

January 22, 2018

Office of Information and Regulatory Affairs  
Office of Management and Budget  
ATTN: NHTSA Desk Officer  
725 17<sup>th</sup> Street NW  
Washington, D.C. 20503

RE: NHTSA Docket 2016-0065, Request for Comments on a Collection of  
Information, 82 Fed. Reg. 60789, December 22, 2017

Dear NHTSA Desk Officer:

The Alliance of Automobile Manufacturers<sup>1</sup> (Alliance) and the Association of Global Automakers<sup>2</sup> (Global Automakers) (together, the Associations) provide the following comments in response to NHTSA's notice seeking comments on its proposed renewal of an information collection identified by OMB Control Number 2127-0004. This information collection generally covers the information required to be reported by manufacturers to NHTSA and to vehicle owners and dealers about safety-related defects and noncompliances. These comments are addressed to the Paperwork Reduction Act (PRA) criteria, as explained in OMB's implementing regulations.

NHTSA previously published a 60-day notice regarding this information collection, and the Alliance and Global Automakers provided comments to NHTSA on December 1, 2017 in response to that notice. A copy of those comments is attached to this letter. The Alliance and Global Automakers appreciate NHTSA's revision of the burden estimates for several of the reporting and recordkeeping items to reflect the industry experience as noted in the December 1 comments.

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<sup>1</sup> The Alliance of Automobile Manufacturers is an association of 12 vehicle manufacturers which account for roughly 77% of all car and light truck sales in the United States. These members are BMW Group, FCA US LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car USA.

<sup>2</sup> The Association of Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. These members include American Honda Motor Co., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Maserati North America, Inc., McLaren Automotive Ltd., Nissan North America, Inc., Subaru of America, Inc., Suzuki Motor of America, Inc., and Toyota Motor North America, Inc.

The Associations will focus these comments on three issues: (1) whether the “investigatory exception” to the PRA applies to the recordkeeping and reporting tasks contained in NHTSA’s Administrative Order (the Coordinated Remedy Order and its several amendments, or the “ACRO”) associated with the recalls of Takata airbag inflators involving 19 vehicle manufacturers and over 34 million vehicles; (2) the costs and other issues associated with the ACRO tasks; and (3) whether it is appropriate for NHTSA to discount the consumer outreach burden estimate to account for the outreach efforts contemplated in the settlement by some manufacturers of Multidistrict Litigation involving Takata airbag inflators.

## **I. The “Investigatory Exception” to the PRA Does Not Apply to the Takata ACRO.**

The Associations’ December 1 comments noted that the Takata ACRO contains numerous recordkeeping and reporting provisions beyond the consumer outreach tasks that NHTSA acknowledged in its PRA Information Collection Request. NHTSA’s response to those comments was to state its belief that the ACRO is exempt from the PRA because the ACRO is imposing information collection burdens “during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities.” NHTSA cited to OMB’s PRA regulations at 5 C.F.R. §§ 1320.3(c) and 1320.4(a)(2).

The Associations respectfully disagree. The “investigatory exception” applies “only after a case file or equivalent is opened with respect to a particular party,” 5 C.F.R. § 1320.4(c), and only with respect to “an administrative action, investigation or audit involving an agency against specific individuals or entities,” 5 C.F.R. § 1320.4(a)(2). Here, if there is any relevant investigation, it is NHTSA Engineering Analysis 15-001, which is “against” Takata. The 19 automakers who are voluntarily cooperating with the ACRO are not the target of that investigation.

The PRA regulations specifically provide that the “investigatory exception” does not apply to “collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry[.]” 5 C.F.R. § 1320.4(c). The ACRO is imposing substantial collections of information on the group of 19 auto manufacturers who are recalling Takata airbag inflators, and is thus not eligible for the “investigatory exception.”

