

AMENDED PROTOCOL UNDER NHTSA PRESERVATION ORDER

Pursuant to Paragraphs 18 and 21 of the Preservation Order and Testing Control Plan issued by the National Highway Traffic Safety Administration (“NHTSA”) on February 25, 2015, (“Preservation Order”), as recently amended on July 27, 2020 by the Second Amendment to the Preservation Order and Testing Control Plan (the “Second Amended Preservation Order”), TK Services Inc., an affiliate of TK Holdings Inc. (collectively “Takata”) submits this Amended Protocol to detail the current procedures for preservation and testing of inflators within Takata’s possession, custody, and control under the Second Amended Preservation Order and establish a framework under which the nineteen vehicle manufacturers identified in Paragraphs 2 and 17 of the Second Amended Preservation Order (hereinafter, the “OEMs”), private parties to civil litigation, or a consortium of the OEMs or private parties may apply for and potentially receive Takata inflators for testing provided they satisfy certain legal and safety requirements.

Takata acknowledges that NHTSA reserves the right to revisit this Protocol should it determine that changes to this Protocol are warranted based upon later-acquired information or changes in circumstances. Takata will make prompt and reasonable efforts to accommodate any such changes in response to a written request from NHTSA.

Takata has trained relevant employees to ensure that they understand and can apply the Protocol consistently with the Preservation Order.

This Amended Protocol is organized around the inflator categories as defined in Paragraphs 5 and 6 of the Second Amended Preservation Order and contains the specific steps for the preservation and proposed testing discussed in Paragraphs 14-17 and the procedural requirements set forth in Paragraph 18.

Ruptured Inflators (¶ 6)

Except for testing, inspection, or analysis, as provided for by the terms of the Second Amended Preservation Order, Takata will continue to take actions reasonably designed to ensure that ruptured inflators from field events currently in Takata’s possession or that may come into Takata’s possession are secured and preserved in unaltered form, including by storing them in a locked, secured, heated area in Michigan with access limited to members of Takata’s Product Safety Group (“PSG”) and other authorized personnel. Takata will provide NHTSA with the list of designated employees separately upon NHTSA’s request. Components of ruptured inflators are and will be kept in separate totes identified by, to the extent available, automobile model and model year, inflator type, inflator serial number, an internal reference number, and, where applicable, case or claimant name. To the extent the aforementioned information is not available, Takata generally takes the following steps to identify that information: (i) requesting the applicable VIN number from OEMs and/or (ii) seeking the missing information from a third-party source, such as Carfax. Ruptured components are and will be logged in and out of the secure storage area for inspection. The access log will be retained and available for inspection by NHTSA. Any inspection of ruptured components must be witnessed and supervised by an authorized Takata employee.

Recalled or Returned Inflators (¶ 5)

For recalled or returned inflators, within the meaning of Paragraph 5 of the Second Amended Preservation Order, received by and within the possession, custody, and control of Takata, Takata gathers the following information upon intake: inflator serial number; replacement kit serial number; name of OEM; dealer zip code; and date received. To the extent available, Takata also collects upon intake the automobile model and model year. Takata currently relies on shipping carrier data for shipping dates and stores such data in a manner that is not dependent on access by the carrier. Takata has a system in place to track the physical location of all recalled or returned inflators. Except for testing, inspection, or analysis, as provided for by the terms of the Preservation Order, Takata will take actions reasonably designed to ensure that the inflators are secured and preserved in unaltered form, including by storing them in a locked, secured, heated facility in Michigan. Access to recalled or returned inflators is limited to warehouse employees, members of PSG, and other authorized personnel.

In the event Takata deems it necessary or appropriate to send recalled or returned inflators outside of the United States for testing or analysis, Takata will ensure that the inflator components are returned to Takata's facility in Michigan, along with any test results. Takata will also inform the Director of the Office of Defects Investigation at NHTSA, in writing, that it is sending such inflators outside the United States for testing. All test data is currently being maintained on Takata servers. Takata is providing all test data to NHTSA on a regular basis, including any data from any tests requested by an OEM, and it will continue to do so.

Documents, data, and tangible things reasonably anticipated to be relevant to the subject of NHTSA's investigation, including records and materials associated with Takata's testing of recalled or returned inflators, are currently being preserved under the NHTSA Preservation Order, as amended. Test results and data (including photographs or video, if any) are currently captured and saved on a Takata business server in Armada, Michigan. Takata is providing such test results and data to NHTSA on a regular and as-requested basis. Relevant Takata employees are being reminded on a regular basis regarding the obligation to preserve documents, materials, and data related to inflator testing.

