

The Chief Counsel, Paul Hemmersbaugh, signed the following notice on November 21, 2016 and it has been submitted for publication in the Federal Register. While we have taken steps to ensure the accuracy of this internet version of the notice, it is not the official version of the notice. Please refer to the official version in a forthcoming Federal Register publication, which will appear on the Government Printing Office's FDSys website (www.gpo.gov/fdsys/search/home.action) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. NHTSA-2016-0124. Once the official version of this document is published in the Federal Register, this version will be removed from the internet and replaced with a link to the official version.

UNITED STATES DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[DOCKET NO. NHTSA-2016-0124; Notice 1]

General Motors LLC, Receipt of Petition for Inconsequentiality and Decision Granting Request to File Out of Time and Request for Deferral of Determination

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of receipt of petition and decision granting partial relief.

SUMMARY: On May 16, 2016, TK Holdings Inc. (Takata) filed a defect information report (DIR), in which it determined that a defect existed in certain passenger-side air bag inflators that it manufactured, including passenger inflators that it supplied to General Motors, LLC (GM) for use in certain GMT900 vehicles. GM has petitioned the Agency for a decision that, because of differences in inflator design and vehicle integration, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles, and that GM should therefore be relieved of its notification and remedy obligations.

DATES: The closing date for comments is September 14, 2017.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments regarding this petition for inconsequentiality. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by one of the following methods:

- Internet: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- Facsimile: (202) 493-2251.

You may call the Docket at (202) 366-9324.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Thus, submitting such information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the “Privacy and Security Notice” link in the footer of <http://www.regulations.gov>. DOT’s complete Privacy Act Statement is available for review in the Federal Register published on April 11, 2000 (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. Comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

For legal issues: Elizabeth Mykytiuk, Office of the Chief Counsel, NCC-100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590 (telephone: (202) 366-5263).

For general information regarding NHTSA's investigation into Takata air bag inflator ruptures and the related recalls: <http://www.safercar.gov/rs/takata/index.html>.

SUPPLEMENTAL INFORMATION:

I. Background.

On May 4, 2016, NHTSA issued, and Takata agreed to, an Amendment to the November 3, 2015 Consent Order (the "Amendment"), under which Takata is bound to declare a defect in all frontal driver and passenger air bag inflators that contain a phase-stabilized ammonium nitrate (PSAN)-based propellant and do not contain a moisture-absorbing desiccant. Such defect declarations will be made on a rolling basis. *See* Amendment at ¶ 14. Takata timely submitted the first scheduled equipment DIRs on May 16, 2016. *See* Recall Nos. 16E-042, 16E-043, and 16E-044. Those DIRs included non-desiccated passenger inflators, designated as types SPI YP and PSPI-L YD, that were installed as original equipment on certain motor vehicles manufactured by GM (the "covered passenger inflators"), as well as other non-desiccated passenger inflators installed as original equipment on motor vehicles manufactured by a number of other automakers, which are not at issue here.

The Takata filing triggered GM's obligation to file a DIR for the affected GM vehicles. *See* 49 C.F.R. Part 573; Amendment at ¶ 16; November 3, 2015 Coordinated Remedy Order at ¶ 46.¹ GM ultimately submitted two DIRs on May 27, 2016. *See* Recall Nos. 16V-381 (for

¹ Under 49 C.F.R. § 573.5(a), a vehicle manufacturer is responsible for any safety-related defect determined to exist in any item of original equipment. *See also* 49 U.S.C. § 30102(b)(1)(C).

vehicles in Zone A) and 16V-383 (for vehicles in Zone B). In an attachment to the DIRs, GM stated that it had not determined the existence of a safety defect, and it referred to the recalls as “preliminary.”² The attachment further indicated that, even though GM had not made an independent defect determination, the company was nonetheless filing a DIR in response to Takata’s defect determination. *See* Recall Nos. 16V-381 and 16V-383. GM stated that it “expect[s] to provide NHTSA with additional test data, analysis or other relevant and appropriate evidence in support of our belief that our vehicles do not pose an unreasonable risk to safety.” *See id.* GM also stated that it “will conduct a recall of its airbag inflators covered by the May 2016 Takata DIRs, unless GM is able to prove to NHTSA’s satisfaction that the inflators in its vehicles do not pose an unreasonable risk to safety.” *Id.*

On November 15, 2016, GM petitioned the Agency, under 49 U.S.C. §§ 30118(d), 30120(h) and 49 C.F.R. Part 556, for a decision that, because of differences in inflator design and vehicle integration, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles. *See* GM’s Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators (the “Petition”). GM’s Petition concluded that because the putative defect is inconsequential in the GMT900 vehicles, the company should be relieved of notification and remedy obligations for Takata inflators in those GM vehicles. *See* Petition at p. 18. GM further requested that NHTSA defer its decision on the petition until GM is able to complete its testing and engineering analysis in August 2017. *See id.*

II. Request to Accept Late Filing.

² Neither the Safety Act nor NHTSA regulations define or use the term “preliminary recall.”

