

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 29, 2015

To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “An Update on the Takata Airbag Ruptures and Recalls”

On Tuesday, June 2, 2015, at 2:00 p.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “An Update on the Takata Airbag Ruptures and Recalls.” This hearing is the second held by this subcommittee on the Takata airbag recalls. The first hearing was held on December 3, 2014.¹

I. BACKGROUND

Takata Corporation is one of the world’s largest suppliers of airbag components for automobiles, with its equipment installed in tens of millions of vehicles in recent years.² Since 2008, defective Takata driver- and passenger-side airbags have resulted in the recall of nearly 34 million vehicles from 11 manufacturers in the United States.³ The defects in these recalled vehicles involve inflator modules in the airbags that inflate with too much force, causing the devices to rupture and spray metal fragments at drivers or passengers when the airbags are deployed.⁴

¹ Additional background information from the December hearing is available [here](#).

² *Airbag Crisis Seen Spurring Shift from Japan’s Takata*, Bloomberg (Oct. 23, 2014) (online at www.bloomberg.com/news/2014-10-23/air-bag-crisis-seen-spurring-shift-from-japan-s-takata.html).

³ National Highway Traffic Safety Administration, *Recalls Spotlight: Takata Air Bag Recalls* (May 19, 2015) (online at www.safercar.gov/rs/takata/index.html).

⁴ National Highway Traffic Safety Administration, *Department Of Transportation Announces Steps To Address Takata Air Bag Defects* (May 19, 2015) (online at www.nhtsa.gov/About+NHTSA/Press+Releases/DOT-action-on-takata-air-bag-defects).

A. Recall History Prior to May 19, 2015

Between 2008 and 2014, Takata identified two distinct manufacturing problems in airbag inflator modules, resulting in nationwide recalls of 10.5 million vehicles from six vehicle manufacturers.⁵ Takata traced these airbag failures to two manufacturing issues at plants in Washington State and Monclova, Mexico that lasted from April 2000 to October 2002.⁶ In November 2008, Honda initiated the first recall related to ruptures in Takata airbag inflators. Between 2008 and 2013, Honda expanded the population of its recalled vehicles.⁷ By April 11, 2013, five additional manufacturers announced Takata inflator recalls: Toyota, Nissan, Mazda, BMW, and GM.⁸

In June 2014, the National Highway Traffic Safety Administration (NHTSA) began investigating a new series of problems with Takata airbags, following reports of at least six Takata airbag inflator ruptures resulting in serious injury or death.⁹ As of November 18, 2014, the investigation had expanded to include ten automakers: BMW, Chrysler, Ford, General Motors, Honda, Mazda, Mitsubishi, Nissan, Subaru, and Toyota.¹⁰

As part of the investigation, NHTSA and Takata worked with each of the manufacturers to conduct initial “safety improvement campaigns” and regional recalls of certain driver- and passenger-side airbags, focusing on high-humidity regions, to understand why airbag inflators are rupturing and sending shrapnel into the vehicles.¹¹

⁵ *Timeline: Takata Air Bag Recalls*, Reuters (Nov. 20, 2014) (online at www.reuters.com/article/2014/11/25/autos-takata-idUSL3N0T36K620141125); *The Long History Behind Takata’s Massive Airbag Recalls*, AutoBlog (June 27, 2014) (online at www.autoblog.com/2014/06/27/takata-airbag-recall-history-feature/).

⁶ Letter from Kazuo Higuchi, Senior Vice President, TK Holdings, Inc., to Nancy Lewis, Associate Administrator of Enforcement, National Highway Traffic Safety Administration (Apr. 11, 2013).

⁷ *Id.*

⁸ *See* note 5.

⁹ National Highway Traffic Safety Administration, *ODI Resume Investigation: PE 14-016* (June 11, 2014).

¹⁰ National Highway Traffic Safety Administration, *USDOT Calls for National Recall of Defective Takata Driver Side Air Bags* (Nov. 18, 2014).

¹¹ National Highway Traffic Safety Administration, *Consumer Advisory: Vehicle Owners with Defective Airbags Urged to Take Immediate Action* (Oct. 22, 2014).

