

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590**

In re:)
)
PE14-016)
Air Bag Inflator Rupture)
)

**TOYOTA’S RESPONSE TO GENERAL ORDER
DIRECTED TO MANUFACTURERS**

Toyota Motor Corporation (“TMC”) and Toyota Motor Engineering & Manufacturing North America, Inc. (“TEMA”) (collectively “Toyota”) submit their Response to NHTSA’s General Order Directed to Manufacturers (“General Order”). Toyota’s Report and Responses are set forth below and are based upon good faith efforts to investigate and collect information within the short time frame allowed. Toyota’s investigation is ongoing, and it may amend or supplement its response with additional information.

Toyota has conferred with NHTSA’s Chief Counsel’s Office with regard to the timing of its production of documents. As agreed with the agency, and subject to the General Objections set forth below, Toyota is currently submitting documents within Toyota’s possession, custody, or control on testing in the United States of Takata inflators recovered from Toyota vehicles outside of the High Absolute Humidity Region (“HAH Region”) in the United States that have been identified and reviewed to date. In light of the short time frame provided to respond to the General Order, Toyota will supplement its production should any additional responsive documents be found.

Toyota is providing documents on such testing to the extent those documents are within the possession, custody, or control of TEMA and Toyota Motor Sales, U.S.A., Inc. (“TMS”) that have been identified and reviewed to date. Toyota will additionally provide the agency with documents collected from TMC in Japan on testing that may be relevant to the United States market. Per agreement with the agency, because of the need to collect and translate those documents, they will be provided at a later date.

Background of Testing

Toyota requested that Takata test inflators multiple times since at least 2010:

- In 2010, Toyota initiated a recall in Japan and other foreign markets to address manufacturing problems identified by Takata in inflators not installed in vehicles sold in the United States market. That action was the subject of a Foreign Recall Report to NHTSA, filed on June 30, 2010. Many of the inflators that were replaced in the recall were returned to TMC and were subjected to a shake-test to gauge the extent to which the manufacturing issue identified, in fact, existed in those inflators; some were also subjected to x-ray/CT-scans. Many were additionally sent to Takata in Japan for further analysis.
- In April 2013, Toyota initiated a nationwide United States recall to address a different set of manufacturing issues identified by Takata (13V133). First, Toyota responded to a field report received in Japan in October 2011 about an abnormal deployment. In-use inflators recovered in Japan were tested by Takata, but no abnormalities were found. Second, in connection with three field reports from the United States about abnormal deployments received in 2012, Toyota recovered and had Takata test additional in-use inflators from Japan and the United States.

When Takata informed Toyota that it had determined that there were manufacturing problems associated with those inflators, Toyota initiated the April 2013 nationwide recall (13V133). Toyota subsequently expanded the remedy associated with that recall (14V312, superseding 13V133) to include replacement of all inflators and not just those that had been identified by Takata in conjunction with the April 2013 recall.

- In June 2014, Toyota agreed to participate in NHTSA's request to conduct a field action to collect inflators from high humidity areas (14V350). Between June 2014 and October 2014, additional recalled inflators were collected for testing by Takata in the United States as part of the NHTSA-initiated inflator collection. These inflators have been, and continue to be, sent directly by dealers to Takata in the United States. Inflators replaced under recalls 14V312 and 14V655 (superseding 14V350), initiated October 19, 2014, continue to be sent directly by dealers to Takata in the United States.
- Toyota filed a Foreign Recall Report on November 27, 2014, regarding a recall of Takata drivers' side airbags in Japan, Australia, and other foreign markets regarding various vehicles not affected in the United States. Toyota plans to collect recalled inflators replaced under these recalls for analysis and testing by Takata in Japan. In addition, certain substantially similar vehicles sold in the United States contain a type or types of Takata inflators not included in the definition of "Inflator" contained in the General Order and not included in the United States recall population. For quality confirmation purposes, a number of

such in-use inflators will be collected and sent to Takata in the United States for analysis and testing.

- Toyota also filed a Foreign Recall Report on December 4, 2014, regarding a recall in Japan and China regarding various vehicles not affected in the United States. Toyota plans to collect recalled inflators replaced under those recalls for further analysis and testing by Takata in Japan.
- Additional information about testing is outlined in responses to the subparts below.

**RESPONSE TO REQUEST 1: REPORT ON COMPLETED, ONGOING
OR PLANNED TESTING**

Request 1. File a Report that describes, in detail, all completed, ongoing or planned testing of Takata inflators outside of the HAH Region.

