

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

1200 New Jersey Avenue, SE
Washington, DC 20590

In re:)
)
EA 15-001 (formerly PE14-016))
Air Bag Inflator Rupture)
)

**SECOND AMENDMENT TO THE FEBRUARY 25, 2015 PRESERVATION ORDER
AND TESTING CONTROL PLAN**

This Second Amendment to the Preservation Order and Testing Control Plan (“Second 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, and hereby amends the Preservation Order and Testing Control Plan of February 25, 2015 (“Preservation Order”). This Second Amendment is entered into by the parties pursuant to Paragraph 24 of the Preservation Order between NHTSA and TK Holdings Inc. (“Takata”), and Paragraph 29 of the April 12, 2018 amendment thereto (“First Amendment”), for the purposes of amending the terms of the Order.

The Preservation Order requires Takata to preserve certain PSAN air bag inflators manufactured by Takata that are the subject of an ongoing defect investigation by NHTSA and the subject of private litigation, and to implement a control plan for the inspection, testing, or analysis of those PSAN inflators. The subject inflator types are subject to national recalls,

schedules for which are set forth in the Amendment to the November 3, 2015 Consent Order issued by NHTSA on May 4, 2016.

The Preservation Order obligated Takata to, among other things: (i) take reasonable steps to prevent the destruction, alteration or loss of all (a) recalled and returned inflators, (b) ruptured inflators, and (c) other ammonium nitrate-containing inflators in its possession or received in the future, except as to those inflators subject to certain testing, inspection, or analysis (see Preservation Order ¶ 14); (ii) “set aside” and maintain ten percent (10%) of the inflators recalled and returned to Takata, do so in proportion to the number of recalled and returned inflators received from each State and the number of recalled and returned inflators from such State that fall within certain inflator types, and in doing so provide a diversity of inflators based on, including but not limited to, vehicle make, model and model year (hereinafter referred to collectively as the “Set Aside” inflators) (see *id.* ¶¶ 15–16); and (iii) provide a process by which (a) private plaintiffs, or consortium thereof, may request access to specific inflators within the Set Aside for inspection, testing, or analysis, and (b) vehicle manufacturers, or those acting on their behalf, may inspect, test, or analyze the recalled and returned inflators in Takata’s possession, other than those inflators maintained within the Set Aside (see *id.* ¶¶ 16–18).

The Preservation Order was amended effective April 12, 2018. Prior to its emergence from bankruptcy on April 10, 2018 (“Closing Date”), Takata requested an amendment of the Preservation Order to reduce the number of inflators subject to the Set Aside, to dispose of inflators no longer subject to preservation requirements in accordance with applicable legal requirements, and to account for foreign and other ammonium-nitrate containing inflators returning to Takata. The First Amendment, among other things, provides for: (i) a reduction of

the Set Aside inflators from 10% to 5% of all recalled and returned inflators received (including foreign recalled inflators) either in Takata's possession or received after the date of the First Amendment (see First Amendment ¶¶ 15–16), and (ii) Takata to dispose of (a) certain recalled and returned inflators in its possession (which are not part of the 5% Set Aside), (b) propellant in its possession, and (c) recalled or returned inflators which either ruptured or otherwise exhibited failures in testing, unless separately designated for preservation (see *id.* ¶¶ 23–26). The disposal of recalled inflators, propellants and tested inflators may only occur fifteen (15) business days following confirmation of NHTSA's receipt of a Disposal Designation Notice, which provides certain information regarding the inflators or propellants to be shipped for disposal (see *id.* ¶¶ 23–26).

According to Takata, based upon the current 5% Set Aside required of the First Amendment to the Preservation Order, Takata is currently preserving: (i) approximately 1.2 million recalled inflators from the population returned pre-Closing Date, and (ii) more than 800,000 recalled inflators from returns post-Closing Date. Also according to Takata, the number of post-Closing Date inflators which must be preserved increases at a rate of approximately 50,000 additional inflators per month as Takata continues to provide warehousing, shipping, and disposal services to vehicle manufacturers. By the end of calendar year 2020, Takata forecasts that the Preservation Order, as currently amended, will require a total 5% Set Aside of more than 2.3 million inflators. Under Takata's Bankruptcy Plan, Takata's Product Safety Group is expected to cease operations in March 2021.

Takata and the Warehousing Entity referred to in Takata's Fifth Amended Chapter 11 Plan of Reorganization (now known as "TK Services Inc.") (hereinafter collectively "Takata")

now request further amendment to the Preservation Order that would substitute the 5% “Set Aside” requirement for an obligation to preserve, for two geographic zones, a set number of inflators in 439 cohorts based on: (i) customer vehicle manufacturer (original equipment manufacturer, or “OEM”); (ii) inflator type; (iii) OEM inflator pre-fix variations within each inflator type; and (iv) year of inflator manufacture. Takata also requests further amendment to the Preservation Order to enable it to designate and schedule for disposal all other ammonium-nitrate inflators currently in its possession or received in the future. This Second Amendment maintains a formal control plan in furtherance of the safety of vehicle owners, for the preservation and testing of certain inflators, for NHTSA’s ongoing defect investigation, and in the interests of vehicle manufacturers and parties in private litigation as necessary.