Takata has implemented a data vault system related to inflator testing. The data vault system is supported with a master database in Armada, Michigan that is replicated to a redundant database in Auburn Hills, Michigan. Some test data and results are added directly to the Armada database without any human involvement (Takata employees can add or view data but not delete it). Other test data that requires manual input are added to the Armada database. Once added, the data cannot be modified or deleted. Images of inflators from Takata's CT Imaging Unit or received from an outside source are added to the Armada database. Once images are added to the database they cannot be deleted or modified. Following the initial roll-out of this data vault model, historic test and CT data were added to the Armada master database, which again is replicated on the redundant Auburn Hills database. Takata also developed a parallel data vault model for any testing that occurs in Moses Lake, Washington. The data vault system bolstered Takata's current preservation efforts and enhanced Takata's ability to report test data to NHTSA as required. Finally, internal Takata written communications regarding testing requests or results are limited to email. Email is being preserved by the end user for litigation or investigation purposes.

Takata has developed classifications for all recalled or returned inflators in Takata's possession, custody, or control using the following criteria: inflator type, OEM, State (as defined in 49 U.S.C. § 30102(a)(10)), year of inflator manufacture, and, where the information is available, automobile model and model year. Ten percent of each of these individual inflator inventory classifications was originally set aside as specified in the Preservation Order. By the first amendment to the Preservation Order entered in April 2018, the set aside was reduced to five percent of each individual inflator inventory classification. By the second amendment to the Preservation Order entered in July 2020, the five percent set aside was replaced by a specific number of Cohort Preserved Inflators to be set aside as defined in paragraph 15.h. and Exhibit B to the Second Amended Preservation Order. For the purpose of achieving reasonable diversity of inflators within these cohorts, inflators in each classification will be selected for set-aside on a random basis.

Takata has developed inventory control numbers for recalled or returned inflators in Takata's possession, custody, or control. The inventory control numbers are used to block or prevent the pulling or shipment of any inflators for testing by Takata that would impact the Cohort Preserved Inflator set-aside for one or more Cohorts. Consistent with paragraph 17 of the Second Amended Preservation Order, Takata also will not pull or ship any inflators for testing by an Applicant to the extent that fulfilling the request would exceed the caps placed on the number of inflators from a Cohort which may be accessed for testing and analysis.

The automobile model and model year of the recalled or returned inflators is the type of information that is in the exclusive possession of OEMs. Takata has previously requested that OEMs provide in electronic form the automobile model and model year for the returned or recalled inflators. Takata has reiterated its request to the OEMs for that information. Takata has also developed replacement inflator kits that will enable it to reasonably identify the automobile model of the returned or recalled inflator and will use that information to populate the Cohort Preserved Inflator set aside.

Other Ammonium Nitrate-Containing Inflators (¶ 6)

For other ammonium nitrate-containing inflators removed from vehicles in the United States within the meaning of Paragraph 6 of the Second Amended Preservation Order and received by Takata and within Takata's possession, custody, or control, Takata gathers the following information upon intake: inflator serial number; replacement kit serial number; name of OEM; dealer zip code; and date received. To the extent available, Takata also collects upon intake the automobile model and model year. Takata currently relies on shipping carrier data for shipping dates and stores such data in a manner that is not dependent on access by the carrier. Takata is able to track the physical location of all such other ammonium nitrate-containing inflators in its possession. Except for testing, inspection, or analysis, as provided for by the terms of the Preservation Order, Takata will take actions reasonably designed to ensure that the inflators are secured and preserved in unaltered form, including by storing them in a locked, secured, heated area with access limited to warehouse employees, members of PSG, and other authorized personnel.

In the event Takata deems it necessary or appropriate to send recalled or returned inflators outside of the United States for testing or analysis, Takata will ensure that the inflator components are returned to Takata's facility in Michigan, along with any test results. All test data is currently being maintained on Takata servers. Takata is providing all test data to NHTSA on a regular basis, including any data from any tests requested by an OEM, and it will continue to do so.

Disposal of PSAN Inflators

In accordance with the notice procedures identified in Section III of the Second Amended Preservation Order, Takata may designate for release from preservation and dispose of recalled or returned inflators, ruptured inflators and other ammonium nitrate inflators. The Cohort Preserved Inflator set aside will not be designated for release from preservation and disposed of until permitted under the terms of paragraph 30 of the Second Amended Preservation Order.

Requests By OEMs And By Private Plaintiffs to Takata for Non-Takata Testing

Attached to this Amended Protocol is an application packet, which includes the following: written application for shipment of inflators for testing; certification or satisfactory proof that the recipient is qualified to safely handle and test the requested inflators; agreement to be responsible for shipping and handling costs; the Acknowledgement of Preservation Obligation attached to the Preservation Order, as amended; and a Release of Takata.

