

**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: |) |
| |) |
| EA15-001 |) |
| (formerly PE14-016) |) |
| Air Bag Inflator Rupture |) |
| |) |
| |) |
| Docket No. NHTSA-2015-0055 |) |
| |) |
| |) |

**AMENDMENT TO NOVEMBER 3, 2015 COORDINATED REMEDY ORDER
AND JULY 17, 2015 REMEDY AGREEMENT**

This Amendment to the July 17, 2015 Remedy Agreement and November 3, 2015 Coordinated Remedy Order (the “Amendment”) is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, to resolve, mitigate, and control risks of harm, and to promote safety. This Amendment is being issued, pursuant to Paragraph 18 of the July 17, 2015 Remedy Agreement and Paragraph 48 of the November 3, 2015 Coordinated Remedy Order, for the purpose of modifying the remedy schedules set forth therein, but only to the extent that those schedules involve the remedy program for PSDI-4 air bag inflators manufactured by TK Holdings Inc. (“Takata”), which are installed in motor vehicles manufactured by BMW North America, LLC (“BMW”).

I. BASIS FOR AMENDMENT.

1. On July 17, 2015, NHTSA entered into a Remedy Agreement with BMW NA. The Remedy Agreement permitted BMW NA, for a limited period of time, to proceed with an

interim “like for like” remedy program for the repair of defective PSDI-4 driver-side air bag inflators, while BMW NA proceeded with developing a permanent remedy through an alternative supplier. *See* Remedy Agreement at ¶¶ 8-10. In exchange, BMW NA was obligated to work with expedition towards finding a permanent remedy, and to make the permanent remedy available to consumers no later than December 31, 2016. *See* Remedy Agreement at ¶ 11.

2. On August 28, 2015, in accordance with Paragraph 11 of the Remedy Agreement, BMW NA informed NHTSA that it expected to have an adequate supply of alternative remedy parts to replace PSDI-4 inflators by the end of the first quarter of 2016. *See* August 28, 2015 letter from Sam Campbell to Frank S. Borris regarding Response to Clause 11 of Remedy Agreement between BMW and NHTSA *available at* <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM485757/INLE-EA15001-62612.pdf>.

3. On November 3, 2015, after a public administrative proceeding, NHTSA issued a unilateral Coordinated Remedy Order to Takata, BMW NA, and eleven other vehicle manufacturers affected by the Takata air bag inflator recalls. Therein, the Agency established a prioritization schedule for the remedy of defective Takata inflators, and set forth the following deadlines by which each of those vehicle manufacturers shall ensure that it has a sufficient supply of remedy parts:

| Priority Group | Sufficient Supply Timelines |
|-----------------------|------------------------------------|
| Priority Group 1 | March 31, 2016 |
| Priority Group 2 | September 30, 2016 |
| Priority Group 3 | December 31, 2016 |

See Coordinated Remedy Order at ¶ 39. The Agency also set forth the following target deadlines by which each of the vehicle manufacturers shall complete its recall remedy program:

| Priority Group | Remedy Completion Target Deadline |
|-----------------------|--|
| Priority Group 1 | December 31, 2017 |
| Priority Group 2 | December 31, 2017 |

| | |
|------------------|-------------------|
| Priority Group 3 | December 31, 2017 |
| Priority Group 4 | December 31, 2019 |

See Coordinated Remedy Order at ¶ 40.

4. On January 29, 2016, BMW NA notified NHTSA that, during production robustness testing, the alternative PSDI-4 inflator had suffered an unexpected failure. See Exhibit A. BMW NA informed NHTSA that, although it was working on developing a solution, it would be unable to resume production before March 31, 2016, and therefore, it would be unable to comply with the deadlines in the Coordinated Remedy Order.¹

5. On February 23, 2016, BMW NA formally requested a five-month extension of time in which to comply with the deadlines specified in Paragraph 11 of the Remedy Agreement, as well as Paragraphs 39 and 40 of the Coordinated Remedy Order. See Exhibit A.

6. Paragraph 18 of the Remedy Agreement permits NHTSA and BMW NA to modify or amend the agreement by an instrument in writing, signed by all parties.

7. Paragraph 48 of the Coordinated Remedy Order permits NHTSA to unilaterally modify or amend the provisions of the order to, among other things, “account for and timely respond to newly obtained facts, scientific data, changed circumstances, and/or other relevant information that may become available . . .” Examples of such anticipated modifications and amendments include “allowing for reasonable extensions of time for the timelines contained in Paragraphs 39 and 40.”

8. NHTSA issues this Amendment pursuant to Paragraph 18 of the July 17, 2015 Remedy Agreement; Paragraph 48 of the November 3, 2015 Coordinated Remedy Order; and its authority under the Safety Act, 49 U.S.C. § 30101, *et seq.*, as delegated by the Secretary of Transportation, 49 C.F.R. § 1.95, to ensure that defective vehicles and equipment are recalled, 49

¹ On or about February 1, 2016, BMW NA told NHTSA that it has only a limited supply of “like for like” interim remedy parts remaining.