REPORT ON COMPLETED, ONGOING OR PLANNED TESTING

Toyota is providing information identified and reviewed as of the date of the General Order with regard to completed, ongoing and planned testing on Takata inflators in the United States market. It is also providing information about inflators from vehicles outside of the U.S.

- Testing of Takata Inflators from Vehicles in the United States

In response to field reports about abnormal deployments received in the United States between September and December 2012, Toyota directed Takata to evaluate and test inflators from the United States. Toyota recovered approximately 58 in-use inflators from across the United States, both from within and from outside what is now defined by NHTSA as the HAH Region. These inflators were sent directly to Takata in the United States for testing.

Between April 2013 and June 2014, Toyota dealers were returning recalled inflators from the United States market directly to Takata in the United States for disposal. In June 2014, in

response to incidents in Puerto Rico involving inflators that had not been identified by Takata, Toyota expanded the remedy for the nationwide recall to include replacement of all inflators, and a new recall number was assigned (14V312). Shortly thereafter, Toyota implemented NHTSA's request for recalled parts collection in four high humidity areas by focusing the 14V312 remedy campaign in Florida and Puerto Rico. All recalled parts collected as part of that effort, as well as the subsequently announced Recall No. 14V655, have been sent directly by dealers to Takata in the United States.

Going forward, Toyota will seek permission from NHTSA to direct some recalled inflators to an independent engineering firm that Toyota has now retained for further evaluation and testing.

In addition, an initiative involving affected manufacturers has been announced that proposes to conduct testing of Takata inflators. This will involve the retention of a coalition-approved, independent engineering firm.

- Testing of Inflators from Vehicles Outside the United States

Toyota has sent inflators recovered from vehicles outside the United States to Takata in Japan. After Toyota received a report in October 2011 in Japan about a vehicle in which the inflator had fractured, Toyota recovered 66 in-use inflators from the Japanese market. These inflators were sent to Takata in Japan for testing. Takata reported that it found no abnormalities after testing the 66 inflators. In 2012, Toyota recovered approximately 145 in-use inflators from vehicles in Japan. These inflators were all sent to Takata for testing. Takata reported that some of the inflators contained propellant wafers that had cracks.

Since the initiation of the recalls in 2013 and 2014, Toyota has also collected recalled inflators from vehicles in Japan and other Asian countries pursuant to recalls conducted in those

areas. TMC has evaluated many of these recalled inflators prior to their delivery to Takata in Japan by shaking them for signs of possible abnormality; some x-ray/CT-scans were taken to view the inside of the inflators.

Going forward, Toyota continues to receive recalled inflators from areas outside of the United States pursuant to recalls being conducted in foreign countries. TMC is shake-testing most of these parts and conducting some x-ray/CT-scans before sending them for testing by Takata in Japan.

- Additional Testing of Takata Inflators From Vehicles Outside the United States

Toyota had also collected inflators after a 2010 recall in Japan and other foreign markets initiated to address a manufacturing defect identified by Takata in its LaGrange, Georgia plant. This defect was for an issue different from the current recalls in the United States. The recall did not impact the United States market, and Toyota submitted a Foreign Recall Report to NHTSA in June 2010. Takata had informed Toyota that the inflators involved in this recall may have been produced with insufficient propellant. Toyota evaluated many recalled and returned inflators through the shake tests and some x-ray/CT-scans, and sent the inflators to Takata in Japan for further testing. The x-ray/CT-scans revealed one returned inflator with insufficient propellant and a number with a missing spring or retainer. Toyota conducted at least one deployment test, which involved an inflator with insufficient propellant. The inflator deployed normally.

RESPONSES TO INDIVIDUAL SUBPARTS OF REQUEST 1

a. All documents regarding or relating to the testing contained in your report.

Response: Toyota is producing documents per the agreement reached with the agency described above. Toyota's document collection efforts continue, and Toyota will supplement its

production should additional responsive documents be found. In addition, as there is on-going testing by Takata, new information will be received in the future.

b. The location of the testing; the dates of the testing; whether the testing is completed, in progress, or planned; anticipated date of completion of testing; the nature and objective of the testing; and, testing protocols.

Response: Prior to the April 2013 recall, Toyota recovered in-use parts from the United States, Japan, and other markets. Toyota has also collected recalled parts in Japan and United States.

With respect to inflators collected from the United States. recalls as described above, Takata provided Toyota with data regarding the testing of those recalled parts. The data received from Takata includes the test date, but does not provide all of the above information requested in this subpart. Toyota understands that Takata has provided the same or similar information to NHTSA.

