to the weight of the seatback itself will, even in a low severity crash, produce forces exceeding the level required by FMVSS 207.<sup>8</sup> Nonetheless, the agency has not yet taken any regulatory actions to upgrade an outdated standard they have known for decades is both ineffective and potentially lethal.

Advocates supports the attached petition filed with NHTSA by CAS in March of 2016 asking that the agency modify its child seating recommendations to warn parents of the dangers associated with setback failures.<sup>9</sup> The CAS petition contains a timeline that details NHTSA’s inaction on this critical safety issue.<sup>10</sup> In fact, as noted in the timeline, NHTSA accepted a petition filed by researcher Alan Cantor 1989 to upgrade the safety standard for seatback performance but failed to take any further action.<sup>11</sup> In 2015, Mr. Cantor again filed a petition requesting that the agency upgrade its strength requirements for front-seat seatbacks.<sup>12</sup> NHTSA cannot ignore this problem any longer and must upgrade the performance of vehicle seatbacks, including head restraints, to increase the protection of children and adults in passenger motor vehicle crashes.

Thank you for the opportunity to answer these additional questions for the record. Please let me know if you have any further questions or require any additional information.

Sincerely,



Jacqueline Gillan  
President

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<sup>1</sup> Associated Press, *Honda reports 10th U.S. death from Takata air bags*, Apr. 6, 2016.

<sup>2</sup> 49. U.S.C. Section 30120(i).

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<sup>3</sup> <http://www.safercar.gov/rs/takata/takata-timeline.html>

<sup>4</sup> *Id.*

<sup>5</sup> Center for Auto Safety (CAS), *PETITION* (Mar. 9, 2016).

<sup>6</sup> Jermakian, J.S., Arbogast, K. B., Durbin, D.R. and Kallan, M.J. Injury Risk for Children in Rear Impacts: Role of the Front Seat Occupant, *Ann. Adv. Automot. Med.*, 52:109-16 (Oct., 2008).

<sup>7</sup> Preliminary Assessment of NASS CDS Data Related to Rearward Seat Collapse and Occupant Injury; U.S. DOT, NHTSA (May, 1997).

<sup>8</sup> Performance of Seating Systems in a FMVSS No. 301 Rear Impact Crash Test, ESV Paper No. 18-00248, U.S. DOT, NHTSA.

<sup>9</sup> Center for Auto Safety (CAS), *PETITION* (Mar. 9, 2016).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*