As an initial matter, GM requests that NHTSA, in its enforcement discretion, accept and consider the Petition even though it was filed outside the regulatory filing deadline. *See* Petition at p. 5 n.5. GM's Petition was filed with the Agency on November 15, 2016. Under 49 C.F.R. § 556.4(c), inconsequentiality petitions usually must be filed within 30 days of the relevant defect determination. Because Takata made a defect determination concerning the covered passenger inflators on May 16, 2016, GM's Petition should have been filed by June 15, 2016.

GM has requested that NHTSA waive the 30-day filing requirement in light of GM's transparency with the Agency, including communications occurring before and contemporaneous with the May 2016 DIR filings. *See* Petition at p. 5 n.5. While such transparency alone would not support a waiver of the filing deadline, the Agency has considered the totality of the facts and circumstances presented here in deciding to grant the waiver.

First, allowing GM's Petition to be filed outside the regulatory deadline is not inconsistent with the purpose of such deadline, which is to prevent a manufacturer from unduly delaying the remedy of defects. *See* 42 FR 7146. Here, GM's delay in filing the Petition will not have any impact on the availability of a remedy. GM has indicated that it has been working diligently on a potential remedy and has stated it intends to have a validated, alternative remedy available by June 30, 2017, should it become necessary. *See* Petition at p. 17. This length of time between DIR submission and remedy is not unusual in the context of the Takata recalls, and it is consistent with the lower relative rupture risk of the covered passenger inflators and the time needed to develop, validate, and ensure the safety of an alternative remedy part. Therefore, some elapsed time between the DIR and the availability of the remedy is inevitable, regardless of the timing of GM's Petition. NHTSA has determined that the availability of the remedy for GM's

May 2016 DIRs would be essentially the same whether this Petition was filed in June or November.

Second, GM has been proactively investigating Takata inflators in GMT900 vehicles since November 2014. *See* Petition at pp. 4-5. GM believes that it has now obtained data through its investigation that supports an inconsequentiality finding, and that it will be able to prove that the covered passenger inflators do not present an unreasonable risk to safety once that investigation concludes in August 2017. *See* Petition at p. 18. Given that GM's ongoing investigation pre-dates the May 2016 DIR filings, the Agency concludes that the company is acting in good faith in filing this Petition, even though it filed the Petition beyond the deadline.³

Finally, GM communicated its intent to file such a petition in the attachment to its May 2016 DIRs when it stated, "GM will conduct a recall of its airbag inflators covered by the May 2016 Takata DIRs, unless GM is able to prove to NHTSA's satisfaction that the inflators in its vehicles do not pose an unreasonable risk to safety." *See* Recall Nos. 16V-381 and 16V-383. This statement is consistent with the purpose of 49 U.S.C. § 30118(d) and 49 C.F.R. Part 556, which is to enable vehicle manufacturers to petition NHTSA for an exemption from the Safety Act's notice and remedy requirements when a defect is determined to be inconsequential to motor vehicle safety. Because NHTSA, the public, and other stakeholders were on notice (since at least May 2016) of GM's intention to attempt to prove the safety of the covered passenger inflators, thereby avoiding any notice and remedy obligation, there is no prejudice to the public caused by GM filing the Petition after the standard deadline.

For the foregoing reasons, NHTSA will grant GM's request and accept the filing of its Petition outside of the 30-day deadline. NHTSA is granting this extraordinary relief because of

³ If it appeared that a manufacturer had filed such a petition in an attempt to toll its notification and remedy obligations while it began a new investigation, the Agency would not waive the 30-day deadline.

the unique circumstances surrounding the Takata recall and the particular facts and circumstances of this case. This decision should not be considered precedent in any other case. The Agency will continue to enforce the 30-day filing deadline for inconsequentiality petitions, including any others that may be filed by GM in connection with future Takata recalls.