With regard to testing in Japan of inflators from various markets, to the extent that Takata has provided information to Toyota about test results that are responsive to this General Order, Toyota will provide such documentation at a later time per agreement with the agency.

c. A roster of all vehicles where the inflator was tested which includes: the model; model year; vehicle build date; VIN; the vehicle's registration history, by location; inflator serial number; inflator type; dealership location with zip code where the inflator unit was returned; whether any deaths, injuries or claims are associated with the inflator in the vehicle; and, product specifications for the air bag and inflator modules in each vehicle.

Response: The data Takata has provided to Toyota about testing conducted on inflators from vehicles in the United States does not generally provide sufficient detail to allow Toyota to match the individual inflator tests to particular vehicles. Takata data does, however, indicate the state, zip code, and inflator serial number of each inflator. None of these inflators are associated

with any deaths, injuries, or claims. Toyota understands that Takata has provided the same or similar information to NHTSA.

With regard to testing in Japan, to the extent that Takata has provided information to Toyota about test results that are responsive to this General Order, Toyota will provide such documentation at a later time per agreement with the agency.

d. If testing of inflators has been completed, describe in detail the results of the testing and the conclusions you have reached based upon the test results. If your conclusion is that a safety defect does not exist in inflators outside of the HAH Region, describe in detail the basis for that conclusion and when the decision was made and by whom. Provide a copy of all documents to or from any person(s) related to the conclusion that no safety defect exists in inflators outside of the HAH Region.

Response: Prior to initiating the recall for the HAH Region (14V655), Toyota had initiated a nationwide recall (13V133 and 14V312). That nationwide recall remains in effect under Recall 14V312.

e. Sub-part (e) is directed to BMW, Chrysler, Ford, GM, Honda, Mazda, Mitsubishi, Nissan, Subaru and Toyota: State in your report whether or not Takata has performed testing of inflators used in your vehicles outside of the HAH Region. If so, describe in detail what Takata has communicated to you about the testing and/or test results. Produce all documents related to Takata's testing, test results and your communications, internal and external, related to the testing. State whether you have requested additional information from Takata concerning its testing of inflators outside of the HAH Region which you believe would assist in your determination of whether a defect exists. Identify and describe any information, documents or categories of information and documents that you reasonably believe that Takata has or reasonably should have concerning inflators or testing of inflators used in your vehicles that Takata has to provided you and which you believe would assist you in testing inflators to determine whether a safety defect exists in inflators outside of the HAH region.

Response: Takata has conducted testing on inflators from Toyota vehicles in the United States and outside the HAH Region. Toyota requested from Takata information about such testing, and Takata initially provided data with regard to 121 inflator tests. The data includes the

state and zip code where the inflator was recovered, the test date, inflator serial number, and the inflator build month and year.

Takata has also provided Toyota with Toyota-specific versions of the information provided to NHTSA about its overall testing program. The data shows the number of recalled inflators tested by Takata and that were from South Florida, North Florida, Puerto Rico, and elsewhere (i.e, outside the HAH Region). As of approximately November 26, according to Takata, it has tested 1159 recalled inflators from Toyota vehicles and 469 of those were from outside the HAH Region.

Prior to initiating the recall for the HAH Region (14V655), Toyota had initiated a nationwide recall (13V133 and 14V312). That nationwide recall remains in effect.

f. Provide the name, title and complete contact information for each and every manager or supervisor (at all levels of management or supervisory responsibility) involved in your investigation and decision-making process concerning rupturing air bag inflators manufactured, in whole or in part, by Takata.

Response: The following individuals were involved in the investigation and decision-making for Recall Nos. 13V133, 14V312, and 14V655.

Recall 13V133. Responsible for decision making: [REDACTED], Vice President, TEMA; [REDACTED], General Manager, Customer Quality Engineering Division, TMC; [REDACTED], Executive General Manager, TMC; [REDACTED], Vice President, Customer Quality Services, TMS; [REDACTED], Vice President, TEMA; [REDACTED], Group Vice President, Product Quality & Service Support, TMS. Responsible for investigation: [REDACTED], Department General Manager, JCQE Technical Management, TMC; [REDACTED], Group Manager, Customer Quality Engineering Division, Technical Investigation Group, TMC; [REDACTED], National Manager, Customer Quality Services, TMS; [REDACTED], Group Manager, Interior Design Division, TMC; [REDACTED], Department General Manager, Interior Design Division, TMC.