Unless otherwise expressly modified herein, the terms and conditions of the February 25, 2015 Preservation Order and Testing Control Plan issued by NHTSA in this matter and agreed to by Takata, and as first amended on April 18, 2018, remain in full force and effect.

I. NATURE OF THE ACTION

1. On June 11, 2014, NHTSA opened a formal defect investigation (formerly Preliminary Evaluation PE14-016, now Engineering Analysis EA15-001) into Takata air bag inflators.

2. Nineteen (19) vehicle manufacturers-BMW of North America, LLC (“BMW”); Daimler Trucks North America LLC (“Daimler Trucks”); Daimler Vans USA LLC (“Daimler Vans”); FCA US LLC (f/k/a/ Chrysler Group LLC) (“FCA”); Ferrari North America, Inc. (“Ferrari”); Ford Motor Company (“Ford”); General Motors Holdings LLC (“General Motors”);

Jaguar Land Rover North America, LLC (“Jaguar-Land Rover”); Karma Automotive on behalf of certain Fisker vehicles (“Karma”); American Honda Motor Co. (“Honda”); Mazda North American Operations (“Mazda”); McLaren Automotive, Ltd. (“McLaren”); Mercedes-Benz USA, LLC (“MBUSA”); Mitsubishi Motors North America, Inc. (“Mitsubishi”); Nissan North America, Inc. (“Nissan”); Subaru of America, Inc. (“Subaru”); Tesla Motors, Inc. (“Tesla”); Toyota Motor Engineering & Manufacturing North America, Inc. (“Toyota”); and Volkswagen Group of America, Inc. (“Volkswagen”) are conducting recalls, or preparing to launch recall repair programs, (collectively, “safety actions”) in the United States to replace certain Takata air bag inflators.

3. Those safety actions currently involve replacing Takata air bag inflators of the types designated SDI, PSDI, PSDI-4, PSDI-4K, PSDI-5 non-desiccated, PSDI-5 with calcium sulfate desiccant, SPI, PSPI, PSPI-1.1, PSPI-2, PSPI-6, PSDI-5D, and PSPI-L. The procedures originally agreed to by the vehicle manufacturers in conducting these safety actions provide that the inflators that are removed through the safety actions are shipped to Takata.

4. Commencing on the effective date of, and as defined in, Takata’s Fifth Amended Chapter 11 Plan of Reorganization (“Chapter 11 Plan”), Takata and those vehicle manufacturers requiring post-effective date warehousing, shipping, and/or disposal services from Takata shall put in place substitute procedures for recalled or returned inflators. Such procedures shall be consistent with Takata’s Chapter 11 Plan (including without limitation section 5.9(c)), and may contemplate that the recalled or returned inflators continue to be warehoused, shipped, and/or disposed of by Takata, provided that Takata and the vehicle manufacturers reach mutual agreement. Takata shall provide copies of such procedures to NHTSA within five (5) business

days of reaching mutual written agreement with a vehicle manufacturer. If vehicle manufacturers elect not to use Takata for warehousing, shipping, and/or disposing of their inflators, nothing in this Amended Preservation Order shall affect the obligations, if any, of those manufacturers to preserve or provide access to such inflators or other materials.

5. Takata acknowledges that after it receives inflators described by Paragraphs 2-3, it assumes control over those inflators and is the primary source of these inflators for further inspection, testing, or analysis. Takata also acknowledges that it has within its possession, custody, or control inflators described by Paragraphs 2-3, which it obtained in a manner other than through removal pursuant to safety actions. The inflators subject to the safety actions described by Paragraphs 2-3, whether received by Takata through the safety actions or otherwise obtained by Takata, are referred to herein as “recalled or returned inflators.” Takata PSAN inflators removed from vehicles located in foreign countries pursuant to recall activities and shipped to Takata in the United States for warehousing and/or disposal are referred to herein as “foreign recalled inflators.” Foreign recalled inflators shall be subject to this Preservation Order when imported to the United States, and foreign recalled inflators already in the United States and in the possession or custody of Takata are subject to the Preservation Order with retroactive application of the Preservation Order to the date of import, except that foreign recalled inflators disposed of prior to the First Amendment are not subject to the Preservation Order.

6. Takata also acknowledges that it has within its possession, custody, or control certain inflators which ruptured prior to being removed in a safety action. These inflators are referred to herein as “ruptured inflators.” Takata also acknowledges that it has within its possession, custody, or control certain ammonium nitrate-containing inflators removed from

vehicles in the United States not subject to a safety action described in Paragraphs 2-3. These inflators are referred to herein as “other ammonium nitrate-containing inflators.”

7. Inspection, testing, and analysis of inflators provide information critical to NHTSA’s defect investigation, including information for, among other things, the purposes of evaluating the root cause of inflator rupture, determining whether current safety actions are sufficient to address the safety risk and to provide an effective remedy to vehicle owners, and deciding what, if any, further actions are necessary to protect the safety of vehicle occupants. As the federal agency charged with ensuring the safety of motor vehicles in the United States, NHTSA has primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA’s related defect investigation. Takata acknowledges that NHTSA, as the federal agency charged with ensuring the safety of motor vehicles in the United States, has primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA’s related defect investigation.