III. Class of Motor Vehicles Involved.

GM's Petition involves certain "GMT900" vehicles that contain the covered passenger inflators (designated as inflator types "SPI YP" and "PSPI-L YD").⁴ GMT900 is a GM-specific vehicle platform that forms the structural foundation for a variety of GM trucks and sport utility vehicles, including: Chevrolet Silverado 1500, GMC Sierra 1500, Chevrolet Silverado 2500/3500, GMC Sierra 2500/3500, Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, GMC Yukon, GMC Yukon XL, Cadillac Escalade, Cadillac Escalade ESV, and Cadillac Escalade EXT. The GM DIRs included the following GMT900 vehicles:

- In Zone A, model year 2007-2011 GMT900 vehicles. Zone A comprises the following states and U.S. territories: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. *See* Amendment at ¶ 7.a.
- In Zone B, certain model year 2007-2008 GMT900 vehicles. Zone B comprises the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee,

⁴ GM previously filed, and ultimately withdrew, a petition to defer the recall of certain newer GMT900 vehicles that will be included in Takata's next set of DIRs, scheduled to be submitted on December 31, 2016. *See* 81 FR 64575. This Petition does not include or address that population of vehicles. *See* Petition at pp. 8-9.

Virginia, and West Virginia. *See* Amendment at ¶ 7.b.⁵

IV. Summary of GM's Petition.

According to the Petition, GM's engineering analysis supports the conclusion that the covered passenger inflators in the subject GMT900 vehicles are currently performing as designed, and will likely continue to perform as designed for a number of years - i.e., that the covered passenger inflators, as integrated into the GMT900 vehicles, do not present an unreasonable risk to safety. *See* Petition at p. 3

As an initial matter, GM notes in its Petition that Takata submitted the May 16, 2016 equipment DIRs without evidence of any incidents of inflator rupture in the SPI YP or PSPI-L YD variants that are used only in GMT900 vehicles. Petition at p. 2. GM has been studying the long-term performance of the covered passenger inflators and has conducted an analysis of the ballistic performance of the covered passenger inflators. *See* Petition at pp. 11-12. Based upon this analysis, GM asserts that the covered passenger inflators are not currently at risk of rupture. According to the Petition, GM's position is based upon the following: an estimated 52,000 Takata passenger inflator deployments in GMT900 vehicles without a rupture; ballistic tests of 1,418 covered passenger inflators without a rupture or sign of abnormal deployment; test deployment of 12 inflators artificially exposed to additional humidity and temperature cycling without a rupture or sign of abnormal deployment; and analysis, through stress-strength interference, indicating that the propellant in older covered passenger inflators has not degraded to a sufficient extent to create rupture risk. *See* Petition at p. 4.

⁵ Takata also filed an equipment DIR covering non-desiccated passenger inflators in Zone C that were manufactured between January 1, 2003 and December 31, 2004. *See* Recall No. 16E-044. Because GM did not use the covered passenger inflators in its GMT900 vehicles prior to model year 2007, there were no GMT900 vehicles in Zone C affected by Takata's DIR. Zone C comprises the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

GM further states that the covered passenger inflators are not used by any other original equipment manufacturer and that those inflators have a number of unique design features that influence burn rates and internal ballistic dynamics, including greater vent-area-to-propellant-mass ratios, steel end caps, and thinner propellant wafers. *See* Petition at p. 12. In addition, GM states that the physical environment of the GMT900 vehicles better protects the covered passenger inflators from temperature cycling that can cause rupture. *Id.* More specifically, GM notes that the GMT900 vehicles have larger interior volumes than smaller passenger cars, and are equipped with solar-absorbing windshields and side glass. *Id.* To support the effect such differences may have on the safety of the covered passenger inflators, GM cites NHTSA's expert Dr. Harold R. Blomquist, who stated in his expert report that vehicle platform differences may play a role in the relative risk of rupture. *See* Petition at p. 11 (citing Amendment, Exhibit A at ¶¶ 30-31).

Finally, GM states its belief that the covered passenger inflators will not present a risk of rupture in the longer term. To supplement its internal analysis, GM has retained a third-party expert, Orbital ATK, to conduct a long-term aging study that will estimate the service life expectancy of the covered passenger inflators in the GMT900 vehicles. *See* Petition at p. 12. GM has asked Orbital ATK to test the effect of different inflator design variables - i.e., wafer thickness, vent area, moisture dynamics, and others - in the GMT900 platform's unique thermal environment. *See* Petition at pp. 17-18. GM anticipates that this study will be complete in August 2017. *Id.*

V. Request to Defer Decision on Petition.

GM implicitly acknowledges that its data, information, and views are not yet sufficient for the Agency to grant its inconsequentiality petition. Given the status of GM's engineering

analysis and the results of testing conducted to date, and in order to fully-analyze the performance of these inflators over the long-term, the company has requested that NHTSA allow GM until August 31, 2017 to complete its engineering analysis and inflator aging studies. *See* Petition at pp. 17-18. Ordinarily, under 49 C.F.R. § 556.4(b)(5), an inconsequentiality petition must set forth all data, views, and arguments supporting that petition. In this case, GM states that further probative data (e.g., further aging testing and analysis) is forthcoming, but necessarily will take more time to develop. Therefore, some of the evidence GM intends to present cannot yet be set forth in the Petition. Accordingly, GM requests that the Agency defer its decision on the Petition until such data can be developed.

