

# Memorandum



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



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**Subject:** Second Extension of Deadline for Written Submissions      **Date:** December 1, 2023

**From:** Ashley Simpson  
Senior Trial Attorney  
Litigation and Enforcement      **Reply to** NCC-100  
**Attn. of:**

**To:** Docket No. NHTSA-2023-0038;  
Initial Decision That Certain Frontal Driver  
and Passenger Air Bag Inflators  
Manufactured by ARC Automotive Inc.  
and Delphi Automotive Systems LLC  
Contain a Safety Defect

**Thru:** Kerry Kolodziej  
Assistant Chief Counsel  
Litigation and Enforcement

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To provide additional opportunity for any interested person to present information, views, and arguments in response to the Initial Decision, NHTSA is providing an additional 14 days to the period during which interested persons can provide written submissions. NHTSA's Associate Administrator for Enforcement extended the prior deadline of December 4, 2023, and written submissions from any interested person are now due on or before **December 18, 2023**.

Notice of the extension will be published in the Federal Register. Enclosed is related correspondence.

Enclosures



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



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VIA EMAIL

December 1, 2023

Erika Z. Jones  
Mayer Brown LLP  
1999 K Street NW  
Washington, DC 20006  
[EJones@mayerbrown.com](mailto:EJones@mayerbrown.com)

Re: NHTSA-2023-0038

Dear Ms. Jones:

Please allow this letter to serve as a response to your November 21, 2023 letter. On behalf of certain manufacturers who are Recipient Parties under the August 24, 2023 Protective Agreement, your letter requested the supplementation of the investigative file related to the above-referenced proceeding. Your letter specifically requested: 1) any papers showing the work and calculations of Dr. Donna Glassbrenner, 2) a presentation given by Sharon Yukevich on April 26, 2023 during a Multi-Disciplinary Review Panel regarding investigation EA16-003, 3) records developed from a Collaboration Team including several vehicle manufacturers, including ARC Automotive, that investigated root cause of ruptures involving ARC inflators, and 4) reports from Standing General Orders 2015-02 and 2015-02A.

As you are aware, the investigative file for this matter contains a significant amount of confidential business information. As discussed in this letter, the investigative file refers to the non-public investigative file provided to manufacturers with potential legal obligations under the Vehicle Safety Act and NHTSA regulations that could result from any recall order issued by NHTSA.

In light of your request, NHTSA will supplement the investigative file with a spreadsheet prepared by Dr. Donna Glassbrenner in the course of her analysis of the estimated rate of rupture of the ARC inflators.<sup>1</sup> This spreadsheet contains information subject to confidential business

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<sup>1</sup> While this spreadsheet includes a tab that labeled “CAFE attrition model,” it should not be used to infer anything related to Corporate Average Fuel Economy standards. The information used in that part of her analysis can be found in the [2016 Corporate Average Fuel Economy Model](#).

information claims. As you are aware and as referenced in the Initial Decision, Dr. Glassbrenner's analysis was based on the following assumptions:

This estimate assumes that: (1) In any given year, 0.4% of the vehicles with subject inflators on the road experience a frontal impact with a delta V of 15 mph or more. ([This figure was derived from the light trucks in the 2015 Fatality Analysis Reporting System \(FARS\), 2015 General Estimates System \(GES\), 2016 vehicle registration data from S&P Global Mobility's \(f/k/a R.L. Polk, Inc.\), and 2015 Crashworthiness Data System.](#)); (2) The subject inflators deploy at about a change in velocity of 15 mph, regardless of other conditions (such as, in the case of passenger air bags, whether a person of a threshold weight is in the passenger seat); and (3) the vehicles with subject inflators remain on the road according to the average of the car and class 1-2a light truck.

88 F.R. at 62144 at fn. 16. All but the S&P Global Mobility data is publicly available without cost. The S&P Global Mobility data is available through S&P for a fee, and NHTSA will make the information available for inspection consistent with law upon request.

