



Selim Hammoud  
Director, Product Safety

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December 5, 2014

Mr. O. Kevin Vincent  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington DC 20590

**RE: NHTSA General Order**

Dear Mr. Vincent:

On behalf of Nissan North America, Inc. ("Nissan"), I am writing to respond to the NHTSA General Order ("General Order") dated November 18, 2014 related to testing of Takata inflators outside the High Absolute Humidity Region ("HAH Region"). Nissan's responses to your specific requests are set forth below. Nissan will continue to provide the agency with updated testing results and analysis as new information becomes available.

### **Preliminary Statement**

As you know, to date, Nissan has initiated two categories of recalls related to the potential defects in Takata passenger side inflators. All Nissan vehicles involved in these recalls incorporate Takata passenger air bag inflators ("SPI" and "PSPI"). None of the recalls involve driver air bag inflators.

The first category of recall is national in scope and concerns potential defects as a result of Takata manufacturing issues in two of its plants. The recalls include specific models of vehicles that may contain inflators made by Takata during a defined production range corresponding to the dates that Takata has determined were subject to potential manufacturing deficiencies. These recalls are 13V-136 and 14V-361.<sup>1</sup>

The second category is regional in scope and is intended to address the possible effect of consistently high absolute humidity on inflators over time. This recall is 14V-701. The regional recall relates to vehicles outside of the production range covered by the national recalls. The regional recall includes both vehicles currently registered in the HAH Region and those that have been registered within the HAH Region in the past.

Nissan understands the General Order to be focused on testing of inflators not already subject to these recalls. In Nissan's case, this would include vehicles of the same model and production range as those subject to the regional recall but which have never been registered in the HAH Region.

By way of background, pertinent to testing of inflators outside the HAH Region, Nissan would note that its decisions to date have been based on the findings and determinations made by the supplier, as well as discussions with the agency. Nissan initiated the first national recall in April 2013, based on Takata's determination that manufacturing problems

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<sup>1</sup> On December 3, 2014 Nissan decided to expand 14V-361 to add additional vehicles not previously included based on production information provided by Takata. Nissan informed NHTSA of this decision by phone the next day.

had occurred in a specific production range of inflators. The national recall was later expanded when Takata identified additional inflator production ranges that could be affected. Nissan also responded to NHTSA's request for a parts collection effort in June 2014, by sending recall letters to the affected customers and sending recovered front passenger air bag inflators to Takata for testing at the agency's direction. Nissan expanded the recall for the HAH Region (in consultation with NHTSA) when Takata informed Nissan that one inflator recovered from Florida (out of 159 inflators from Nissan vehicles tested by Takata as of then) deployed abnormally.

Although Nissan is aware of no confirmed related incidents in Nissan vehicles outside the scope of existing recalls or any abnormal deployments in Takata testing of inflators recovered from vehicles outside of the HAH Region, Nissan is taking steps to ensure that the current actions fully address the issue. Nissan remains in contact with Takata to keep current on Takata's testing and ongoing root cause analysis. Nissan also remains in regular contact with NHTSA to facilitate an open exchange of information. In addition, Nissan has retained an independent engineering consulting firm to perform additional testing on Takata inflators. This includes testing of inflators recovered from outside the HAH Region. Should Nissan find that additional action is warranted, Nissan will act quickly and consistently with that data.

While Nissan intends to commence the testing as quickly as possible, it welcomes NHTSA's immediate input into Nissan's enclosed test plan. Nissan also supports a coordinated industry-wide testing and evaluation program that would allow manufacturers to share information without regard to competitive concerns. Such a program would provide synergy to the effort and would allow each manufacturer to learn from the collective set of data. We welcome NHTSA's input and possible facilitation of information sharing.

### **General Objections**

In responding to this General Order, information has been obtained from those places within Nissan likely to contain such information in the regular and ordinary course of business. When a particular request seeks "documents" as defined in the General Order, reasonable, good faith searches have also been made of corporate records in those places likely to maintain them in the regular and ordinary course of business. Although the General Order allowed for an unreasonably short period of time for response, Nissan has made a good faith effort to collect responsive documents. Nissan reserves the right to supplement its response should additional responsive material be found.

We note, however, that the definition of "document" is extremely broad and includes information not typically included within the ambit of that term. In addition, the term "document" might also appear to include ESI from sources that are not reasonably accessible because of time constraints, and appears to include documents that may not be within Nissan's possession, custody or control.

The term "testing" is undefined. Nissan has made a good faith effort to obtain information and data relating to testing and evaluations within the ambit of the agency's concerns, which Nissan understands to encompass physical examination of the propensity for inflators to rupture during deployment, particularly within the United States that are outside the HAH Region.

