

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re: _____)

AQ14-004 _____)

SPECIAL ORDER DIRECTED TO AMERICAN HONDA MOTOR CO., INC.

To:

Jay Joseph
Assistant Vice President
Product Regulatory Office
American Honda Motor Co., Inc.
1919 Torrance Boulevard
Torrance, CA 90501-2746

This Special Order¹ is issued by the Secretary of Transportation pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7 and 510.8, and pursuant to a delegation of authority to the Chief Counsel of the National Highway Traffic Safety Administration (“NHTSA”), an Operating Administration of the United States Department of Transportation. 49 C.F.R. §§ 1.95, 501.8(d).

NHTSA has opened an Audit Query, AQ14-004, to investigate the extent and scope of certain EWR reporting failures by Honda, the reason(s) for such failures, and the steps being taken by Honda to assure full compliance with TREAD reporting requirements.

Honda’s response to this Special Order must be provided no later than **November 24, 2014**. Honda’s response must be signed under oath, i.e., accompanied by an affidavit, signed by a responsible officer of Honda, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and

¹ Pursuant to 49 U.S.C. § 30166(g), this Special Order is equivalent to a subpoena.

correct, that he/she has caused the documents of Honda to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses, and may subject Honda to civil penalties of up to \$7,000 per day, up to a maximum penalty of \$35,000,000 for a related series of daily violations. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). Falsifying or withholding information in response to this Special Order may also lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C. § 30170(a)(1).

DEFINITIONS

To the extent used in this Special Order, the following definitions apply:

1. **“Affiliates”** means a corporation that is related to another corporation (such as a subsidiary, parent, or sibling corporation) by shareholdings or other means of control.
2. **“Agent”** means an individual, such as a representative, who is authorized to act for or in place of another.
3. **“Document(s)”** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure, and includes all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, electronic communications (existing in hard copy and/or in electronic storage), invoices, contracts, agreements, manuals, publications, photographs of all types, and all mechanical, magnetic, and electronic records or recordings of any kind. Any

document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.

4. **“Employee”** means a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

5. **“EWR Information”** means the information that manufacturers are required to report to NHTSA under the TREAD Act. 49 U.S.C. § 30166(m). EWR Information includes: production information as described in 49 C.F.R. § 579.21(a); information on incidents involving death or injury as described in 49 C.F.R. § 579.21 (b); numbers of property damage claims, consumer complaints, warranty claims and field reports as described in 49 C.F.R. § 579.21(c); and copies of field reports as described in 49 C.F.R. § 579.21(d).

6. **“Honda”** means American Honda Motor Co., Inc. and its parent company, Honda Motor Co., Ltd., all of their past and present officers and employees, whether assigned to their principal offices or any of their field or other locations, all of their divisions, subsidiaries (whether or not incorporated) and affiliated enterprises, including the Honda Division and the Acura Division, and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Honda (including all business units and persons previously referred to).

7. “**Officer**” means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.

INSTRUCTIONS

1. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590.

2. Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

3. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

4. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. You are instructed and cautioned not to assert privilege in connection with any information you submit to NHTSA. Should you anticipate doing so for any reason (and NHTSA can contemplate none), you are instructed to contact Beth Mykytiuk at (202) 366-9991 to discuss why any information you submit would constitute privileged information.

5. The response to this Special Order, including the document requests, must be submitted in duplicate to this office by the deadline stated above.

6. We expect that you will not claim that materials we request contain confidential business information. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, then you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. You are required to submit two copies of the documents containing allegedly confidential information and one copy of the documents from which information claimed to be confidential has been deleted. Failure to adhere to the requirements of 49 C.F.R. Part 512 will result in a rejection of your request for confidential treatment.

