U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

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Washington, DC 20590

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BY EMAIL AND U.S. MAIL

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NVS-210fsb
PE14-016

RE: PE14-016 - Air bag Inflators
Recall Request Letter

Dear Mr. Higuchi:

As you are well aware, on June 11, 2014, the Office of Defects Investigation ("ODI") of the National Highway Traffic Safety Administration ("NHTSA" or the "Agency") opened a Preliminary Evaluation, No. PE14-016, to investigate vehicle crash incidents resulting in the rupture of frontal driver and passenger side air bag inflators manufactured by TK Holdings, Inc. and/or Takata Corporation (collectively, "Takata").

Takata has supplied millions of frontal driver's side air bag inflators to at least five motor vehicle manufacturers over the last fifteen years. A growing number of these inflators have ruptured, projecting metal fragments into vehicle occupants; thereby creating an unreasonable risk of death and injury.

In June 2014, at NHTSA's insistence, five auto manufacturers - BMW of North America, LLC ("BMW"), Chrysler Group, LLC ("Chrysler"), Ford Motor Company ("Ford"), American Honda Motor Company ("Honda"), and Mazda Motor Corporation ("Mazda") - commenced regional recall campaigns for certain driver's side air bag inflators manufactured by Takata and installed in vehicles operating in areas of high absolute humidity. The subject driver's side inflators have been designated by Takata as types PSDI, PSDI-4, and PSDI-4K.

On November 17, 2014, ODI contacted Takata, demanding that the manufacturer submit a Part 573 Safety Recall Report that unequivocally states that a defect exists in the subject driver's side air bag inflators. The following day, NHTSA publicly demanded that the five auto manufacturers expand their regional recall campaigns and conduct a nationwide recall of all vehicles equipped with the subject driver's side air bag inflators. The decision to take these two

actions was based on, among other things, the Agency's ongoing evaluation of data, including a recent incident involving a driver's side air bag failure in a vehicle outside the current regional recall area and its relationship to five previous driver's side air bag ruptures.

Despite the severe consequences of air bag ruptures and mounting data demonstrating a safety defect, Takata responded that it did not agree with NHTSA's basis for a nationwide recall of driver's side air bags. Takata also continues to disclaim any finding of a safety-related defect and has failed to submit the requisite Part 573 Safety Recall Report regarding these frontal driver's side air bag inflator ruptures. However, Takata has not provided any new information to support its position that a regional recall is appropriate, nor has Takata provided any explanation for driver side air bag ruptures that have occurred outside the areas of high absolute humidity. **As a result and based on currently available information, NHTSA is issuing this recall request letter to notify you that the Agency has tentatively concluded that a defect related to motor vehicle safety exists on a national basis in the subject driver's side air bag inflators, and to demand that Takata issue a Part 573 Safety Recall Report addressing that defect.**

The National Traffic and Motor Vehicle Safety Act (the "Safety Act") defines motor vehicle safety as "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of crashes occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle." *See* 49 U.S.C. § 30102(8). A defect that occurs in an essential component of a piece of motor vehicle equipment, such as in this matter involving a driver's side air bag inflator, presents an unreasonable risk to safety. *See United States v. General Motors Corp.* 561 F.2d 923, 929 (D.C. Cir. 1977) ("*Pittman Arms*").

A motor vehicle or component contains a "defect" if it is subject to a significant number of failures in normal operation. *See United States v. General Motors Corp.*, 518 F.2d 420, 427 (D.D.C. 1975) ("*Wheels*"). To establish that a significant number of failures exist, the Agency need only show that the figure is more than *de minimus*. *See id.* at 438. The Agency must also show that the failure condition occurred under circumstances which, in the absence of a defect, would not have occurred. *See United States v. General Motors Corp.*, 841 F.2d 400 (D.C. Cir. 1988) ("X-Cars"). This matter plainly satisfies the *Wheels* test. At a minimum, the following six field events involving subject driver's side inflators are more than *de minimus*:

- On August 6, 2013, a Takata driver's side air bag inflator ruptured in a 2005 Honda Civic in Florida. The driver sustained injuries, including the loss of sight in the right eye and 100 stitches on the nose and face.