There is no principled basis to distinguish the ACRO provisions regarding consumer outreach about the Takata recall, which NHTSA concedes are subject to the PRA, and the other ACRO provisions (most of which involve reporting information to NHTSA and the Takata Monitor, to whom many of the information collection tasks have been delegated)<sup>3</sup> which NHTSA believes are exempt. In fact, many of the ACRO reporting provisions are simply more expansive versions of the information required by NHTSA regulations (Parts 573 and 577) to be reported about any safety recall (such as recall completion data), requirements for which NHTSA has sought and obtained PRA approval for decades. Creating paperwork burdens via

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<sup>3</sup> As previously noted in our December 1, 2017 comment, the Monitor is an adjunct to the Office of Chief Counsel and the Office of Defects Investigation for the purpose of supervising the execution of the Takata recalls under the ACRO.

Administrative Order as opposed to regulation should not enable a government agency to avoid the requirements of the Paperwork Reduction Act.

Finally, the public policy underlying the PRA supports the applicability of the Act to all of the tasks specified in the ACRO. NHTSA's justification of the practical utility of the ACRO tasks will be a useful exercise to ensure that the burdens imposed on the regulated industry meet the letter and spirit of the PRA, including assuring that the information collection has practical utility to the agency, is not unnecessarily duplicative of information already available to the agency and imposes reasonable burdens commensurate with the value of the information to NHTSA's program needs. NHTSA's estimates of the cost burdens associated with the ACRO tasks will serve the goal of increasing transparency into the extraordinary efforts being made by the affected manufacturers to cooperate with NHTSA's efforts to maximize completion of the Takata recalls.

## **II. The Takata ACRO Imposes Cost Burdens Beyond the Supplemental Outreach Program and Raises Other Issues Which NHTSA Should Acknowledge and Justify under the Paperwork Reduction Act Criteria.**

### **A. The Costs Associated with ACRO Compliance.**

NHTSA acknowledged in the 30-day notice that the "ACRO sets forth various requirements in addition to the consumer outreach." The Associations summarized their understanding of the ACRO provisions in the December 1 comments, and here provides an updated version of the significant tasks, along with an estimate of compliance burdens, in the following table:

<b>Task (Paragraph numbers refer to the Paragraph of the ACRO or other document)</b>	
<b>Tasks Under the ACRO</b>	<b>Industry's Estimated Time To Comply</b>
Submitting to NHTSA and the Monitor a Recall Engagement Plan and updating it quarterly (§§ 36 and 37)	Estimates vary widely by company but a best fit is about 50 hours/quarter per manufacturer
Submitting to NHTSA and the Monitor a Supply Certification for each of the 12 Priority Groups in the recall confirming details about remedy part availability (§ 38)	About 10 hours/report per manufacturer
Submitting to NHTSA and the Monitor biweekly recall completion update reports (§ 44)	About 15 hours/week per manufacturer
Notifying NHTSA of a manufacturer's intent to remove certain VINs from the population of VINs subject to the recall (for example, because they meet NHTSA's criteria for being considered no longer in service), and conduct quarterly retroactive monitoring of dealer service records to determine if a removed VIN is later serviced by a dealer for any reason (§ 48 and Supplemental Guidance recently issued by NHTSA)	About 60 hours/year per manufacturer

Task Under the Standing General Order Issued on August 15, 2015	
Reporting to NHTSA within five business days of receiving notice of an incident in which an air bag inflator ruptured or is alleged to have ruptured. The report is to be made on a NHTSA-specified form that does not currently display an OMB Control Number, and is to be accompanied by all documents related to the incident (§§ 1 and 2). The report must also be updated.	About 8 hours/report

**B. NHTSA and the Takata Monitor Are Engaging in Surveys and Other Information Collections that Have Not Been Acknowledged in the Information Collection Request.**

NHTSA’s Information Collection Request states that the answer to the question about whether the information collection “contains surveys, censuses or employ statistical methods” is “no.” However, the correct answer is “yes.” For example, the Takata Monitor team recently asked some of the affected manufacturers to assist the Monitor in conducting a survey of independent repair facilities. And, as discussed below, the Takata Monitor has undertaken surveys, focus groups and other research to support its recommendations. Any such survey should be subject to PRA approval, and in particular, NHTSA should have to document how it meets the substantive standards for information collections employing statistical methods on Part B of a properly submitted Information Collection Request.