8. In connection with NHTSA’s defect investigation, Takata has been inspecting, testing, and analyzing recalled or returned inflators, and providing NHTSA with information on the testing, including the results of the testing. Certain of the vehicle manufacturers conducting safety actions involving Takata air bag inflators in the United States have also formed a coalition to perform their own testing of PSAN inflators through an independent, third-party engineering firm.

9. Takata inflators are also the subject of ongoing private litigation alleging economic harm and personal injuries allegedly caused by Takata inflators. Many of these

lawsuits are now, or are anticipated to be, subject to coordinated or consolidated pretrial proceedings in In re: Takata Airbag Products Liability Litigation, Case No. 1:15-md-02599-FAM (S.D. Fla.).

10. Plaintiffs in private litigation against Takata have expressed interest in inspecting Takata recalled and returned inflators and other ammonium nitrate-containing inflators and testing artifacts, as well as conducting their own inflator testing, including the possibility of forming a consortium for testing. There remains a federal interest in ensuring that NHTSA, in the course of its ongoing defect investigation, has full access to information on any testing performed on Takata inflators, including by plaintiffs, their experts, and any plaintiffs' consortium.

11. NHTSA issues this Amendment pursuant to its authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended and recodified (the "Safety Act"), 49 U.S.C. § 30101, et seq., as delegated by the Secretary of Transportation, 49 C.F.R. § 1.95, to inspect and investigate, 49 U.S.C. § 30166(b)(1), to ensure that defective vehicles and equipment are recalled, 49 U.S.C. §§ 30118-30119, to ensure the adequacy of recalls, 49 U.S.C. § 30120(c), and to require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(g). It is AGREED by Takata and ORDERED by NHTSA as follows:

II. TERMS OF AMENDMENT TO THE PRESERVATION ORDER

12. This Amendment is not intended to nor shall it interfere with any ongoing or future testing or analysis by NHTSA, Takata, vehicle manufacturers, private litigants or other third parties, or hamper any efforts by NHTSA to coordinate testing results and conduct its

defect investigation pursuant to its primary regulatory interest in the safety actions involving Takata inflators and in the preservation, inspection and testing of inflators in connection with NHTSA's related defect investigation.

13. In cooperation with NHTSA's defect investigation, Takata shall provide to NHTSA, on terms acceptable to NHTSA, information on its inspection, testing, or analysis of the recalled or returned inflators, including but not limited to information on the procedures used for such inspection, testing, or analysis and the results of such inspection, testing, or analysis.

14. Except for testing, inspection, or analysis, as provided by Paragraphs 16-17 below, and unless otherwise provided for by the terms of this Amendment (including Section III, below), Takata shall take reasonable and appropriate steps designed to prevent the partial or full destruction, alteration, deletion, shredding, incineration, or loss of recalled or returned inflators, propellant from such recalled or returned inflators, ruptured inflators, foreign recalled inflators, other ammonium nitrate-containing inflators, as described by Paragraphs 3, 5 & 6, and any Takata PSAN inflator type covered by a future safety action, that comes into Takata's control or possession. Takata shall also take reasonable and appropriate steps designed to prevent the partial or full destruction, alteration, deletion, shredding, incineration, or loss of documents, data, and tangible things reasonably anticipated to be relevant to the subject of NHTSA's defect investigation, including but not limited to all such records and materials associated with Takata's inspection, testing, or analysis of inflators. Takata shall make available and submit to NHTSA upon NHTSA's request all data and other records reflecting the results of Takata's inspection, testing, or analysis of inflators and shall respond to any request from NHTSA for the submission of other records and materials covered by this Paragraph.

15. As of the date of execution of this Amendment by Takata and approval by NHTSA, Takata shall:

a. Secure and preserve all recalled or returned inflators, ruptured inflators, foreign recalled inflators, and other ammonium nitrate-containing inflators in the United States within Takata's control or possession (as described by Paragraphs 3, 5 & 6), and any Takata PSAN inflator type covered by a future safety action that comes into Takata's control or possession, in a manner reasonably designed to ensure that inflators not the subject of its testing or analysis are preserved in unaltered form;

b. Maintain records that enable Takata to track by unique serial number all recalled or returned inflators, ruptured inflators, foreign recalled inflators, and other ammonium nitrate-containing inflators (as described by Paragraphs 3, 5 & 6), and any Takata PSAN inflator type covered by a future safety action, in Takata's possession, custody, or control;

c. Secure and preserve, in unaltered form, all testing data, video, photographs, test results, electronic files and communications related to inflator testing, which is in Takata's possession, custody, or control;

d. No longer be required to set aside and preserve no fewer than 5 percent of all recalled or returned inflators and foreign recalled inflators, as described in the First Amendment at paragraph 15.d., that are currently within Takata's possession;

e. No longer be required to set aside and preserve no fewer than 5 percent of all recalled or returned inflators and foreign recalled inflators, as described in the First Amendment

at paragraph 15.e, which come into Takata's possession after the date of this Amended Preservation Order;

f. No longer be required to set aside and preserve no fewer than 5 percent of all other ammonium nitrate-containing Takata inflators, as described in the First Amendment at paragraph 15.f, that are currently within Takata's possession;

