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UNITED STATES DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

DOCKET NO. NHTSA-2016-0098; Notice 2

General Motors LLC, Withdrawal of Petition to Amend Takata DIR Schedule

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

ACTION: Notice of petition mootness.

SUMMARY: General Motors, LLC (GM) petitioned the Agency to alter the Part 573 defect information report (DIR) filing schedule set forth in paragraph 14 of the May 4, 2016 Amendment to November 3, 2015 Consent Order between NHTSA and TK Holdings Inc. (Takata). More specifically, GM requested that NHTSA modify the DIR schedule with respect to certain GM-branded motor vehicles to defer the filing date from December 31, 2016 to December 31, 2017. GM has since withdrawn this petition.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mykytiuk, Office of the Chief Counsel, National Highway Traffic Safety Administration, at (202) 366-2992.

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 inflators that contain a phase-stabilized ammonium nitrate (PSAN)-based propellant and do not contain a moisture-absorbing desiccant. Such defect declarations are to be made on a rolling basis. *See* Amendment at ¶ 14. Takata timely submitted the first scheduled DIR on May 16, 2016. *See* Recall Nos. 16E-042, 16E-043, and 16E-044. The

next scheduled DIR is due to be filed by Takata on December 31, 2016. That second DIR is expected to include passenger inflators installed as original equipment on certain motor vehicles manufactured by GM (the “covered passenger inflators”), as well as inflators installed as original equipment on motor vehicles manufactured by a number of other automakers, which are not at issue here. The Takata filing of the second DIR will trigger GM’s obligation to file a DIR for affected GM vehicles. *See* 49 C.F.R. Part 573; Amendment at ¶ 16; November 3, 2015 Coordinated Remedy Order at ¶ 46.¹

Paragraph 17 of the Amendment sets forth the following procedure under which the DIR schedule may be modified or amended:

Based on the presentation of additional test data, analysis, or other relevant and appropriate evidence, by Takata, an automobile manufacturer, or any other credible source, NHTSA may, after consultation with Takata, alter the schedule set forth in Paragraph 14 to modify or amend a DIR or to defer certain inflator types or vehicles, or a portion thereof, to a later DIR filing date. Any such evidence must be submitted to NHTSA no later than one-hundred-twenty (120) days before the relevant DIR filing date. This paragraph applies only to the DIRs scheduled to be issued on or after December 31, 2016 under the schedule established by Paragraph 14 of this Amendment.

On July 22, 2016, NHTSA issued Enforcement Guidance Bulletin 2016-03 to inform the public of the process and procedure the Agency had established in connection with paragraph 17, as well as the standards and criteria that would guide Agency decision-making. *See* 81 FR 47854. Therein, the Agency stated that it may grant a petition to modify or amend the DIR schedule “if the Agency finds that the written data, information, and arguments regarding the petition and other available information demonstrate, by a preponderance of the evidence, that either: (i) there has not yet been, nor will be for some period of years in the future, sufficient propellant degradation to render the inflators contained in the particular class of vehicles

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.

unreasonably dangerous in terms of susceptibility to rupture; or (ii) the service life expectancy of the inflators installed in the particular class of vehicles is sufficiently long that they will not pose an unreasonable risk to motor vehicle safety if recalled at a later date.” *Id.* at 47856.

The Agency also clarified that the paragraph 17 petition process could not be used to expedite or expand the DIR schedule, or to eliminate a population of vehicles from the recall altogether. *Id.*

On September 2, 2016, GM filed a petition pursuant to paragraph 17 of the Amendment and Enforcement Guidance Bulletin 2016-03. Therein, GM requested that NHTSA modify the DIR schedule to defer the inclusion of certain GM passenger-side inflators from December 31, 2016 to December 31, 2017. *See* General Motors LLC’s Petition to Amend Takata DIR Schedule.

Notice of receipt of GM’s petition was published in the Federal Register, and a public comment period commenced on September 20, 2016 (81 FR 64575). Six comments were received, including one comment from GM that, after further consideration, it would withdraw the petition and will instead address the subject population through an alternative procedure. *See* Letter from Jeffrey Boyer to Jeffrey Giuseppe (Nov. 15, 2016). To view the petition and all supporting documents visit the Federal Docket Management System website at: <http://www.regulations.gov>. Then, follow the online search instructions to locate docket number “NHTSA-2016-0098.”

II. NHTSA’s Decision.

Petitions filed under Paragraph 17 are actionable by the Agency only so long as they are submitted and maintained by the petitioner. In its comment to the petition, GM explained that it was withdrawing the petition and that it will address the subject vehicle population through an alternative procedure. *See* Boyer Letter (Nov. 15, 2016).

Because GM has withdrawn its petition to defer the inclusion of the covered passenger inflators in the Takata equipment DIR, that petition is moot and no further action on the petition is warranted. Therefore, the DIR schedule set forth in Paragraph 14 of the Amendment is unchanged. The covered passenger inflators shall be included in Takata's equipment DIR submission due on December 31, 2016. *See* 49 C.F.R. Part 573; Amendment at ¶ 16; November 3, 2015 Coordinated Remedy Order at ¶ 46.

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

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