We note that Nissan does not assert attorney client privilege over the report concerning inflator testing outside the HAH Region that is the subject of this General Order. Currently known results from Takata, Nissan's test plan, and the results from Nissan's planned testing will be submitted to NHTSA. However, Nissan does assert privilege over (1) communications between outside counsel and Nissan Legal Department employees or other Nissan

employees for the purposes of seeking or providing legal advice; (2) communications between Nissan Legal Department employees and other Nissan employees for the purpose of seeking or providing legal advice; and (3) notes and other work product of outside counsel or of Nissan Legal Department employees concerning communications relating to legal advice being sought or provided. This would include documents and communications specifically related to the preparation of this report, but does not include the report itself. *See United States v. Firestone*, 455 F. Supp. 1072, 1089 (1978)(NHTSA's information gathering authority tracks that of the Federal Trade Commission, making FTC decisions relevant when considering NHTSA's authority); *FTC v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 898 F. Supp.2d 171, 175 (D.D.C. 2012); *FTC v. GlaxoSmithKline*, 294 F.3d 141, 145-148 (D.C. Cir. 2002).

These General Objections apply to the Request, and to each subpart of the Request, and to the demand for the production of documents.

### **Responses**

The information submitted in response to this General Order includes documents obtained by Nissan on or before December 3. Nissan will continue to provide responsive documents concerning testing of inflators outside the HAH Region as they become available.

#### ***File a report that describes, in detail, all completed, ongoing or planned testing of Takata inflators outside of the HAH Region.***

For a description of Nissan's planned testing of Takata inflators outside of the HAH Region, see the attached Enclosure 1. Responses to specific questions in the General Order, including completed and ongoing testing of Takata inflators outside of the HAH Region by Takata, is below:

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

Responsive documents related to Nissan's planned testing are attached as Enclosure 1. These include Nissan's final test protocol and agreement with Exponent to conduct testing.<sup>2</sup> Responsive documents related to Takata testing are provided in Enclosure 2.

##### ***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;***

1. On December 3, 2014, Takata informed Nissan that it has tested 3 PSPI inflators and 19 SPI inflators recovered from Nissan vehicles in states outside of Florida and each of those inflators deployed normally. We have requested clarification on whether these 22 inflators are from vehicles outside the HAH Region as defined by the agency, and additional information about those tests and the inflators. Nissan is providing the information available to it from Takata as of December 3, 2014 in Enclosure 2. Nissan understands that Takata's testing is ongoing.
2. Nissan testing described in Enclosure 1 is scheduled to commence on or about December 9. Nissan will supplement the response when the testing is completed.

##### ***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***

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<sup>2</sup> We have provided the final test protocol to be employed, but not preliminary correspondence and drafts.

***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.***

1. With respect to testing conducted by Takata and referenced in our answer to General Order Question 1(b) above, Nissan has requested but does not yet have all of the information on the specific vehicles tested by Takata. Nissan is providing the information that has been furnished by Takata with respect to the 159 Nissan inflators tested by Takata as of October 22, 2014, two of which appear to be from outside the HAH region. Please see Enclosure 2, bates nos. NISS000015-16. On December 3, 2014 Nissan learned that Takata has now tested a total of 446 Nissan inflators, 22 of which are from vehicles located outside of Florida. Enclosure 2, bates nos. NISS000009-14. Nissan understands that Takata will provide a response to General Order Question 1(c).
2. With respect to Nissan's planned testing, Nissan will provide the requested information upon testing completion.
3. Nissan is providing product specifications in Enclosure 3.<sup>3</sup>

***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.***

1. Nissan understands that Takata's testing is ongoing. The results known to date and Nissan's written requests to Takata for additional information are provided in Enclosure 2.
2. For those model vehicles covered by the Nissan regional recall 14V-701, the data to date supports the current recall scope. Nissan is aware of no confirmed related incidents in Nissan vehicles outside the scope of existing recalls. It is also not aware of any abnormal deployments in Takata testing of its inflators recovered from vehicles in states outside of Florida. Nissan's understanding is that, to the extent Takata inflators have deployed abnormally in Takata's testing, they have only done so in inflators recovered from different OEM vehicles within Florida and Puerto Rico. Based on data provided to Nissan by Takata on December 3, 2014, Takata has observed 6 abnormal deployments in SPI inflators recovered from Nissan vehicles and all of those were from vehicles located in Florida.

Nissan continues to study and evaluate data pertaining to Takata passenger side inflators used in Nissan vehicles outside of the HAH Region as it becomes available and has not reached a conclusion. Accordingly, Nissan does not have documents responsive to the specific request in this subpart.

***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***

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<sup>3</sup> Design drawings are being provided to NHTSA by separate delivery on December 8, 2014. Nissan believes design drawings are competitively sensitive and therefore intends to submit a request for confidential treatment of those specific documents in accordance with 49 CFR Part 512.