g. No longer be required to set aside and preserve no fewer than 5 percent of all other ammonium nitrate-containing Takata inflators as described in the First Amendment at paragraph 15.f, which come into Takata's possession after the date of this Amended Preservation Order; and

h. Set aside recalled and returned ammonium-nitrate containing inflators according to a cohort-based scheme, as described herein. Combinations of the following constitute a "cohort" for which Takata shall set aside and preserve recalled and returned inflators: (i) customer vehicle manufacturer (original equipment manufacturer, or "OEM"); (ii) inflator type; (iii) OEM inflator pre-fix variation within the inflator type; and (iv) year of inflator manufacture. There are 446 distinct cohorts for which Takata shall set aside and preserve recalled and returned inflators. The OEMs, inflator types (which include all pre-fix variations within the type), and years of inflator manufacture for these cohorts are enumerated in Exhibit B. For each of these 446 cohorts, Takata shall take reasonable and appropriate steps to collect and set aside for preservation: (i) 1,500 recalled and returned inflators from Zone A,¹ and (ii) 800 recalled and

¹ Zone A is comprised of: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico and the U.S. territories of American Samoa, Guam, Saipan and U.S. Virgin Islands. Amendment to November 3, 2015 Consent Order at ¶7.a.

returned inflators from Zone C² (collectively, the “Cohort Preserved Inflators”). Under this scheme, the total number of targeted inflators for preservation is 1,025,800. Takata may select recalled and returned inflators necessary to populate the Cohort Preserved Inflators from the existing post-Closing Date Set Aside inflators as of the date of this Amendment, and the additional inflators returned to Takata after the date of this Amendment as a result of the shipping, warehousing and disposal services for vehicle manufacturers. The Cohort Preserved Inflators shall exclude recalled and returned inflators from the “Alpha”-designated population.³ Takata shall utilize its best efforts to collect the Cohort Preserved Inflators. If any additional safety actions involving additional Takata PSAN airbag inflator types in the United States are conducted, the number of cohorts Takata shall collect pursuant to the requirements of this paragraph shall increase accordingly.

16. Recalled and returned inflators other than those set aside as Cohort Preserved Inflators pursuant to Paragraph 15 above may be inspected, tested, and analyzed by Takata, any of the entities listed in Paragraph 2, a coalition of those entities, and anyone acting on behalf of those entities. Such inspection, testing, or analysis, including the allocation of inflators for such purposes, shall be subject to NHTSA’s regulatory oversight pursuant to the Safety Act and all regulations thereunder.

17. The Cohort Preserved Inflators shall be set aside for the purpose of future inspection, testing, or analysis requested or directed by NHTSA. The Cohort Preserved Inflators

² Zone C is comprised of: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. Amendment to November 3, 2015 Consent Order at ¶7.c.

³ The “Alpha” population is comprised of certain higher-risk inflators originally installed in certain 2001–2003 Honda and Acura vehicles.

shall also be set aside for the purpose of future inspection, testing, or analysis requested by (i) private plaintiffs (including a consortium thereof, or their experts, consultants, or other designated person or entity, collectively “plaintiffs”); (ii) the entities listed in Paragraph 2, (including a coalition of those vehicle manufacturers, or anyone acting on behalf of these entities) (collectively “OEMs”); and (iii) the Takata Restitution Funds Special Master or Trustee of the PSAN PI/WD Trust as defined in Takata’s Chapter 11 Plan (“Trustee”). Such inspection, testing, or analysis by litigants, OEMs, and the Trustee, including the allocation of Cohort Preserved Inflators for such purposes, shall be subject to NHTSA’s regulatory oversight pursuant to the Safety Act and all regulations thereunder. For the purpose of maintaining a sufficient population for testing as requested or directed by NHTSA, the number of Cohort Preserved Inflators which may be accessed for testing and analysis by, collectively, plaintiffs, the OEMs, or the Trustee, shall be capped at twenty percent (20%) of any single cohort’s Zone A inflators ever set aside for the cohort, and twenty percent (20%) of any single cohort’s Zone C inflators ever set aside for the cohort.

18. The amended set-aside requirements are in effect as of the date of execution of this Amendment by Takata and approval by NHTSA. No later than 30 days after execution of this Amendment by Takata and approval by NHTSA, Takata shall submit to NHTSA updated written protocols that incorporate the amended set-aside requirements described above in place of the previous set-aside requirements, where applicable. Except with respect to the amended set-aside requirements, the current written protocols that address steps for preservation and proposed testing, and the below issues, remain and shall remain in full force and effect until updated:

- a. Establish a process for a private plaintiff, or a consortium thereof, the Takata Restitution Funds Special Master, or the Trustee of the PSAN PI/WD Trust as defined in Takata's Chapter 11 Plan ("Trustee"), to seek access to inflators for inspection, testing, or analysis by submitting an application to Takata;
- b. Require each applicant to certify that the applicant (or the applicant's expert, consultant, or other designated person or entity) is qualified safely to handle and test inflators in accordance with law and may require the applicant to release Takata from any liability associated with applicant's handling and testing of such inflators;
- c. Require each applicant to certify that the applicant has agreed to provide information on the inspection, testing, or analysis of Takata inflators to NHTSA by signing Exhibit A, a copy of which shall be submitted to Takata in support of the application;
- d. Require each applicant to provide a name, address, phone number, and email address for each person responsible for providing information on the inspection, testing, or analysis of Takata inflators to NHTSA;
- e. Establish criteria that provide for expeditious approval of an application, except for good cause;
- f. Provide for access to inflators within 45 days or such other time as can be agreed upon, except for good cause, from the date that such access is requested by an applicant, and, subject to availability, accommodate the type(s) of inflators requested by the applicant when and as reasonably practicable (including by age of inflator and

geographic location, make, model, and model year of the vehicle from which the inflator was removed);

g. Establish a mechanism for an applicant to obtain available information on the type of inflators provided to the applicant (including age of inflator and geographic location, make, model, and model year of the vehicle from which the inflator was removed);

h. Ensure that the allocation of inflators to applicants takes into account the need to maintain a sufficient quantity of inflators for future applicants; and

i. Provide for reporting to NHTSA on the application process, including the submission and approval of applications and the provision of access to inflators pursuant to such approvals.

If NHTSA determines that any changes to the written protocols are warranted, NHTSA shall inform Takata in writing of such proposed changes with copies to the Trustee, Future Claims Representative (as defined in the Chapter 11 Plan), and Trustee Advisory Committee (as defined in the PSAN PI/WD Trust Agreement) collectively, the “Notice Parties,” and Takata shall make prompt and reasonable efforts to accommodate NHTSA’s feedback. Takata shall provide a revised copy, if applicable, of the proposed revised written protocols to NHTSA no later than 5 business days after receiving any such feedback from NHTSA. Upon acceptance by NHTSA of the proposed revised written protocols, or amendments thereto, NHTSA will make the final revised written protocols publicly available. The final revised written protocols shall not be subject to attorney-client privilege or attorney work-product protection, and shall not include

confidential business information or information otherwise not subject to public disclosure by NHTSA.

19. Takata shall not release any foreign recalled inflator, recalled or returned inflator, or ruptured inflator (as described by Paragraphs 3, 5 & 6), any Takata PSAN inflator type covered by a future safety action that comes into Takata's possession, or other ammonium nitrate-containing inflators, to the Takata Restitution Funds Special Master, the Trustee, any vehicle manufacturer, private plaintiff, or consortium thereof (including their experts, consultants, or other designated person or entity), for inspection, testing, or analysis unless that Takata Restitution Funds Special Master, the Trustee, vehicle manufacturer, private plaintiff, or consortium thereof accedes to this Amendment by signing a copy of Exhibit A, requiring preservation of materials associated with the inspection, testing, or analysis and provision of information on the inspection, testing, or analysis to NHTSA, on terms acceptable to NHTSA.

20. In addition to the written protocols as set forth in paragraphs 18 and 19 above, upon Takata's receipt of a request for access to inflators set aside as Cohort Preserved Inflators (a "Request") from a private plaintiff, or consortium thereof, or the Takata Restitution Funds Special Master or the Trustee (each an "Applicant"), or upon inspection, testing, or analysis requested or directed by NHTSA, Takata shall provide a copy of the Request to NHTSA, as well as the Notice Parties as defined in paragraph 18, a representative of the private litigation plaintiffs, and a representative of the vehicle manufacturers (each a "Request Notice Recipient"). Within five (5) business days of the receipt of a copy of the Request, NHTSA or a Request Notice Recipient may request from Takata additional information consisting of: (a) the serial number and date of manufacture of each inflator to be provided in response to the Request

by Cohort Preserved Inflator group, and (b) the serial number and date of manufacture of each of the remaining inflators for each Cohort Preserved Inflator group subject to the Request. A request for additional information should only be made if the inflator Request raises a concern over the availability of inflators for testing needed for an alternate investigation. Takata shall provide the additional information (“Response”) to NHTSA, the Request Notice Recipient who requested the additional information, and the Applicant. Takata shall also place a hold on the Request for an additional five (5) business days from the date of the Response. Should the Request concern inspection, testing, or analysis requested or directed by NHTSA, the Request Notice Recipient who requested the additional information may consult with NHTSA which, in its sole discretion, may make any amendments to the Request. Should the Request have been made by an Applicant, the Request Notice Recipient who requested the additional information may consult with the Applicant to amend the Request should there be other, similar replacement inflators available within the remaining Cohort Preserved Inflators to meet investigation objectives. At the end of the five (5) business day hold, Takata shall release the inflators as per the original Request or, if such request is amended consistent with this paragraph, shall release the inflators as per the amendment.

21. In its discretion, NHTSA may determine that time is of the essence for the inspection, testing, or analysis it requests or directs of certain Cohort Preserved Inflators. In such an event, Paragraph 20 shall not apply, except that Takata shall give notice of NHTSA’s determination and request or direction to the Notice Parties as defined in paragraph 18, a representative of the private litigation plaintiffs, and a representative of the vehicle manufacturers.

22. Takata shall, upon written request by NHTSA, address Takata's compliance with this Amendment by, at NHTSA's election and in its sole discretion, submitting a written report to NHTSA or meeting with NHTSA representatives.