U.S.C. §§ 30118-30119, to ensure the adequacy of recalls, 49 U.S.C. § 30120(c), to exercise NHTSA's inherent power of enforcement discretion, and to compromise civil penalty liability, 49 U.S.C. § 30165(b). It is AGREED by BMW NA (solely with respect to the Amendment to the July 17, 2015 Remedy Agreement) and ORDERED by NHTSA (with respect to the Amendments to both the July 17, 2015 Remedy Agreement and November 3, 2015 Coordinated Remedy Order) as follows:

II. TERMS AND CONDITIONS OF AMENDMENT.

9. **Only as to BMW NA vehicles that are equipped with PSDI-4 air bag inflators manufactured by Takata**, the schedule set forth in Paragraph 39 of the Coordinated Remedy Order is extended by five months as follows:

| Priority Group | Sufficient Supply Timelines |
|-----------------------|------------------------------------|
| Priority Group 1 | August 31, 2016 |
| Priority Group 2 | February 28, 2017 |
| Priority Group 3 | May 31, 2017 |

10. **Only as to BMW NA vehicles that are equipped with PSDI-4 air bag inflators manufactured by Takata**, the schedule set forth in Paragraph 40 of the Coordinated Remedy Order is extended by five months as follows:

| Priority Group | Remedy Completion Target Deadline |
|-----------------------|--|
| Priority Group 1 | May 31, 2018 |
| Priority Group 2 | May 31, 2018 |
| Priority Group 3 | May 31, 2018 |
| Priority Group 4 | May 31, 2020 |

11. The deadline set forth in Paragraph 11 of the Remedy Agreement is extended to May 31, 2017

12. BMW NA shall use its best efforts to complete, to the extent possible, each milestone set forth in Paragraphs 9, 10, and 11 of this Amendment well in advance of the extended deadline.

13. The deadlines for BMW NA recalls that involve Takata air bag inflators other than the PSDI-4 inflator remain unchanged. Those remedy programs remain subject to the deadlines set forth in Paragraphs 39 and 40 of the Coordinated Remedy Order.

14. All other provisions of the November 3, 2015 Coordinated Remedy Order and July 17, 2015 Remedy Agreement remain in full effect and are applicable to this Amendment.

APPROVED AND SO ORDERED:

NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

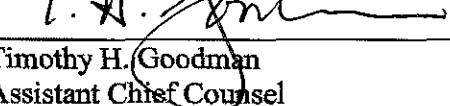
Dated: March 15, 2016

By: ORIGINAL SIGNED BY
Mark R. Rosekind, Ph.D.
Administrator

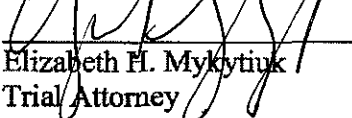
Dated: March 15, 2016

By: 
Paul A. Hemmersbaugh
Chief Counsel

Dated: March 15, 2016

By: 
Timothy H. Goodman
Assistant Chief Counsel
for Litigation and Enforcement

Dated: March 15, 2016

By: 
Elizabeth M. Mykytiuk
Trial Attorney

AGREED, BUT ONLY AS TO THE AMENDMENT
TO THE JUNE 17, 2015 REMEDY AGREEMENT:

BMW OF NORTH AMERICA, LLC

Dated: March 7, 2016

By: 
Samuel Campbell
Head of Safety Engineering

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Via Email

February 23, 2016

Paul Hemmersbaugh, Esq.
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D. C. 20590

**RE: Docket No. NHTSA-2015-0055 - Coordinated Remedy Proceeding
In Re EA15-001 - Air Bag Inflator Rupture**

Dear Mr. Hemmersbaugh:

BMW hereby requests an extension of time in which to comply with the timelines contained in Paragraphs 39 and 40 of the Coordinated Remedy Order (“the Order”) dated November 3, 2015 that was issued in the above-captioned proceeding. BMW also requests an amendment to the timelines outlined in Paragraph 11 of its Remedy Agreement dated July 17, 2015.

BMW had reasonable plans in place to procure a sufficient quantity of alternative PSDI-4 inflators from a supplier other than Takata to meet expected consumer demand by the end of the first quarter of 2016. The plans included procurement of inflators that would be capable of being integrated into a Takata airbag module, with some physical modifications to the module design. The confidential details of BMW’s plans were provided to the agency under separate cover in late January.

Although the early testing of the revised design modules was promising, Takata experienced some unexpected test failures in January. BMW and Takata believe that they have identified the root cause of the test failures, which relates to unanticipated interaction with the horn plate in the steering wheel. The confidential details of BMW test results were also provided to the agency under separate cover earlier this month.

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Takata has redesigned the module to address the failures. Moreover, to mitigate the risk that the redesign might be insufficient, BMW is proceeding in parallel with three alternative module designs as a backup plan. However, it will be necessary to produce new tools for the redesigned module, as well as to conduct new Production Part Approval Process (PPAP) tests, robustness tests, and a final Product Verification (PV) for the revised module design.

Due to these unanticipated development and validation steps, BMW requests a five month extension of time in which to comply with each of the deadlines specified in Paragraph 11 of its Remedy Agreement, as well as Paragraphs 39 and 40 of the Coordinated Remedy Order, as follows:




Proposed New **Priority Group Timelines** (paragraph 39)

- Priority Group 1 August 31, 2016
- Priority Group 2 February 28, 2017
- Priority Group 3 May 31, 2017

Proposed new **Remedy Completion Target** Deadlines (paragraph 40)

- Priority Group 1 May 31, 2018
- Priority Group 2 May 31, 2018
- Priority Group 3 May 31, 2018
- Priority Group 4 May 31, 2020

Please let us know if you need any other information to evaluate our request. Thank you for your consideration.

Respectfully submitted,

Ann Marie Dias Lebrun
Assistant General Counsel

cc: Elizabeth Mykytiuk, Esq.