**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 not 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.**

On October 22, 2014, Takata informed Nissan that it had tested 159 passenger side inflators removed Nissan vehicles. Two of the inflators were recovered from Nissan vehicles in Alabama and Georgia and each of those inflators deployed normally. We believe the Georgia and Alabama inflators were from outside the HAH Region as defined by the agency. Nissan has requested but does not yet have all of the information on the specific vehicles tested by Takata. Nissan is providing the information that has been furnished by Takata with respect to the 159 Nissan inflators tested by Takata as of October 22, 2014, including the two which appear to be from outside the HAH region. Please see Enclosure 2.

In a separate presentation made to Nissan in Japan, Takata advised that it responded to questions from the Japanese Ministry of Land, Infrastructure, Transport and Tourism ("MLIT") and indicated that it had performed testing on 100 passenger side inflators obtained from various OEM vehicles outside of Florida. Based on the communication from Takata, Nissan assumes at least 2 of these inflators are those described in the previous paragraph.

On December 3, 2014, Takata informed Nissan that Takata has now tested 1098 passenger inflators obtained from vehicles outside of Florida and Puerto Rico. Of these, 3 PSPI inflators and 19 SPI inflators were recovered from Nissan vehicles and each of those inflators deployed normally. We have requested additional information about those tests and the inflators. Nissan is providing the latest information available to it from Takata as of December 3, 2014 in Enclosure 2.

**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.**

The name and title of each person are supplied below.

[REDACTED]  
Director, Product Safety  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Senior Manager, Product Safety  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Manager, Product Safety

One Nissan Way  
Franklin, TN 37067

Manager, Campaigns and Port Modifications  
610 Enon Springs Rd East  
Smyrna, TN 37167

Senior Manager, Field Quality Assurance  
One Nissan Way  
Franklin, TN 37067

Manager, Technical Compliance  
One Nissan Way  
Franklin, TN 37067

Manager, Field Quality Assurance  
Nissan Motor Company Limited

Manager, Field Quality Assurance  
610 Enon Springs Rd East  
Smyrna, TN 37167

Manager, Field Quality Assurance  
610 Enon Springs Rd East  
Smyrna, TN 37167

***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, accountants, engineers, employees and other professionals.***

1. The following individuals provided information and/or data included in Nissan's Report:

Director, Product Safety  
One Nissan Way  
Franklin, TN 37067

Senior Manager, Product Safety  
One Nissan Way

Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Manager, Product Safety  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Project Engineer, Product Safety  
One Nissan Way  
Franklin TN 37067  
[REDACTED]

[REDACTED]  
Manager, Campaigns and Port Modifications  
610 Enon Springs Rd East  
Smyrna, TN 37167  
[REDACTED]

[REDACTED]  
Senior Manager, Field Quality Assurance  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Manager, Technical Compliance  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Engineer, Technical Compliance  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Manager, Field Quality Assurance  
Nissan Motor Company Limited  
560-2, Okatsukoku, Atsugi-shi  
Kanagawa 243-0192, Japan  
[REDACTED]

[REDACTED]  
Senior Manager, Safety & Body Test  
39001 Sunrise Dr  
Farmington Hills, MI 48331-3487  
[REDACTED]

2. The following individuals did not provide information and/or data included in the Nissan's Report, but provided input and legal advice and helped gather the some of the enclosed materials:

[REDACTED]  
Senior Managing Counsel  
One Nissan Way  
Franklin, TN 37067  
[REDACTED]

[REDACTED]  
Sedgwick LLP  
1717 Main Street, Suite 5400  
Dallas, TX 75201  
[REDACTED]

[REDACTED]  
Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
[REDACTED]

[REDACTED]  
Bowman & Brooke  
970 West 190th Street, Suite 700  
Torrance, CA 90502  
[REDACTED]

Sincerely,



Selim Hammoud  
Director, Product Safety

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

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

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**DECLARATION OF SELIM HAMMOUD IN SUPPORT OF THE  
RESPONSES TO GENERAL ORDER DIRECTED TO  
NISSAN NORTH AMERICA, INC.**

I, Selim Hammoud, declare as follows:

1. I am the Director of Product Safety at Nissan North America, Inc. ("Nissan").
2. I have undertaken and directed an inquiry reasonably calculated to assure that the foregoing answers and corresponding production of documents in response to the General Order directed to Nissan pursuant to *In re: PE14-016, Air Bag Inflator Rupture*, are complete and correct.
3. I have caused Nissan's documents to be 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, Nissan 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 respond completely and correctly to the General Order.

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.

  
Selim Hammoud

*Ledia A. Galbraith*  
*Notary Public*  
*Dec. 5, 2014*