GM asserts that it has made a threshold showing that its inflators are safe in the short term or, at a minimum, will not present an unreasonable risk to safety during the period that the Petition is pending. *See* Petition at p. 3. GM further asserts that because its engineers and suppliers have been working on re-designed replacement inflators to be ready in the event that the inflators in these vehicles must be replaced, providing GM the additional time it requests will not delay GM's efforts to develop and validate replacement inflators as an available remedy for the Subject GMT900 Vehicles, should that remedy ultimately be required. *Id.*

The Agency acknowledges that GM has produced probative evidence to support its inconsequentiality claim. The testing and data collected by GM to date - while not yet sufficient - tends to support GM's Petition, at least with respect to the short-term safety of the covered passenger inflators. Based upon the data GM has developed and presented to date, NHTSA believes that in the coming months this evidence could ultimately grow and develop to support GM's position with respect to the long-term safety of the covered passenger inflators. Presently, however, the evidence GM has presented is not yet sufficient to prove (by a preponderance of the

evidence) their long-term safety. Based upon the evidence and analysis GM has presented to date, and its plan to develop and analyze additional data, NHTSA agrees that GM's request for additional time is reasonable and supported by the testing and data collected to date.

Moreover, although a pending inconsequentiality petition tolls GM's obligation to provide a remedy, NHTSA does not believe consumers will be significantly impacted by the requested deferral. As explained above, GM has been working toward an alternative remedy in the event it should become necessary, and expects that remedy to be available in June 2017. The length of the requested deferral is through August 2017. Therefore, if NHTSA ultimately were to deny this Petition at the conclusion of GM's engineering analysis, no significant delay in the availability of remedy parts would result.

For these reasons, NHTSA will grant the requested relief, and allow GM an opportunity to provide more evidence and a fuller record upon which the Agency can make its determination. Subject to the conditions that follow, GM shall have until August 31, 2017 to present all data, views, and arguments supporting this Petition, including additional analysis and testing results, through a supplement or amendment, which shall be published in the docket. GM shall be required to provide NHTSA with monthly updates on GM's engineering analysis, Orbital ATK's study, and any other data, analysis, or test results GM develops in its effort to support its inconsequentiality claim. In addition, GM shall provide the Agency with a non-confidential summary of each update that will be made available through the public docket. During this time, any interested person may also submit written data, views, and arguments regarding this Petition. Following the conclusion of the requested deferral - i.e., August 31, 2017, NHTSA will make a decision whether to grant or deny the Petition after considering all available information.

NHTSA reserves the right to deny this Petition at any time prior to August 31, 2017, in the event necessary to mitigate an unreasonable risk to safety within the meaning of the Safety Act, based upon, *inter alia*, future field ruptures, ballistic testing failures that are not related to artificial aging tests, or other relevant facts or circumstances.

Accordingly, NHTSA hereby gives notice of its receipt of GM's Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata "SPI YP" and "PSPI-L YD" Passenger Inflators. And it is hereby ORDERED that:

1. GM's request to file an inconsequentiality petition for DIRs 16V-381 and 16V-383 beyond the 30-day deadline is GRANTED;
2. The period for public comment on GM's Petition shall run from the publication of this decision through September 14, 2017;
3. GM's request for a deferral of the Agency's decision so that it may have additional time to present evidence and analysis in support of this Petition is GRANTED, and GM's time for the development and presentation of further evidence, data, and information is extended to August 31, 2017;
4. GM shall provide NHTSA with monthly updates on its engineering analysis, Orbital ATK's study, and any other data, analysis, or test results the company develops in its effort to support this Petition, and GM shall provide the Agency with a non-confidential summary of each update that will be added to the public docket; and
5. NHTSA retains the right to rule on the Petition at any time before August 31, 2017 (i.e., to either deny or grant the Petition) should additional evidence, facts, or circumstances - in NHTSA's sole judgment and discretion - warrant such a decision.

Authority: 49 U.S.C. 30101, *et seq.*, 30118, 30120(h), 30162, 30166(b)(1), 30166(g)(1);
delegation of authority at 49 C.F.R. 1.95(a); 49 C.F.R. Parts 556, 573, 577.

Issued:

Paul A. Hemmersbaugh
Chief Counsel

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