7. All documents shall be produced electronically, as described below, and accompanied by a Concordance-format load file.

a. Hard copy documents shall be imaged in TIFF format. They shall be provided as multi-page TIFFs with document level OCR. The following metadata fields shall be provided for each document:

- i. Custodian—Name of person or division (if the document is from a file shared by multiple employees) from which the file is being produced;
- ii. Bates Begin—Beginning Production Number;
- iii. Bates End—Ending Production Number;
- iv. Attach Begin—Beginning Attachment Range Number;
- v. Attach End—Ending Attachment Range Number (i.e. parentage is maintained); and
- vi. Page Count.

b. Electronically Stored Information (ESI) shall be converted to multi-page TIFF images and produced along with document level OCR/extracted text. The following metadata fields will be provided for non-email ESI:

- i. Custodian (name of custodian from which file is being produced);
- ii. Other Custodian(s) (name of other custodian(s) who had a copy of the file);
- iii. Doc Title (title of file from properties);
- iv. Doc Subject (subject of file from properties);
- v. Created Date (date the file was created);
- vi. Created Time (time the file was created);
- vii. Last Modified Date (date the file was last modified);
- viii. Last Modified Time (time the file was last modified);
- ix. Last Saved By (name of user who last saved the file);
- x. Doc Type (attachment or loose file);
- xi. File Type (Microsoft Word, Microsoft Excel, etc.);
- xii. File Name (names of the file);
- xiii. Full Path (full path location to where the file resided);
- xiv. File Ext (extension for the file);
- xv. MD5 Hash (or equivalent);
- xvi. Bates Begin (beginning production number);
- xvii. Bates End (ending production number);
- xviii. Attach Begin (beginning attachment range number);
- xix. Attach End—Ending Attachment Range Number (i.e. parentage is maintained);
- xx. Page Count; and
- xxi. Native link (path to the native file as included in the production, e.g., d\PROD001\Natives\ABC00015.xls).

The following metadata fields will be provided for electronic mail:

- i. Custodian (name of custodian from which file is being produced);
- ii. Other Custodian(s) (name of other custodian(s) who had a copy of the file prior to de-duplication);
- iii. Author (FROM filed);
- iv. CC;
- v. BCC;
- vi. Recipient (TO field);
- vii. MD5 Hash Value (or equivalent);
- viii. Date Sent (date the email was sent);
- ix. Date Received (date the email was received);
- x. Time Sent (time the email was sent);
- xi. Time Received (time the email was received);

- xii. File Ext (extension for the file);
- xiii. Email Folder (the folder within the mailbox where the message resided);
- xiv. Body Text (extracted text);
- xv. Bates Begin (beginning production number);
- xvi. Bates End (ending production number);
- xvii. Attach Begin (beginning attachment range number);
- xviii. Attach End—Ending Attachment Range Number (i.e. parentage is maintained);
- xix. Page Count;
- xx. Subject; and
- xxi. Native link (path to the native file as included in the production, e.g., d\PROD001\Natives\ABC00015.xls).

For all date fields, please produce them in either YYYYMMDD or MM/DD/YYYY format. Do not include the time in any date fields. Electronic mail shall be produced along with attachments to the extent the message or any attachment is responsive, relevant, and not privileged. As a general matter, subject to specific review, a message and its attachments shall not be withheld from production based on the fact that one or more attachments are privileged, irrelevant, or non-responsive.

c. Excel spreadsheets, PowerPoint files (or like presentations), photographs, and brochures shall be produced both in native and TIFF formats. For Excel documents or any documents with embedded links to other files or documents, any linked files should be sequentially numbered and produced after the source file and the Attach Beg/Attach End fields be used to denote the parent/child relationship.

d. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, you must provide a copy of that software with its submission.

8. Provide all documents requested in this Special Order, even if such documents have been previously produced.

9. The singular includes the plural; the plural includes the singular. The masculine

gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document requests all responses which might otherwise be construed to be outside its scope.

10. Honda's response to this Special Order must be under oath, i.e., accompanied by an affidavit, signed by a responsible officer of Honda, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Honda to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

REQUESTS

1. Provide a corporate organizational chart(s) identifying the employees, by name, division and title, who are responsible for collecting and reporting EWR information to NHTSA.
2. Describe the systems used by Honda, between April 1, 2003 and the present, for storing and reporting EWR information.
3. Provide all written company policies, memoranda and/or directives for reporting EWR information to NHTSA since the passage of the TREAD Act in October 2000, until the present.