On November 18, 2014, NHTSA called for a national recall of vehicle driver-side frontal airbags made by Takata.¹² Takata did not agree to conduct a recall at that time.¹³ Eight days later, on November 26, 2014, in a Recall Request Letter, NHTSA demanded that Takata recall all affected driver's side airbags and issue a Part 573 Safety Recall Report, writing: "[T]he 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."¹⁴

Despite Takata's refusal to undertake a national recall of the inflators, some auto manufacturers individually expanded recalls to cover more geographic regions. On December 9, 2014, Honda announced it would implement a national recall covering an additional 2.6 million vehicles.¹⁵ Nine days later, on December 18, Ford announced it would also expand its recall nationwide, adding nearly 450,000 of its vehicles to the list of recalls.¹⁶ On May 13, 2015, Toyota and Nissan announced that they would recall an additional 6.5 million vehicles worldwide, including 5 million Toyota vehicles and over 1.5 million Nissan vehicles.¹⁷

B. Questions About When Takata and Affected Auto Manufacturers Became Aware Of Airbag Problems

Press reports raised questions about whether Takata and auto manufacturers were aware of airbag problems before they reported problems to NHTSA. The *New York Times* reported that Honda and Takata became aware of airbag problems as early as 2004, when an airbag ruptured in a Honda Accord and injured the car's driver.¹⁸ Three additional airbag ruptures were reported to Honda in 2007, and each time the company reached a confidential settlement with the driver.¹⁹ But Honda did not issue a safety recall until late 2008.²⁰

¹² See note 10.

¹³ Letter from Frank Borris, Director, Office of Defects Investigation, National Highway Traffic Safety Administration, to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Nov. 26, 2014) (Preliminary Evaluation No. PE14-016).

¹⁴ *Id.*

¹⁵ *Honda to Expand Investigative Air Bag Recall Globally*, Reuters (Dec. 9, 2014) (online at www.reuters.com/article/2014/12/09/autos-takata-honda-idUSL3N0TT1FD20141209).

¹⁶ *Ford Recall of Takata Airbags to Extend Nationwide*, New York Times (Dec. 18, 2014) (online at www.nytimes.com/2014/12/19/business/ford-recall-of-takata-airbags-to-extend-nationwide.html).

¹⁷ *Toyota and Nissan Recall 6.5 Million More Vehicles Over Takata Airbags*, New York Times (May 13, 2015) (online at www.nytimes.com/2015/05/14/business/international/new-recall-by-japanese-automakers-for-airbags.html).

¹⁸ *Air Bag Flaw, Long Known to Honda and Takata, Led to Recalls*, New York Times (Sept. 11, 2014) (online at www.nytimes.com/2014/09/12/business/air-bag-flaw-long-known-led-to-recalls.html).

¹⁹ *Id.*

²⁰ *Id.*

Other reports indicate that Takata conducted secret tests of airbag inflators in 2004 following a rupture in a 2002 Honda Accord, and that – despite identifying problems – Takata employees were ordered to destroy the test results.²¹ Takata responded that the 2004 tests evaluated a separate airbag tearing issue, and that the company did not learn of the rupture in the 2002 Accord until 2005.²²

II. NHTSA’S INVESTIGATION AND OVERSIGHT OF THE TAKATA AIRBAG RECALLS

On October 30, November 5, and November 18, 2014, NHTSA issued Special Orders to Takata, which contained specific document and information requests as part of NHTSA’s continued investigation of the airbag defect as well as Takata’s alleged prior knowledge of the defect.²³ On November 18, NHTSA issued a General Order to ten vehicle manufacturers and Takata, which required each manufacturer and Takata to file reports detailing all completed, ongoing, or planned testing of Takata airbag inflators outside of the high absolute humidity region and requested all documents concerning such testing.²⁴

On February 20, 2015, NHTSA announced that it was imposing a fine on Takata in the amount of \$14,000 per day for each day Takata failed to comply with the October 30th and November 18th Special Orders.²⁵ According to NHTSA, Takata produced more than 2.4 million

²¹ *Takata Saw and Hid Risk in Airbags in 2004, Former Workers Say*, New York Times (Nov. 6, 2014) (online at www.nytimes.com/2014/11/07/business/airbag-maker-takata-is-said-to-have-conducted-secret-tests.html).

²² See note 10.

²³ Special Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Oct. 30, 2014); Special Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Jay Joseph, Assistant Vice President, Product Regulatory Office, American Honda Motor Co., Inc. (Nov. 5, 2014); Second Special Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Nov. 18, 2014).

²⁴ General Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Kazuo Higuchi, Senior Vice President, TK Holdings Inc., *et al.* (Nov. 18, 2014).