23. Takata shall provide written notice of each required submission under the Preservation Order and this Amendment by electronic mail to NHTSA's Director, Office of Defects Investigation (currently Stephen Ridella, Stephen.Ridella@dot.gov), and with a copy to NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Kerry Kolodziej, Kerry.Kolodziej@dot.gov). NHTSA will provide notice to Takata if the individuals holding these positions or their email addresses change.

24. On demand by NHTSA, Takata shall release into NHTSA's custody any recalled or returned inflator or other category of inflators in its possession and subject to the Preservation Order, as amended, including any Takata PSAN inflator type covered by a future safety action that comes into Takata's possession, for inspection, testing, or analysis, including any recalled or returned inflator or category of inflators otherwise required to be set aside as Cohort Preserved Inflators pursuant to Paragraph 15, with notice to the Notice Parties. Nothing herein shall limit NHTSA's ability to carry out its defect investigation.

III. RELEASE OF INFLATORS FROM PRESERVATION OBLIGATIONS

25. Recalled or returned inflators, foreign recalled inflators, ruptured inflators, or other ammonium nitrate-containing inflators designated for disposal shall not be subject to the preservation obligations set forth in the Preservation Order or this Amendment (the "NHTSA preservation obligations") fifteen (15) business days after NHTSA's confirmation of receipt of a

Disposal Designation by Takata. A Disposal Designation identifies a specific quantity of recalled or returned inflators, foreign recalled inflators, ruptured inflators, or other ammonium nitrate-containing inflators, for disposal and release from preservation. Takata shall certify that the release of inflators covered in that Disposal Designation does not, and will not, violate any other law or regulation. Takata's submission to NHTSA shall be contemporaneously provided to the Notice Parties, a representative of the private litigation plaintiffs and a representative of the vehicle manufacturers, and shall contain reasonably available information identifying the specific inflators or types of inflators to be disposed of.

26. Once released from the applicable NHTSA preservation obligations, and if not subject to any other preservation obligation, Takata may dispose of the recalled or returned inflators, foreign recalled inflators, ruptured inflators, or other ammonium nitrate-containing inflators, subject to the Disposal Designation in conformity with all relevant regulatory requirements.

27. Propellant designated for disposal shall not be subject to the NHTSA preservation obligations fifteen (15) business days after NHTSA's confirmation of receipt of a Propellant Disposal Designation by Takata. A Propellant Disposal Designation identifies a specific quantity and type of propellant for disposal. Takata shall certify that the release of propellant covered in that Propellant Disposal Designation does not, and will not, violate any other law or regulation. Once released from the NHTSA preservation obligations, Takata may dispose of the propellant subject to the Propellant Disposal Designation in conformity with all relevant regulatory requirements. Takata's submission to NHTSA shall be contemporaneously provided to the Notice Parties, a representative of the private litigation plaintiffs and a representative of

the vehicle manufacturers, and shall contain reasonably available information identifying the propellant to be disposed.

28. All recalled or returned inflators, foreign recalled inflators, or other ammonium nitrate-containing inflators, that ruptured or exhibited failures of any kind during testing (“testing failure inflators”) shall not be subject to the NHTSA preservation obligations fifteen (15) business days after NHTSA’s confirmation of receipt of a submission by Takata designating a set of such inflators for disposal (“Test Failure Disposal Designation”). Such inflators consist of all inert deployed recalled or returned inflators, foreign recalled inflators, or other ammonium nitrate-containing inflators. Takata shall certify that, for all testing failure inflators, it has, and shall maintain for use by litigants, complete and accurate records documenting the failure including, but not limited to, data and photos. Takata shall further certify that the release of inflators covered in the Test Failure Disposal Designation does not, and will not, violate any other law or regulation. Once released from the NHTSA preservation obligations, Takata may dispose of the testing failure inflators subject to the Test Failure Disposal Designation in conformity with all relevant regulatory requirements.

29. Takata shall not issue a Disposal Designation prior to October 31, 2020 for: (i) recalled or returned inflators which are currently part of the post-Closing Date 5% Set Aside, and (ii) all ruptured inflators or testing failure inflators in its possession as of the date of this Amendment. All other ammonium-nitrate containing inflators, with the exception of the Cohort Preserved Inflators, may be identified in a Disposal Designation as of the date of this Amendment.

30. Unless the Preservation Order, as amended, is terminated as outlined in Section IV below, Takata shall preserve and not designate for disposal the Cohort Preserved Inflators for the duration of its warehousing, shipping, and disposal services. Takata hereby acknowledges that it anticipates to shut down warehousing, shipping, and disposal services in the first quarter of calendar year 2023. Takata shall, in writing, notify NHTSA of any change in this anticipated date and explain the basis for the change, within five working days of any change in the anticipated date of the shutting down of warehousing, shipping, and disposal services. Takata shall also provide no less than 120 days advance written notice of its planned date to shut down the warehousing, shipping, and disposal services. Within thirty (30) days of planned shutdown of warehouse operations, either (i) the responsibility to warehouse and preserve the Cohort Preserved Inflators shall be transferred to another entity or person with the approval of NHTSA, or (ii) if no other entity or person has been approved by NHTSA and has agreed in writing, in a form to be approved at the discretion of NHTSA, to take responsibility for the warehousing and preservation of the Cohort Preserved Inflators (or any portion thereof), Takata shall issue a Disposal Designation for the Cohort Preserved Inflators for which no other entity has taken responsibility under this Paragraph, and is authorized to release those inflators for disposal fifteen (15) business days after NHTSA's confirmation of receipt of that Disposal Designation.