**C. NHTSA Should Add to the Record and Consider Other Available Data on the Practical Utility and Burdens of the Supplemental Non-traditional Outreach Contemplated by the ACRO.**

While the Associations appreciate NHTSA’s consideration of the data provided in our December 1 comments, simply adjusting an overall per-VIN outreach cost underappreciates the wide variety of outreach methods contemplated by the ACRO.<sup>4</sup> As the affected manufacturers are interested in identifying effective methods for reaching affected vehicle owners, those manufacturers have been voluntarily working with NHTSA and responding to Monitor recommendations to use different methods to maximize completions. There is a recognition that outreach populations change, because remaining owners with unrepaired vehicles are likely to be owners that have not responded to previous outreach attempts. Thus, new methods are incorporated in the attempts to reach these remaining owners.

NHTSA and the Takata Monitor have developed an extensive set of recommendations toward finding new strategies for reaching owners that might have not responded to earlier outreach attempts. Recommendations include canvassing, leveraging social media, engaging dealerships to help outreach, conducting mobile repairs, etc. Each of these methods creates different cost burdens and yields different benefits toward the goal of maximizing recall completions. To fulfill its PRA obligations, NHTSA must consider and justify the practical utility and the cost burden for each of the outreach methods contemplated under the ACRO and further defined through the Takata Monitor recommendations.

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<sup>4</sup> See, e.g., the Monitor’s Coordinated Communications Recommendations, a copy of which is enclosed with these comments.

1. NHTSA Should Consider Available Data and More Granular Data on the Practical Utility of the Supplemental Non-Traditional Outreach.

While NHTSA generally stated in its 30-day notice that greater notification frequency is better than less notification frequency,<sup>5</sup> NHTSA's discussion of the practical utility of this outreach has thus far considered only the *frequency* of outreach without contemplating the *method* of outreach and its burden. As affected manufacturers have been voluntarily implementing a large number of the Takata Monitor's outreach recommendations where possible, the affected manufacturers have often been unable to evaluate the effectiveness of any given outreach method (i.e., because multiple forms of outreach target the same groups of affected owners at the same time, it is difficult to isolate the impact of any given outreach method).

On the other hand, NHTSA (through the Takata Monitor) has been conducting focus groups, in-depth interviews, surveys, and canvassing pilot studies to support the development of the Takata Monitor recommendations.<sup>6</sup> While the Takata Monitor's latest "State of the Takata Airbag Recalls" report generally describes the research undertaken, it does not address practical utility considerations. NHTSA should add to the record greater details on this research, including the statistical methods used to support the research conclusions. Because the Takata Monitor's research is being conducted under delegation from NHTSA, NHTSA should have requested and obtained PRA approval for the Takata Monitor research.

Moreover, where the research involved focus groups, surveys, etc., the Information Collection Request justification should have also included a "Part B" submission, which would have had to document the statistical methods used in the research and demonstrated that the statistical methods employed are consistent with OMB's various information quality guidance documents. As the purpose of "Part B" of the PRA approval process is to ensure that public policy relies on high-quality and objective information, "Part B" information relating to the Takata Monitor's research could help inform the practical utility of the outreach methods contemplated by the ACRO in this case. Particularly because NHTSA stated in the 60-day notice for this Information Collection that "the lessons learned from the Takata recall will provide a useful guidepost in structuring any similar future action," the agency should be required to identify and justify the statistical methods used to support the Takata Monitor's research and its conclusions, both for this PRA approval request, and to inform any "similar future action" that NHTSA might contemplate.

In summary, NHTSA should more closely consider the practical utility of the supplemental non-traditional outreach methods contemplated under the ACRO and further defined in the Takata Monitor recommendations. As these outreach methods vary widely,

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<sup>5</sup> See 82 FR 60789, 94.

<sup>6</sup> See "The State of the Takata Airbag Recalls," report from the Independent Takata Monitor dated November 15, 2017, pp 23-36, available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the\\_state\\_of\\_the\\_takata\\_airbag\\_recalls-report\\_of\\_the\\_independent\\_monitor\\_112217\\_v3\\_tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the_state_of_the_takata_airbag_recalls-report_of_the_independent_monitor_112217_v3_tag.pdf)

NHTSA's analysis of their practical utility should not be limited simply to the frequency of the outreach but should also include the available data on the effectiveness of the various methods of outreach, including the Takata Monitor's research.