While not requested by your letter, NHTSA will also supplement the investigative file with photos from the November 15, 2023 Audi A3 e-Tron vehicle inspection,<sup>2</sup> which only became available after the distribution of the investigative file to the Recipient Parties under the Protective Agreement.

NHTSA does not have any additional supplemental materials for the investigation file in response to your requests. The presentation given during an internal agency Multi-Disciplinary Review Panel meeting regarding investigation EA16-003 is subject to the deliberative process privilege, and as such, the document will not be provided.<sup>3</sup> NHTSA previously provided as a part of the investigative file all records in its possession that were developed by the Collaboration Team. If any manufacturer believes that another document produced by the Collaboration Team should be considered by the agency, it is invited to submit the document as a part of a written submission. Similarly, NHTSA has previously included all SGO reports made pursuant to Standing General Orders 2015-02 and 2015-02A related to ARC inflators. Other Standing General Order reports related to the referenced Orders are not part of this investigative file.

NHTSA will also provide interested persons an additional 14 days to make written submissions. The prior deadline of December 4, 2023 is being extended, and written submissions from any interested person are now due on or before December 18, 2023.

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<sup>2</sup> This inspection relates to the December 18, 2021 inflator rupture identified in NHTSA's Initial Decision.

<sup>3</sup> The agency will separately respond to your November 13, 2023 letter regarding another privileged document related to this meeting.

Should you have any questions or concerns, please do not hesitate to contact Sharon Yukevich at [Sharon.Yukevich@dot.gov](mailto:Sharon.Yukevich@dot.gov).

Sincerely,

EILEEN FALLON  
SULLIVAN



Digitally signed by EILEEN  
FALLON SULLIVAN  
Date: 2023.12.01 10:14:26  
-05'00'

Eileen Sullivan  
Associate Administrator for Enforcement

cc: Docket No. NHTSA-2023-0038

November 21, 2023

VIA EMAIL

Tanya Topka  
Acting Director  
Office of Defects Investigation  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Erika Z. Jones**  
Partner  
T: +1 202 263 3232  
Ejones@mayerbrown.com

Re: Docket NHTSA-2023-0038; Request to Supplement Investigative File

Dear Ms. Topka:

I write on behalf of certain motor vehicle and motor vehicle equipment manufacturers (jointly, the “Manufacturers”) in furtherance of their September 22, 2023, Letter to Cem Hatipoglu (the “September 22 Letter”) sent in the above-captioned docket, and your response thereto dated September 29, 2023 (the “September 29 Response”).

As you will recall, the September 22 Letter pointed out a number of materials missing from the investigative file NHTSA provided to us on August 24, 2023, and requested supplementation of the file accordingly. The Manufacturers explained that they would request further supplementation of the investigative file to include any additional materials identified as missing based on our continuing review of that file. To that end, pursuant to 49 C.F.R. § 554.10(a) & (b), the Manufacturers request that NHTSA provide the following materials:

1. Any papers showing the work and calculations of Dr. Donna Glassbrenner. As you know, NHTSA is required to make available “all information on which the [Initial] decision is based.” 49 C.F.R. § 554.10(b). Here, there can be no doubt that the Initial Decision is based in significant part on Dr. Glassbrenner’s work. The Initial Decision is premised on NHTSA’s estimation of a “rupture risk” that it calculates to be “7 out of 2.6 million.” 88 F.R. 62140, 62145 (Sept. 8, 2023). The Initial Decision expressly identifies a number of assumptions underlying that estimation. *Id.* at 62145 n. 16. And it explains that the Agency’s initial determination that the subject inflators must be recalled is rooted in this risk assessment. *Id.* at 62146. The centrality of Dr. Glassbrenner in developing this estimation was confirmed by her recorded comments at the October 5, 2023, public meeting in this matter. At that meeting, NHTSA offered Dr. Glassbrenner to provide an explanation “about how we estimated the rate at which the subject inflators have ruptured and what that means for future ruptures.” Tr. at 51:7-9. That explanation included additional detail on the calculations Dr. Glassbrenner performed, including additional detail on the assumptions disclosed in Footnote 16 of the Initial Decision.