31. Takata acknowledges that it may be or become subject to other preservation obligations outside the scope of this Amendment and that it bears full responsibility for compliance with such obligations. The terms of this Amendment allowing for recalled or returned inflators, foreign recalled inflators, ruptured inflators, test failure inflators, other ammonium nitrate-containing inflators, and/or propellant to be released from the NHTSA

preservation obligations and disposed of do not supersede or otherwise affect such other preservation obligations of Takata.

IV. TIME PERIOD OF AMENDMENT TO THE PRESERVATION ORDER

32. Upon NHTSA's closure of EA15-001 (formerly PE14-016) the terms of the Preservation Order (as amended) shall be automatically terminated, subject to the below 90-day waiting period. However, the NHTSA Administrator may issue a written order providing notice of termination earlier, at the Administrator's sole discretion. The Preservation Order (as amended) shall remain in effect for 90 days following closure of EA15-001 or the issuance of the written order of the NHTSA Administrator. NHTSA and Takata anticipate that this 90-day term will allow the Notice Parties and any remaining private party litigants to obtain an appropriate preservation order, if necessary.

V. AMENDMENT

33. This Amendment to the Preservation Order cannot be modified, amended, or waived other than by a writing agreed to by NHTSA and Takata setting forth such modification, amendment, or waiver. NHTSA reserves all authority to take any further action permitted by law.

VI. INTERPRETATION CONSISTENT WITH FEDERAL LAW

34. Nothing in this Amendment shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation, in effect at the time of the execution of this Amendment by Takata and approval by NHTSA or any subsequent amendment.

VII. MISCELLANEOUS

35. This Amendment does not release Takata from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity.

36. This Amendment shall be effective following its execution by Takata and approval by NHTSA and shall remain in effect until termination pursuant to Paragraph 32 and for a period of 90 days thereafter as provided in that paragraph. NHTSA may bring an action against Takata in any United States District Court to enforce this Amendment to the Preservation Order, including in response to any material breach by Takata of its obligations hereunder. Takata hereby waives any and all objections as to venue in such enforcement action and any and all defenses to the enforceability of this Amendment to the Preservation Order. Nothing herein shall constitute an admission of any wrongdoing or to the jurisdiction of NHTSA as to any other order, proceeding, or demand.

37. This Amended Preservation Order constitutes the entire agreement regarding the resolution of the subject matter therein.

38. This Amendment to the Preservation Order shall be binding upon, and inure to the benefit of, Takata and its directors, officers, employees, agents, subsidiaries, successors, and assigns. Takata and the Warehousing Entity hereby waive any and all defenses to the enforceability of this Amendment that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including as a result of any changes to the

corporate structure or relationships among or between Takata and any of its parents, subsidiaries, or affiliates.

39. This Amendment to the Preservation Order shall not be construed to create rights in, or grant any cause of action to, any individual or entity not party to this Amendment to the Preservation Order, other than as expressly provided herein.

40. If any provision of this Amendment to the Preservation Order is held illegal or unenforceable in a judicial proceeding, the remainder of this Amendment to the Preservation Order shall remain operative and binding, but only if the elimination of the invalidated provision does not alter the fundamental terms of this Second Amendment to the Preservation Order (including, without limitation, Paragraphs 14-19 and 25-31).

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

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

Dated: July 27, 2020

By: James Owens Digitally signed by James Owens
DN: cn=James Owens, o, ou=NHTSA,
email=james.owens@dot.gov, c=US
Date: 2020.07.27 17:48:43 -04'00'

James C. Owens
Deputy Administrator

Dated: July 27, 2020

By: JONATHAN CHARLES MORRISON Digitally signed by JONATHAN
CHARLES MORRISON
Date: 2020.07.27 09:42:38 -04'00'

Jonathan C. Morrison
Chief Counsel

Dated: July 27, 2020

By: KERRY E KOLODZIEJ Digitally signed by KERRY E
KOLODZIEJ
Date: 2020.07.27 09:40:18 -04'00'

Kerry Kolodziej
Assistant Chief Counsel
for Litigation & Enforcement

Dated: July 27, 2020

By:  Digitally signed by STEPHEN HENCH
Date: 2020.07.27 09:37:15 -04'00'

Stephen Hench
Trial Attorney

AGREED:

TK SERVICES INC.