4. Describe the procedures that Honda employs to ensure that all EWR information is timely and accurately reported to NHTSA.
5. Provide all documents that refer or relate to concerns or allegations (regardless of whether or not such concerns or allegations were substantiated) by any Honda employee or contractor that there was a problem with any of Honda's EWR reporting processes or that EWR information was not being reported to NHTSA as required.
6. Provide all documents that refer to, relate to, discuss or concern any investigation into Honda's EWR reporting processes and procedures, regardless of whether the investigation was conducted by Honda or a third party.
7. Provide all documents that refer to, relate to, evidence or concern internal audits, whether formal or informal, of Honda's EWR reporting processes, procedures or systems.
8. Identify the outside counsel retained by Honda on September 19, 2014 to perform a third-party audit of Honda's EWR reporting procedures.
9. Provide a copy of the retainer agreement between Honda and the outside counsel identified in your response to Request No. 8.
10. Provide the third-party audit described in Request No. 8.
11. Provide all documents that refer to, relate to, evidence or concern any other third-party audit of Honda's EWR reporting processes, procedures or systems, conducted at any time between July 1, 2003 and the present.
12. Describe the process by which Honda collects death and injury information, and explain how this information is reported to NHTSA.
13. Provide all written company policies, memoranda and/or directives regarding the procedures for entering information and data into Honda Law Department's case matter

management system since the passage of the TREAD Act in October 2000, until the present.

14. Explain the process by which death and injury information is communicated by Honda's Law Department to its Product Regulatory Office, and the process by which that information is then submitted by the Product Regulatory Office to NHTSA.

15. State how and when Honda first became aware that it had not been reporting all EWR information to NHTSA. Include in your answer a summary of events leading up to Honda's discovery of this issue.

16. Provide all chronologies, timelines and/or summaries of events, previously prepared by Honda or any third party, that refer to, relate to, discuss or concern Honda's discovery that it had not been reporting all EWR information to NHTSA.

17. Provide all documents that refer to, relate to, evidence or concern the EWR reporting issue described in Request No. 15.

18. Describe any and all efforts undertaken by Honda to correct the EWR reporting issue identified in Request No. 15.

19. Provide all documents that refer to, relate to, evidence or concern Honda's efforts to correct the EWR reporting issue, as described in your response to Request No. 18.

20. Identify all Honda employees and contractors, by name and title, who attended a meeting with representatives of NHTSA that was held on or about January 26, 2012.

21. Provide all documents that refer to, relate to, discuss or concern the meeting between representatives of Honda and NHTSA that was held on or about January 26, 2012.

22. For each field incident listed on the December 13, 2011 Summary of Field Incidents that was provided to NHTSA on or about January 26, 2012, state whether the incident was reported in EWR. If so, when was the incident reported? If not, explain why the incident was

not reported.

23. Provide all documents that refer to, relate to, discuss or concern the discrepancies between the December 13, 2011 Summary of Field Incidents that was provided to NHTSA on or about January 26, 2012, and EWR information reported by Honda.

24. Provide the EWR reporting policy implemented by Honda on or about March 21, 2012.

25. Provide all documents that refer to, relate to, discuss or concern the EWR reporting policy implemented by Honda on or about March 21, 2012.

26. Describe the process by which Honda collects information and data regarding property damage claims, consumer complaints, and warranty claims, and explain how this information is reported to NHTSA.

27. Describe Honda's process for collecting field reports and submitting copies to NHTSA.

28. Identify all death and injury claims known to Honda since 2003 that have not been reported in EWR.

29. Explain why each death or injury claim identified in your response to Request No. 28 was not reported.

30. State whether the California claim by the family of Devin Xu was reported in EWR. If so, when was the incident reported? If not, explain why this incident was not reported.

31. State whether the Oklahoma complaint filed by the family of Ashley Parham was reported in EWR. If so, when was the incident reported? If not, explain why this complaint was not reported.

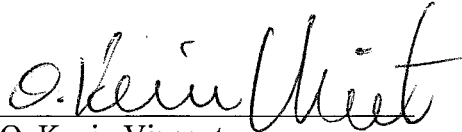
32. State whether the Virginia complaint filed by the family of Gurjit Rathore was

reported in EWR. If so, when was the incident reported? If not, explain why this complaint was not reported.

33. Provide payment records evidencing any payment by Honda of warranty claims, property damage claims, and/or settlements.

34. Provide all other documents not otherwise requested herein that refer to, relate to, discuss or concern Honda's EWR reporting processes, procedures or systems.

Dated: November 3, 2014


O. Kevin Vincent
Chief Counsel