Recall 14V312. Responsible for decision making: [REDACTED], Vice President, TEMA; [REDACTED], General Manager, Customer Quality Engineering Division, TMC; [REDACTED], Vice President, TEMA; [REDACTED], Vice President, Customer Quality Services, TMS; [REDACTED], Group Vice President, Product Quality & Service Support, TMS; [REDACTED], Senior Managing Officer, TMC. Responsible for investigation: [REDACTED], Manager, Customer Quality Services, TMS; [REDACTED], Department General Manager, Customer Quality Engineering Division, Technical Management, TMC; [REDACTED], Group Manager, Customer Quality Engineering Division, Technical Investigation Group, TMC; [REDACTED], National Manager, Customer Quality Services, TMS.

Recall 14V655. Responsible for decision making: [REDACTED], Vice President, TEMA; [REDACTED], General Manager, Customer Quality Engineering Division, TMC; [REDACTED], Vice President, TEMA; [REDACTED], Vice President, Customer Quality Services, TMS; [REDACTED], Group Vice President, Product Quality & Service Support, TMS; [REDACTED], Senior Managing Officer, TMC. Responsible for investigation: [REDACTED], Manager, Customer Quality Services, TMS; [REDACTED], Department General Manager, Customer Quality Engineering Division, Technical Management, TMC; [REDACTED], Group Manager, Customer Quality Engineering Division, Technical Investigation Group, TMC; [REDACTED], National Manager, Customer Quality Services, TMS.

g. Provide the name, title and complete contact information for each and every person who prepared and provided input and/or data included in the report contained in Request No. 1, including but not limited to inside or outside counsel, accounts, engineers, employees and other professionals.

Response: Toyota collected information and documents from the following Departments within the company: Quality Division at TMC, Interior Design Division at TMC, Customer

Quality Engineering Division at TMC, Customer Quality Services at TMS, Vehicle Safety and Compliance Liaison Office at TEMA, and Product Quality and Service Support at TMS. Toyota Legal One and TMC Legal Division, and outside counsel from the following law firms provided legal advice and helped gather the materials produced: Hogan Lovells US LLP, Debevoise & Plimpton LLP, King & Spalding, Winston & Strawn, and Dykema Gossett PLLC. Toyota may be contacted through counsel at Hogan Lovells US LLP.

General Objections

The General Objections set forth below are incorporated into Toyota's responses to Request 1 and each of the subparts to Request 1, *i.e.*, Request 1.a. through 1.g. These General Objection are deemed continuing as to each subpart of the Request, and are not waived, nor in any way limited, by the specific responses to a subpart, nor should the failure to specifically incorporate the General Objections be construed as a waiver.

Toyota notes that the General Order allowed an unreasonably short time period to collect and review potentially responsive documents and information. The 17 days provided is about half the time allotted under the comparable Federal Rules of Civil Procedure, Fed. R. Civ. P. 33(b)(2) ("The responding party must serve its answers and any objections within 30 days after being served with the interrogatories."); Fed. R. Civ. P. 34(b)(2) ("The party to whom the [document] request is directed must respond in writing within 30 days after being served."), and included the Thanksgiving holiday. Toyota has made a good faith effort to collect the information necessary to respond to the General Order and reserves the right to supplement this Response. Toyota reserves the right to recapture privileged or otherwise protected or exempted documents that are inadvertently produced in response to this General Order. Toyota's Response is based on information collected and reviewed as of the date of the General Order.

In responding to the General Order, reasonable, good faith searches have been made of corporate records where such documents would ordinarily be expected to be found and to which Toyota would ordinarily refer when looking for such information. Toyota's Response is based on information obtained from those departments and employees most knowledgeable about the subject matter of this inquiry and most likely to have responsive information in the regular and ordinary course of business. Toyota reserves the right to amend, supplement, or clarify its Response to reflect additional information as it is produced and/or discovered.

Toyota also notes that the definition of "documents" includes items not typically included in the definition of that term, and might appear to include ESI from sources that are not reasonably accessible because of undue burden or cost and appears to include documents that are not within Toyota's possession, custody, or control. The definition of the term "Document(s)" also purports to require Toyota to produce the original of every responsive document. Such production would impose an extraordinary burden on Toyota in time, expense, and business disruption, while providing no benefit contemplated by the applicable statutes and regulations.

Toyota further notes that the Definitions and Instructions could appear to obligate Toyota to search for information or documents not within its possession, custody, or control, including the proffered definition of "You" and "Your" in paragraph 6 of the Definitions as encompassing "all of your past and present officers and employees, whether assigned to their principal offices or any of their field or other locations, including all of their divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under your control (including all business units and persons previously referred to)." Adherence to these

definitions and instructions would require an unduly burdensome and extraordinarily costly search for information and documents involving persons or entities not under Toyota's direct control and persons and entities not reasonably likely to have possession, custody, or control of responsive documents different from those produced hereunder. Accordingly, Toyota's search for information does not extend beyond those employees, directors, officers, and other persons subject to Toyota's direct control who are reasonably likely to possess non-privileged information.