Dated: July 23, 2020

By: Mike Rains Digitally signed by Mike Rains
Date: 2020.07.23 16:15:31
-04'00'

D. Michael Rains
President

Dated: July 23, 2020

By: D. Ross
Hamilton, Jr. Digitally signed by D. Ross Hamilton, Jr.
DN: cn=D. Ross Hamilton, Jr., o=Tuggle
Duggins P.A., ou,
email=rhamilton@tuggleduggins.com, c=US
Date: 2020.07.23 16:33:10 -04'00'

D. Ross Hamilton, Jr.
Tuggle Duggins P.A.
Outside Counsel

EXHIBIT A

ACCESSION TO PRESERVATION ORDER AND TESTING CONTROL PLAN

I, [Name], am an authorized representative of [Manufacturer, Plaintiff, or Consortium Name]. On behalf of [Manufacturer, Plaintiff, or Consortium Name]:

1. I am aware of and have reviewed the terms of the Preservation Order and Testing Control Plan, entered on February 25, 2015, by the National Highway Traffic Safety Administration (“NHTSA”) in *In re*: PE14-016, Air Bag Inflator Rupture (“Preservation Order”), as amended.

2. I acknowledge that NHTSA, as the federal agency charged with ensuring the safety of motor vehicles in the United States, has primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA’s related defect investigation.

3. As a condition of receiving Takata inflator(s) for inspection, testing, or analysis, pursuant to the Preservation Order, I agree to take reasonable and appropriate steps to prevent the partial or full destruction, alteration, deletion, shredding, incineration, or loss of documents, data, records, and tangible things reasonably anticipated to be relevant to the subject of NHTSA’s defect investigation, including but not limited to all such materials associated with the inspection, testing, or analysis of Takata inflators. I further agree to make available and submit to NHTSA upon NHTSA’s request all data and other records reflecting the results of inspection, testing, or analysis of inflators and shall respond to any request from NHTSA for the submission of other records and materials covered by this Paragraph.

4. In cooperation with NHTSA’s defect investigation, I agree to provide to NHTSA, on terms acceptable to NHTSA, information on the inspection, testing, or analysis of Takata

inflators, including but not limited to information on the procedures used for such inspection, testing, or analysis and the results of such testing, inspection, or analysis.

[SIGNATURE PAGE FOLLOWS]

**EXHIBIT A (FOR A
MANUFACTURER)**

AGREED:

[MANUFACTURER NAME]

Dated: _____, 2020

By: _____

[Name]

[Title]

EXHIBIT A (FOR A PLAINTIFF)

AGREED:

[PLAINTIFF NAME]

Dated: _____, 2020

By: _____

Plaintiff in [Lawsuit]

Dated: _____, 2020

By: _____

Counsel for [Plaintiff]

EXHIBIT A (FOR A CONSORTIUM)

AGREED:

[CONSORTIUM NAME]

Dated: _____, 2020

By: _____

[Name]

[Title]

ON BEHALF OF THE FOLLOWING CONSORTIUM MEMBERS:

[If for a consortium of vehicle manufacturers, list each vehicle manufacturer which is a consortium member. If for a consortium of plaintiffs, list each plaintiff who is a consortium member, and identify the name of each plaintiff's counsel and each plaintiff's lawsuit.]

Exhibit B

Vehicle Manufacturer	Inflator Type	Year Range
Audi	PSDI-5	2005-2013
	PSPI	2004-2010
	SDI	2008-2012
		2015-2017
BMW	PSDI-4	2001-2006
	PSDI-5	2005-2014
	PSPI	2003-2006
	PSPI-2	2007-2013
MBUSA, Daimler Vans, and Daimler Trucks	PSDI-5	2006-2011
	PSPI-2	2007-2011
	SDI	2007-2016
	SPI	2006-2016
FCA	PSDI-4	2003-2011
	PSPI	2003-2011
	PSPI-1.1	2006-2016
	SDI	2006-2007
	SPI	2003
Ferrari	PSPI-2	Any Year
Fisker	PSPI-1.1	Any Year
Ford	PSDI-4	2004-2015
	PSDI-5	2006-2008
	PSPI	2003-2014
	SDI	2003-2006
	SPI	2003-2006
GM	PSDI-5	2005-2011
	PSPI-6	2008-2010
	PSPI-L	2002-2008
Honda	PSDI	2002-2006
	PSDI-4	2002-2011
	PSDI-4K	2005-2013
	PSDI-5	2004-2015
	PSDI-5D	2014-2015
	PSPI	2003-2006
	PSPI-6	2005-2015
	PSPI-L	2003-2014
Jaguar Land Rover	PSPI	2006-2015

Vehicle Manufacturer	Inflator Type	Year Range
Mazda	PSDI-4	2002-2008
	PSPI	2003-2008
	PSPI-6	2006-2015
McLaren	PSPI-2	Any Year
Mitsubishi	PSPI	2005-2006
	PSPI-6	Any Year
	SPI	2003-2006
Nissan	PSDI-5	2006-2012
	PSDI-5D	2011-2017
	PSPI	2003-2007
	PSPI-6	2006-2012
	SPI	2003-2006
Subaru	PSPI	2003-2006
	PSPI-6	2007-2014
	PSPI-L	2004-2013
	SPI	2003-2004
Tesla	PSPI	2012-2016
Toyota	PSDI-5	2003-2005
	PSPI	2003-2005
	PSPI-6	2005-2016
	PSPI-L	2002-2007
		2013-2015
SPI	2003-2004	
Volkswagen	PSDI-5	2005-2006
	SDI	2007-2017