

# United States Senate

WASHINGTON, DC 20510

October 15, 2014

The Honorable David Friedman  
Acting Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE, West Building  
Washington, DC 20590

Dear Acting Administrator Friedman:

We write to request information about how the National Highway Traffic Safety Administration (NHTSA) conducts so-called 'regional' recalls, in which vehicles with safety defects are recalled only within certain parts of the country. We believe that this practice risks the safety of those whose cars may not be registered in the states in which the recalls occur. This is because even if the vehicles are not actually registered in the particular states subject to the regional recall, they may nevertheless be driven there. These regional recalls also do not always include a sufficiently large part of the country to ensure safety. Regional recalls that treat cars and trucks like they never leave their home makes no sense as a policy to protect American families.

We also write to request additional information about the manner in which NHTSA ensures compliance with its publicly available Early Warning Reporting (EWR) system in light of an apparent failure by Honda to comply with the requirement to submit quarterly reports of incidents in which the manufacturer learns of potential defects that could have caused fatalities or serious injuries. We are concerned that NHTSA has not made real efforts to determine whether automakers have complied with this requirement to alert the public to potentially deadly defects.

Regional recalls can adversely impact automobile safety by failing to reach all potentially affected vehicles. For example, drivers can permanently or temporarily move or drive from one geographic area that is not the target of a regional safety recall to another that is, but never be informed by the automaker to take their vehicles in for repair. Regional recalls can also sometimes have apparently arbitrary geographic boundaries determined by automakers and approved by NHTSA.

For example, numerous reports of Takata airbags exploding and killing or injuring drivers and passengers with shrapnel have been received since 2004. More recently, these airbags have been the subject of several recalls and service campaigns, which are voluntary measures not subject to NHTSA enforcement and which do not carry with them a requirement that dealers perform the needed service when drivers request it. Yet these recalls and service campaigns have been inconsistently applied across manufacturers, types of airbags covered and geographic regions to which they apply, as can be noted from some of the more recent developments:

- On June 11, 2014, Takata told NHTSA<sup>1</sup> that it would conduct a service campaign to repair airbags in “Puerto Rico, Florida, Hawaii, and the Virgin Islands, based on the high levels of absolute humidity in those areas.” It is unclear how ‘absolute humidity’ has been determined in these areas, since most weather forecasting measurements rely on ‘relative humidity’ instead. It is also unclear why this effort was limited to those states, given the high levels of summer-time humidity experienced by large portions of the rest of the country.
- On June 11, 2014, Toyota<sup>2</sup> began a nationwide recall of more than 800,000 vehicles containing Takata passenger-side airbags.
- In June-July, 2014, BMW,<sup>3</sup> Chrysler,<sup>4</sup> Ford,<sup>5</sup> Mazda<sup>6</sup>, Mitsubishi<sup>7</sup>, Nissan<sup>8</sup>, Subaru<sup>9</sup>, and Toyota<sup>10</sup> started service campaigns for vehicles containing Takata airbags (including a combination of passenger- and driver-side airbags) in Puerto Rico, Florida, Hawaii, and the Virgin Islands.
- On June 19, 2014, Honda<sup>11</sup> announced a nationwide recall of about 1 million of its vehicles that contain Takata passenger-side airbags.
- On June 19, 2014, Honda announced<sup>12</sup> that it would conduct a service campaign for almost 3 million vehicles containing driver-side Takata airbags in Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico and the US Virgin Islands “based on the high absolute humidity levels common to those areas.”
- On June 19, 2014, Honda<sup>13</sup> announced that it would conduct a service campaign for almost 700,000 of its vehicles containing Takata passenger-side airbags in Alabama, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico and the U.S. Virgin Islands due to those areas’ “high absolute humidity.”

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<sup>1</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM457251/INLE-PE14016-59600.pdf>

<sup>2</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM456830/RCDNN-14V312-6319P.pdf>

<sup>3</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Takata%20BMW%2014V348%20Part%200573.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Takata%20BMW%2014V348%20Part%200573.pdf)

<sup>4</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Takata%20Chrysler%20Field%20Action.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Takata%20Chrysler%20Field%20Action.pdf)

<sup>5</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Takata%20Ford%20Field%20Action.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Takata%20Ford%20Field%20Action.pdf)

<sup>6</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Takata%20Mazda%2014V344.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Takata%20Mazda%2014V344.pdf)

<sup>7</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/14V421%20Takata%20Mitsubishi.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/14V421%20Takata%20Mitsubishi.pdf)

<sup>8</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Takata%20Nissan%2014V340.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Takata%20Nissan%2014V340.pdf)

<sup>9</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Takata%20Subaru%2014V471.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Takata%20Subaru%2014V471.pdf)

<sup>10</sup> [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/Toyota%20Takata%20Airbag%20Recall%2014V-350.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/Toyota%20Takata%20Airbag%20Recall%2014V-350.pdf)

<sup>11</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM457390/RCDNN-14V349-6465P.pdf>

<sup>12</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM457412/RCDNN-14V351-7745.pdf>

<sup>13</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM457414/RCDNN-14V353-7456.pdf>

- On July 3, 2014, Subaru<sup>14</sup> announced a nationwide recall of about 9,000 vehicles containing Takata passenger-side airbags.
- On July 15, 2014, BMW<sup>15</sup> announced a nationwide recall of almost 600,000 of its vehicles that contain Takata passenger-side airbags.