²⁵ National Highway Traffic Safety Administration, *U.S Transportation Secretary Foxx Calls on Congress to Authorize New Enforcement Tools for NHTSA and Levies Fine on Takata* (Feb. 20, 2015) (online at www.nhtsa.gov/About+NHTSA/Press+Releases/2015/DOT-wants-new-enforcement-tools-for-nhtsa-and-fines-takata).

documents, but violated the Special Orders by failing to provide an explanation of the documents as required by the instructions in the Special Orders.²⁶

On May 19, 2015, NHTSA announced that it had entered into a consent order with Takata under which Takata agreed to cooperate with NHTSA's investigation and to undertake a coordinated effort with the affected auto manufacturers to replace the defective inflators.²⁷ Through the Consent Order, Takata acknowledged for the first time that a defect exists in its airbag inflators and agreed to a national recall of certain types of driver- and passenger-side air bag inflators, bringing the total number of recalled vehicles to 33.8 million.²⁸ The \$14,000-a-day fine that began accruing against Takata in February was suspended at the time of the Consent Order; however, additional financial penalties against the company may be forthcoming depending on the outcome of NHTSA's investigation.²⁹ At this point, Takata is being fined a total of \$1.2 million.

Some estimates project that at the current rates of recall and repair, it will take more than two years for Takata to make enough replacement inflators for all the cars involved in the recall.³⁰ On May 22, 2015, NHTSA issued a Notice of Intent to begin a formal process to coordinate and accelerate repairs to the affected vehicles.³¹ NHTSA will consider the views of commenters on whether it should, and on what terms, issue an order to "accelerate" all applicable recall remedy programs, which could include provisions regarding sourcing, production, allocation, delivery, installation, and adequacy of the remedy.³²

III. LEGISLATIVE PROPOSALS

A. H.R. 1181, the Vehicle Safety Improvement Act of 2015

²⁶ Letter from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration, to Steven G. Bradbury, Dechert LLP (on behalf of TK Holdings, Inc.) (Feb. 20, 2015) (online at www.nhtsa.gov/staticfiles/communications/pdf/Takata-civil-penalty-demand-02202015.pdf).

²⁷ National Highway Traffic Safety Administration, *Consent Order In re: EA 15-001, Air Bag Inflator Rupture* (May 18, 2015) (online at www.safercar.gov/staticfiles/safercar/recalls/consent-order-takata-05182015.pdf).

²⁸ See note 4.

²⁹ *Takata Air-Bag Recalls Expand to 34 Million Cars in the U.S.*, Wall Street Journal (May 19, 2015) (online at www.wsj.com/articles/air-bag-recalls-expand-sharply-1432057549).

³⁰ *What You Need to Know About the Takata Air Bag Recall*, New York Times (May 20, 2015) (online at www.nytimes.com/aponline/2015/05/20/us/ap-us-takata-air-bag-recall-qa.html).

³¹ See note 3.

³² National Highway Traffic Safety Administration, *Notice of Intent To Open a Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflators*, 80 Fed. Reg. 29791 (May 22, 2015).

On February 27, 2015, Subcommittee Ranking Member Jan Schakowsky, Full Committee Ranking Member Frank Pallone, Jr., and other committee Democrats introduced H.R. 1181, the Vehicle Safety Improvement Act. Among its provisions, the bill requires that manufacturers' safety-related communications regarding defective parts be made public on NHTSA's website; improves the Early Warning Reporting system by requiring manufacturers to submit additional information on fatal incidents that may have been caused by a defect; and eliminates regional recalls. The bill also gives NHTSA imminent hazard authority to expedite recalls in certain cases; increases civil penalty amounts, and eliminates most statutory maximum penalties for violations of federal motor vehicle safety laws, like the failure to disclose relevant information to regulators in a timely manner; prohibits dealers from selling or leasing a used vehicle subject to a recall if the vehicle has not been repaired; and requires NHTSA to establish new standards to improve pedestrian safety.

B. H.R. 2198, Raechel and Jacqueline Houck Safe Rental Car Act of 2015

On May 1, 2015, Rep. Lois Capps, Subcommittee Ranking Member Schakowsky, and Reps. G.K. Butterfield and Walter Jones introduced H.R. 2198, Raechel and Jacqueline Houck Safe Rental Car Act of 2015. Among other provisions regarding the safety of rental cars, the bill prohibits a rental company that receives a notification from the manufacturer of a covered rental vehicle about any equipment defect, or noncompliance with federal motor vehicle safety standards, to rent or sell the vehicle or equipment unless the defect or noncompliance is remedied.

IV. WITNESSES

The following witnesses have been invited to testify:

Panel I

The Honorable Mark R. Rosekind, Ph.D.

Administrator

National Highway Traffic Safety Administration

Panel II

Kevin Kennedy

Executive Vice President Takata

John Bozzella

CEO Global Automakers

Mitch Bainwol

President and CEO Alliance of Automobile Manufacturers

David Kelly

Project Director Independent Testing Coalition