



March 23, 2021

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg:

We write to inquire about the implementation status of the Motor Vehicle Safety Whistleblower Act, enacted into law as part of the Fixing America's Surface Transportation (FAST) Act of 2015. This statute required the Department of Transportation (DOT) to promulgate regulations to implement the legislation within 18 months of enactment, or by May 4, 2017. However, almost four years later, the DOT has not finalized any rule or regulation. We respectfully request that you work towards implementing the FAST Act's whistleblower protection provisions immediately.

In 2015, Congress passed the Motor Vehicle Safety Whistleblower Act to provide essential whistleblower protections to employees of motor vehicle manufacturers, part suppliers, or dealerships who witness illicit activity by their employer. In particular, the statute would incentivize these employees to come forward to the DOT with information about safety defect violations or other acts of noncompliance that are likely to cause an unreasonable risk of serious physical injury or death. Importantly, the law would also protect the identity of employees, ensuring that they are not victims of retaliation by their employers.

Over the past few years, we have observed increasingly devastating and tragic motor vehicle safety defects, which could have been prevented if the auto manufacturers did not ignore substantial safety concerns that originated during the manufacturing process. For example, in 2014, the *New York Times* reported that Takata became aware of their deadly exploding airbags — which propel metal fragments into drivers' and passengers' faces and bodies, causing severe injuries and even death — years before alerting the National Highway Traffic Safety Administration (NHTSA).¹ To date, Takata's failure to act, on what would become the largest

¹ Hiroko Tabuchi, "Air Bag Flaw, Long Known to Honda and Takata, Led to Recalls", *New York Times* (New York City, New York), September 11, 2014, <https://www.nytimes.com/2014/09/12/business/air-bag-flaw-long-known-led-to-recalls.html? r=0>

automotive recall in U.S. history, has been responsible for over 69 million recalls, 400 injuries, and 18 deaths in the United States. However, if it were not for Kevin Fitzgerald, a Takata employee and whistleblower who reported Takata's manipulation of testing data, the situation could have been far worse.²

Unfortunately, there are many more examples of auto manufacturers hiding severe safety defects from consumers and federal regulators. In 2017, Kim Gwang-ho, a Kia engineer and whistleblower, alerted NHTSA authorities to a safety defect that caused engine failures and fire risks in Hyundai and Kia vehicles.³ In 2015, Stuart Johnson, a Volkswagen executive and whistleblower, revealed to authorities that Volkswagen had specially designed and installed a software device on its vehicles to beat vehicle emission tests.⁴ Volkswagen has since paid more than \$14.7 billion in penalties and recalled over half a million vehicles in the United States. Similarly, Kia and Hyundai have paid more than \$137 million in penalties and recalled over 4 million vehicles.

We owe it to the whistleblowers mentioned above and those unnamed to implement the whistleblower protections in the Motor Vehicle Safety Whistleblower Act.

To better understand the cause for the missed deadline, status of the rulemaking, and expected completion date, I respectfully request an answer to the following questions by April 14, 2021.

1. Why did NHTSA miss the statutory deadline for the rulemaking?
2. What is the current status of the rulemaking and when does NHTSA expect to progress to the next stage?
3. When does NHTSA expect to issue a final rule?

Sincerely,



Richard Blumenthal
United States Senator



Edward J. Markey
United States Senator

² Craig Trudell, Margaret Fisk, "Audit: Takata Juiced Data on Air Bags", *Washington Post* (Washington, D.C.), July 19, 2016, https://www.washingtonpost.com/business/economy/audit-takata-juiced-data-on-air-bags/2016/07/19/2706560e-4de8-11e6-a422-83ab49ed5e6a_story.html

³ Hyunjoon Jin, "South Korea Orders Major Hyundai, Kia Recall After Whistleblower Report", Reuters (London, England), May 11, 2017, <https://www.reuters.com/article/us-hyundai-motor-recall/south-korea-orders-major-hyundai-kia-recall-after-whistleblower-report-idUSKBN18807P>

⁴ Larry Vellequette, "VW Diesel Whistleblower Identified in Book", *Automotive News* (Detroit, Michigan), April 21, 2017, <https://www.autonews.com/article/20170421/OEM02/170419798/vw-diesel-whistleblower-identified-in-book>