Tanya Topka  
November 21, 2023  
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We assume that Dr. Glassbrenner generated written work, potentially involving one or more electronic files, in performing this analysis. Given the centrality of that work to the Initial Decision, the Manufacturers request that the Agency make that work available as part of the investigative file in this matter.

2. The Manufacturers have learned that Sharon Yukevich made a factual presentation at the April 26, 2023 meeting of the Multi-Disciplinary Review Panel regarding the Agency's investigation in EA16-003 and the alleged defect at issue in the investigation. That meeting authorized the issuance of the Recall Request Letter (the "RRL") to ARC Automotive the following day. The RRL is cited throughout the Initial Decision and, in fact, its description of NHTSA's root cause theory is quoted verbatim in the Initial Decision. 88 F.R. at 62144. The Manufacturers thus request that NHTSA supplement the investigative file to include Ms. Yukevich's presentation to the Multi-Disciplinary Review Panel.
3. In January 2017, at NHTSA ODI's urging, several vehicle manufacturers, ARC Automotive and NHTSA formed a Collaboration Team to investigate the root cause of certain ruptures that occurred during quality testing of certain passenger-side inflators. NHTSA was granted access to materials used and generated by this Team. NHTSA also participated in numerous conference calls convened by the Team. However, the investigative file in this matter does not appear to include the bulk of the materials related to the Collaboration Team's work. To the extent any such materials exist, the Manufacturers request that NHTSA supplement the investigative file with them.

Finally, the Manufacturers also must address again the absence of certain reports responsive to Standing General Orders 2015-02 and 2015-02A from the investigative file. As previously mentioned, those Standing General Orders are expressly referenced in the Initial Decision. 88 F.R. at 62143 ("NHTSA also ordered vehicle and inflator manufacturers, including ARC, to report to the agency information related to any inflator field ruptures. Standing General Order (SGO) 2015-02."). The investigative file does not contain SGO reports submitted by any airbag inflator manufacturers named in SGO 2015-02A except ARC. NHTSA's September 29 Response indicated that "[t]he responses to these SGOs *related to this investigation* were included in the investigative file." September 29 Response at 2 (emphasis added). To the extent that NHTSA intentionally omitted those reports prepared and submitted by other airbag inflator manufacturers because it does not deem them to be "related to this investigation," that is improper.

Of course, SGO 2015-02A was issued through PE15-027, the predecessor investigation into ARC Automotive inflators before that investigation was upgraded to EA16-003.

Tanya Topka  
November 21, 2023  
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But more importantly, the relevance of these materials is established by long-standing agency practice and as a matter of law by the relevant legal precedent. The Manufacturers must assume that NHTSA, in determining whether to issue the RRL and the Initial Decision, conducted a comprehensive peer analysis of the failure rates of comparable airbag inflators produced by other inflator manufacturers. *See United States v. General Motors Corp.*, 518 F.2d 420, 438 n.84 (D.C. Cir. 1975) (noting that the “relevant considerations” in determining whether there have been a “significant” number of failures include “failure rates of comparable components”). Assuming that NHTSA performed this analysis, the SGO 2015-02 and 2015-02A reports submitted by the other airbag inflator manufacturers, or regarding those other airbag inflators, would have been the primary data source supporting that analysis, and therefore must be added to the investigative file provided to the Manufacturers.

The Manufacturers therefore request that NHTSA supplement the investigative file with the materials described in this letter as soon as possible and, in any event, no later than November 29, 2023. The Manufacturers again appreciate your consideration and look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Erika Z. Jones", with a horizontal line extending from the end of the signature.

Erika Z. Jones