The term "testing" is undefined. Toyota has taken a broad view of the term "testing," and has therefore included information in its Response relating not only to destructive deployment testing, but also to shake-testing and x-ray/CT-scans.

Toyota reserves the right to claim privilege when appropriate. Toyota notes that the courts have upheld the privilege in the FTC context, and that NHTSA's authority closely tracks that of the FTC. *See FTC v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 898 F. Supp. 2d 171, 175 (D.D.C. 2012); *FTC v. GlaxoSmithKline*, 294 F.3d 141, 145-48 (D.C. Cir. 2002) (both declining to enforce FTC subpoenas seeking documents protected by the attorney-client and work product privileges); *United States v. Firestone*, 455 F. Supp. 1072, 1089 (1978) (NHTSA's information-gathering authority under the Safety Act tracks the FTC's authority to compel information and therefore "cases concerning the FTC's power are of some relevance."). The United States Supreme Court has indeed cautioned against creating novel exceptions to privileges because it would introduce "substantial uncertainty" and "could contribute to the general erosion" of privileges "without reference to common-law principles of 'reason and experience.'" *Swidler & Berlin v. United States*, 524 U.S. 399, 409-10 (1998).

Toyota has identified those documents protected from public disclosure as Confidential Business Information, and has submitted a Confidentiality Request and Certificate as required by the agency's regulations.

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590**

In re:)
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PE14-016)
Air Bag Inflator Rupture)
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**DECLARATION OF TORU NAGATA IN SUPPORT OF THE
RESPONSES TO GENERAL ORDER DIRECTED TO TOYOTA**

I, Toru Nagata, declare as follows:

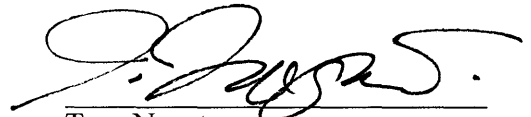
- 1) I am General Manager, Customer Quality Engineering Division of Toyota Motor Corporation (“Toyota”).
- 2) An inquiry has been made reasonably calculated to assure that the foregoing answers and corresponding production of documents in response to the General Order directed to Toyota pursuant to *In re: PE14-016, Air Bag Inflator Rupture*, are correct to the best of Toyota’s understanding based upon its investigation to date. I understand that Toyota will produce additional documents to NHTSA at a later date as they are identified, and, where appropriate, translated.
- 3) The documents of Toyota have been searched diligently for information and documents responsive to this General Order within the time-frame requested by NHTSA.
- 4) Subject to alternative arrangements made with the agency, Toyota will produce such responsive information and documents to the National Highway Traffic Safety Administration (“NHTSA”).



5) Based on a reasonable, good faith inquiry, the answers to the inquiries provided to NHTSA correctly respond to the General Order based upon Toyota's investigation to date. Toyota's investigation into the issues raised in the General Order is ongoing and Toyota reserves the right to amend and/or supplement its response as it completes its investigation and review.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 5, 2014.


Toru Nagata

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590**

In re:)
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PE14-016)
Air Bag Inflator Rupture)

**DECLARATION OF ABBAS SAADAT IN SUPPORT OF THE
RESPONSES TO GENERAL ORDER DIRECTED TO TOYOTA**

I, Abbas Saadat, declare as follows:

- 1) I am Vice President, Toyota Motor Engineering & Manufacturing, North America, Inc. (“Toyota”).
- 2) An inquiry has been made reasonably calculated to assure that the foregoing answers and corresponding production of documents in response to the General Order directed to Toyota pursuant to *In re: PE14-016, Air Bag Inflator Rupture*, are correct to the best of Toyota’s understanding based upon its investigation to date. I understand that Toyota will produce additional documents to NHTSA at a later date as they are identified, and, where appropriate, translated.
- 3) The documents of Toyota have been searched diligently for information and documents responsive to this General Order within the time-frame requested by NHTSA.

4) Subject to alternative arrangements made with the agency, Toyota will produce such responsive information and documents to the National Highway Traffic Safety Administration (“NHTSA”).

5) Based on a reasonable, good faith inquiry, the answers to the inquiries provided to NHTSA correctly respond to the General Order based upon Toyota’s investigation to date. Toyota’s investigation into the issues raised in the General Order is ongoing and Toyota reserves the right to amend and/or supplement its response as it completes its investigation and review.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2014.


Abbas Saadat