**2. NHTSA Should Consider the Increasing Burdens As the Outreach Efforts Focus More Intently on Owners who have Not Responded to Previous Outreach.**

As the Associations explained in the December 1 comments, the costs of outreach vary widely from around \$2 - \$5 per VIN to over \$100 per VIN depending on the outreach method. Thus, we believe that using a simple dollar-per-VIN analysis cannot adequately represent the true cost burdens of the varying methods used to reach affected vehicle owners. As NHTSA is aware, the outreach methods employed will change over the course of a recall as remaining affected owners are increasingly those who have not responded to prior outreach attempts, and perhaps never will.<sup>7</sup> Thus, an outreach campaign which might start by incurring a \$2 - \$5 per VIN cost could end up closer to the \$100 per VIN cost toward the end of the campaign. Outreach methods recommended by the Takata Monitor for the unremedied vehicles in the recall population (methods such as door-to-door canvassing) invariably will cost more than initial post-card or telephone outreach communications.

Thus, in order to appropriately consider the burdens, NHTSA should not assume that one per-VIN cost value is appropriate for the whole outreach program covering a particular recall. NHTSA should consider the likely rising per-VIN costs of outreach as communication campaigns for each recall move into subsequent iterations. For the three-year period covered under this PRA approval request, NHTSA should consider the completion targets that it established under the ACRO and use that as a guide to calculate the rising per-remaining-VIN costs for each outreach strategy. Specifically, NHTSA should identify the costs and justify the effectiveness of door-to-door canvassing—one of the recommended forms of outreach to be considered for nonresponsive owners. As the Takata Monitor conducted canvassing pilot studies,<sup>8</sup> NHTSA should also have access to the cost and effectiveness information from the Takata Monitor that can help inform the per-VIN costs and benefits of this outreach method.

**III. The Paperwork Reduction Act Does Not Provide for Discounting the Costs Associated with the Recordkeeping and Reporting Provisions of the Takata ACRO.**

NHTSA discounted the costs associated with the Takata ACRO consumer outreach to reflect “the cost of outreach efforts” that will be incurred by some manufacturers<sup>9</sup> in settling the various multidistrict litigation (MDL) cases. This discount is inappropriate and without basis.

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<sup>7</sup> The Monitor's December 23, 2016 recommendations, issued under Paragraph 42 of NHTSA's December 9, 2016 ACRO, states, among other things, that manufacturers “[c]oordinate communications across different means of outreach to ensure that each vehicle in a launched campaign receives at least one form of outreach per month until the vehicle is repaired.... (emphasis in original).” There is no requirement in the Safety Act for a vehicle owner to complete a recall; some owners do not seek repair for a variety of reasons despite repeated contacts and in some instances ask manufacturers to stop contacting them about the recall. This is not addressed in the agency's analysis.

<sup>8</sup> See “The State of the Takata Airbag Recalls” at 44-46.

<sup>9</sup> Not all of the manufacturers subject to the ACRO have entered into MDL settlements, as NHTSA noted in the Request for Comments.

The Associations respectfully disagree that there is any basis under the Paperwork Reduction Act for such a discount. NHTSA (often via the Takata Monitor) has announced certain unique expectations for consumer outreach efforts in the Takata recalls that go beyond the Vehicle Safety Act obligations, and those provisions form the sole baseline from which the PRA obligations should be measured. The ACRO provisions predate any MDL settlement obligations, and would have existed in the absence of the litigation settlements. The ACRO specifications should have to be justified under the PRA in their entirety.

We appreciate this opportunity to provide our comments.

Sincerely,



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Vice President  
Vehicle Safety & Harmonization



Steve Gehring  
Vice President  
Vehicle Safety &  
Connected Automation

Enclosures: The Associations' Comments of December 1, 2017  
The Takata Monitor's Coordinated Communications Recommendations

Cc: NHTSA Docket 2016-0065  
OMB OIRA Desk Officer for NHTSA