The wide range of automaker response to the potential safety defect in Takata airbags is puzzling and inconsistent.

We also have concerns about the manner in which Honda has complied with its requirement to report to NHTSA's EWR database any incidents in which the manufacturer learned of potential defects that could have caused fatalities or serious injuries. For example, the Center for Auto Safety has informed us that there is no EWR report of a 2009 death<sup>16</sup> of an Oklahoma teenager whose car crashed in a school parking lot and whose airbag then exploded, although Honda was aware of the incident. While NHTSA may have been made aware of this incident by Honda, EWR's purpose is to provide early public warnings of potentially fatal safety defects, and this public notification apparently did not occur.

In your July 28, 2014, response<sup>17</sup> to the July 2, 2014, letter<sup>18</sup> we sent you that was related to the manner in which NHTSA enforces compliance with EWR, you told us that "it is not possible to verify the accuracy of each piece of information submitted in early warning reporting" and that NHTSA enforces compliance "as appropriate". NHTSA's response noted only two examples of such enforcement efforts – one in 2007, against motorcycle manufacturer Piaggio Group Americas, Inc., and a request for information you sent to Ferrari following our letter which had noted that Ferrari had never filed a single EWR report. We find it troubling that NHTSA appears to take such a limited approach to EWR compliance.

Please provide responses to the following questions and requests for information by November 7, 2014:

- 1) When does NHTSA expect to complete its investigation into what is causing some Takata airbags to explode? Has NHTSA sent any requests for information to manufacturers related to this issue? If so, please provide us with copies of each such request. If not, then how does NHTSA intend to obtain information needed to complete its investigation?

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<sup>14</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM458062/RCDNN-14V399-5724.pdf>

<sup>15</sup> <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM458290/RCDNN-14V428-7196P.pdf>

<sup>16</sup> [http://wheels.blogs.nytimes.com/2011/12/02/honda-adds-273000-vehicles-to-long-running-air-bag-recall/?\\_php=true&\\_type=blogs&\\_r=0](http://wheels.blogs.nytimes.com/2011/12/02/honda-adds-273000-vehicles-to-long-running-air-bag-recall/?_php=true&_type=blogs&_r=0)

<sup>17</sup> [http://www.markey.senate.gov/download/2014-07-29\\_nhtsa\\_re\\_em\\_rb\\_letter](http://www.markey.senate.gov/download/2014-07-29_nhtsa_re_em_rb_letter)

<sup>18</sup> <http://www.markey.senate.gov/news/press-releases/markey-and-blumenthal-query-nhtsa-on-auto-injury-and-defect-reporting-compliance>

- 2) How have you validated measurements of 'absolute humidity,' and what were the measurements thereof in Puerto Rico, Florida, Hawaii and the Virgin Islands that were provided by Takata to NHTSA in June 2014 as compared to the 'absolute humidity' levels in the rest of the United States in the summer? Please provide us with all documents that supported the NHTSA decision to allow a limited regional recall or service campaign in this case.
- 3) What is the safety difference between driver-side airbags that explode and passenger-side airbags that explode? If no such difference exists, then why doesn't NHTSA require automakers to treat passenger- and driver-side airbags the same way for purposes of conducting safety recalls or service campaigns?
- 4) Please provide us with copies of all documents related to NHTSA's policies, procedures, and approaches for regional recalls.
  - a. Since 1995, please provide us with i) policy guidelines issued by NHTSA both internally and externally regarding regional recalls, ii) guidance documents regarding regional recalls, iii) legal opinions from NHTSA attorneys regarding the legality of regional recalls, iv) portions of NHTSA employee training manuals discussing the review of proposed regional recalls and v) any other document that describes NHTSA's policy regarding regional recalls.
  - b. Since 2014, please provide us with copies of i) correspondence between NHTSA and manufacturers related to any proposed or actual regional recall, ii) internal office memoranda or other communications regarding proposed or actual regional recalls, iii) notes from any NHTSA meetings in which actual or proposed regional recalls were discussed, iv) notes from meetings between NHTSA and manufacturers in which actual or proposed regional recalls were discussed, and v) any other document that related to the consideration or approval of proposed or actual regional recalls. Please also provide us with the same types of documents for any actual (not proposed) regional recalls that involved more than 100,000 vehicles since 2008. For documents posted on NHTSA's website, links may be submitted in lieu of copies of the documents.
- 5) Has NHTSA ever declined a request to conduct a regional recall instead of a nationwide one? If so, please provide us with a list of each such instance.
- 6) Please provide us with copies of each Death Inquiry sent by NHTSA to any manufacturer or equipment manufacturer that is related to reports of explosions involving Takata's airbags, and the manufacturer's response thereto.

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- 7) When contemplating compliance with EWR reporting requirements, does NHTSA ever compare media or other reporting of incidents related to high-profile safety defects (or potential safety defects) such as the GM ignition switch or Takata airbags in order to see whether incidents that are reported to have been settled in court or otherwise known to the manufacturer were reported to EWR as required? If so, what was the outcome? If not, why not, and will NHTSA do so going forward in light of the Honda example?

Thank you for your prompt consideration of this important matter. If you have questions or concerns, please have your staff contact Michal Freedhoff (Senator Markey, 224-2742) or Joel Kelsey (Senator Blumenthal, 224-2823).

Sincerely,

  
Edward J. Markey  
United States Senator

  
Richard Blumenthal  
United States Senator