

United States Senate

WASHINGTON, DC 20510

August 27, 2015

The Honorable Dr. Mark Rosekind
Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE, West Building
Washington, D.C. 20590

Dear Administrator Rosekind:

We are writing to reiterate our request that you call for a rulemaking to increase early warning reporting requirements for automakers in order to make more potentially life-saving information available to NHTSA and the public. In light of the 124 confirmed deaths from the General Motors (GM) ignition switch recall and the 8 confirmed deaths from the Takata airbag recalls—and knowing that these fatal defects could and should have been detected sooner—additional rules to ensure transparency and early defect detection are badly needed to ensure the next fatal defect can be remedied as soon as possible.

Several weeks ago, during the Commerce, Science, and Transportation Committee hearing on the Takata recalls and the Inspector General (IG) report on NHTSA, you testified that “the agency and I will do everything we can... to try and make that information available,” and that after evaluating the legal conflicts, “if the evaluation shows a rulemaking would be useful for transparency, yes,” you would call for such a rulemaking. Such a rulemaking should require automobile and equipment manufacturers to automatically submit accident reports or other documents that first alert them to a fatality involving their vehicle or equipment to the NHTSA Early Warning Reporting (EWR) database. It should also ensure that NHTSA makes those documents, as well as additional categories of information submitted by automakers to NHTSA as part of its EWR reporting, public in an online, searchable database (redacting any information that is exempt from public disclosure under the Freedom of Information or Privacy Acts).

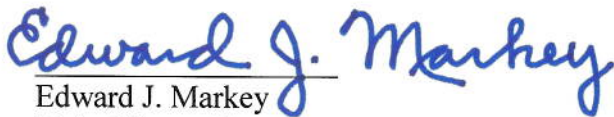
The need for these new rules can be illustrated by two recent examples of how such early warning information, had it been made available, could have prevented additional deaths or injuries. As noted in the report on the GM ignition switch defect by former U.S. attorney Anton R. Valukas, the GM ignition switch defect was correctly identified in a 2007 document that GM submitted to NHTSA related to the deaths of two Wisconsin teenagers—a document that was never made public until it was released at a May 7, 2014 hearing in the Commerce, Science, and Transportation Committee. The Takata airbag defect was known to both Honda and Takata when an Oklahoma teenager was killed by an exploding airbag in 2009. A secret court settlement was reached, but Honda never reported the Oklahoma fatality to NHTSA’s EWR database. Had all of this information been made public in a timely manner, it is possible that many of the subsequent deaths and injuries related to these defects could have been avoided. Both of these failures were also noted in the Inspector General’s June 18, 2015 audit report detailing the systematic failures of NHTSA to acquire and properly analyze safety-related data.

Recently, Fiat Chrysler Automobiles (FCA) was found to have violated the Motor Vehicle Safety Act in the way it executed 23 vehicle safety recalls covering more than 11 million defective vehicles. As a result, NHTSA has taken unprecedented enforcement action to fine and increase oversight of the automaker, and specifically to provide NHTSA with comprehensive reporting on each death or injury incident that is reportable to NHTSA. This includes the incident police report (if available), the electronic data recorder (EDR) download (if available), a summary of the incident, and FCA's assessment of the incident without regard to attorney client privilege or attorney work product. This enforcement action is an improvement over the status quo, and it follows some of the measures that we have put forth in the Early Warning Reporting System Improvement Act, as it requires FCA to automatically submit documents related to potentially-fatal defects. However, this move by NHTSA falls short by not disclosing this information to the public and, of course, by only applying it to one automaker.

The longer NHTSA waits to issue new requirements that automakers automatically submit all early warning documents related to potentially fatal defects and that NHTSA make this information available to the public on a user-friendly website, the higher the chance that the next fatal defect goes undetected. It is time to recall our defective early warning reporting system and issue new rules to detect fatal defects.

Thank you for your consideration of this important matter. We look forward to receiving a response within 10 business days.

Sincerely,



Edward J. Markey
United States Senator



Richard Blumenthal
United States Senator