- On September 7, 2013, a Takata driver's side air bag inflator ruptured in a 2006 Chrysler Charger in Florida. The driver sustained injuries, including cuts and burns.

- On April 26, 2014, a Takata driver's side air bag inflator ruptured in a 2005 Mazda 6 in Florida. The driver sustained injuries, including burns to the arms and face and loss of hearing.

- On May 31, 2014, a Takata driver's side air bag inflator ruptured in a 2005 Honda Accord in California. The driver sustained injuries, including burns.

- On July 7, 2014, Takata a driver's side air bag inflator ruptured in a 2002 Honda Civic in Florida. The driver sustained injuries, including cuts and burns.

- On August 17, 2014, a Takata driver's side air bag inflator ruptured in a 2007 Ford Mustang in North Carolina. The driver sustained injuries, including cuts and burns.

The inflators also pose an unreasonable risk of death or serious injury that may result from a component that, when not defective, is designed to save lives. Air bag inflators that project metal fragments into vehicle occupants, rather than properly inflating the attached air bag, create an unreasonable risk of death and injury.

Based on information available at the time, NHTSA believed initially that the regional recall approach to air bag inflator ruptures would mitigate the unreasonable safety risk to both the driver and passenger of a vehicle when an air bag inflator ruptures. However, recent information indicates that the unreasonable risk posed by subject driver's side air bag inflators may exist outside of the areas with high absolute humidity and therefore would not be mitigated by the current regional recall. Indeed, the May 31, 2014, California and August 17, 2014, North Carolina incidents demonstrate that this defect can and does occur in geographic areas other than those areas with levels of high absolute humidity.[1] Moreover, driver-side air bag inflator ruptures have an increased risk to safety because there always is a driver in the vehicle during a collision, and the placement of the driver-side air bag in the steering column positions the air bag relatively close to the driver, increasing the risk to safety during an air bag rupture.

Accordingly, the Agency makes a formal demand that Takata immediately submit to NHTSA a Part 573 Report that identifies a defect in the subject driver's side air bag inflators and is nationwide in scope. Based on data recently obtained and analyzed by NHTSA, the scope of this defect **must not** be limited to the high absolute humidity region. An auto manufacturer may limit the geographic scope of a safety recall only when it can justify with sufficient evidence and data that the limitation is appropriate. *See Ctr. For Auto Safety v. NHTSA*, 342 F. Supp. 2d 1 (D.D.C. 2004); *Ctr. For Auto Safety v. NHTSA*, 452 F.3d 798 (D.C. Cir. 2006). Here, Takata has provided

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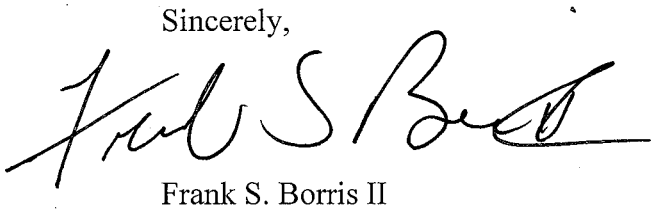
[1] "Where there is a choice between theories which say that something is possible or impossible, there is special significance in a real life incident, albeit a single instance, in which something has happened." *Pitman Arms*, 561 F.2d at 933.

no justification for limiting the geographic scope to the high absolute humidity region. Accordingly, Takata's Part 573 Report must cover all subject driver's side air bag inflators, regardless of where the vehicle is registered or operated.

Should Takata fail to submit to the Agency the Part 573 Report demanded herein by Tuesday, December 2, 2014, NHTSA may proceed to an Initial Decision that these vehicles contain a safety-related defect. *See* 49 U.S.C. § 30118. An Initial Decision will be accompanied by the publication of a Federal Register notice describing the alleged defects, the safety consequences of these defects, the ODI investigation, and the scheduling of a public meeting. Further, NHTSA may begin proceedings to seek penalties and remedies authorized by law, subjecting Takata to civil penalties of up to $7,000 per violation (*i.e.*, per vehicle) pursuant to 49 U.S.C. § 30165(a)(1).

Sincerely,



Frank S. Borris II
Director
Office of Defects Investigation