The written application will require the applicant to identify the name of the person or entity submitting the request; address; phone number; email address; and the number of inflators that it is requesting. The applicant shall also have the opportunity, but is not required, to identify the inflators requested for testing purposes by the following classifications: inflator type, OEM, year of inflator manufacture, automobile model, and automobile model year. If an applicant is requesting inflators from one or more classification, it shall indicate the number requested from each such classification. In addition, consistent with Paragraph 18.d of the Second Amended Preservation Order, the application will require the applicant to provide the name, address, telephone number, and email address of the person or entity responsible for providing information on the applicant's inspection, testing or analysis to NHTSA. Pursuant to Paragraph 18.c of the Second Amended Preservation Order, the applicant shall also submit an executed copy of Exhibit A to the Second Amended Preservation Order along with the written application.

Following receipt of a complete application ("Request"), Takata will share the Request with NHTSA and the Request Notice Recipients as defined in paragraph 20 of the Second Amended Preservation Order. Takata shall also determine whether it has sufficient inflators in the relevant Cohort set aside to fulfill the request in a manner that is consistent with the terms of the Second Amended Preservation Order and this Amended Protocol. If a Request from an Applicant would cause the number of inflators in any Cohort to fall below the relevant specified minimum described above for recalled or returned inflators, Takata will inform the Applicant and deny or modify such request unless the Applicant obtains written approval from NHTSA to receive inflators from the preservation inventory in response to such Request.

Takata will endeavor to respond to a Request in seven (7) business days. In some instances, Takata may need to communicate directly with the applicant in order to properly process the Request. The time spent in addressing such issues shall extend Takata's response time. Further, unless NHTSA has determined in its discretion that time is of the essence for the inspection, testing and analysis it has directed consistent with paragraph 21 of the Second Amended Preservation Order, Takata will not ship the requested inflators until NHTSA and the Request Notice Recipients have had at least five (5) business days to request additional information about the inflators selected by a Request and the inflators remaining in the affected Cohort(s) as outlined in paragraph 20 of the Second Amended Preservation Order. Should a timely request for additional information be received, Takata will place a hold on the shipment of the inflators for additional five (5) business days from the time Takata is able to timely respond to the additional information request. These time periods may need to be extended depending on work mandated by the current recalls and other safety actions or by the volume of requests for inflators for testing. Takata will track the applications and its responses and initially provide weekly status reports to NHTSA. This schedule may be modified by NHTSA as it deems appropriate.

Takata will be entitled to reject or modify an application for a number of reasons including, but not limited to: incomplete application; insufficient information to permit Takata to accurately identify the requested inflators; refusal to pay the costs associated with the shipping and handling of the requested inflators to the applicant; or a substantial risk that fulfilling the request will result in insufficient inflator inventory to respond to anticipated future requests.

In an effort to address any potential concerns on the part of the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation ("PHMSA") and the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the U.S. Department of Justice, Takata will ship the requested inflators in accordance with applicable regulations. Takata will communicate directly with and obtain approvals from PHMSA at DOT headquarters regarding the permitting and transportation of inflators pursuant to the Preservation Order. The shipment will be accompanied by a letter identifying the classifications of inflators shipped to the applicant, if applicable, (*e.g.*, inflator serial number; replacement kit serial number; name of OEM; dealer zip code; date, and/or automobile model and model year) and a reminder of the obligations imposed by the NHTSA Preservation Order.

APPLICATION PACKET

[Requesting Applicant’s name and address]

[Date]

TK Services Inc.
111 Peyerk Court
Romeo, MI 48065
Attn: Susan Vrana
Susan.vrana@takata.com

Re: Application to Receive Inflators for Inspection, Testing, or Analysis

Dear Takata:

Pursuant to the Preservation Order and Testing Control Plan issued by the National Highway Traffic Safety Administration (“NHTSA”) on February 25, 2015, and as subsequently amended, (the “Preservation Order”), the undersigned Applicant hereby requests inflators collected by TK Services Inc., an affiliate of TK Holdings Inc. (collectively “Takata”) as part of certain recalls or other safety actions being conducted by certain vehicle manufacturers in the United States for inspection, testing, and/or analysis. The number of inflators requested and, should the Applicant desire specific types of inflators, the classification(s) of inflators requested, including the number of inflators from each classification, are set out below or on an attached spreadsheet containing the specified information.

Number of inflators requested: _____

Inflator type(s): _____

Inflator year(s) of manufacture: _____

OEM(s): _____

Other (e.g., inflator serial number range): _____

Pursuant to paragraph 18 of the Preservation Order, Applicant hereby certifies that it is qualified to safely handle and test inflators in accordance with all applicable laws and regulations. Applicant further certifies that it has agreed to provide to NHTSA, upon NHTSA’s request, all data and other records reflecting the results of inspection, testing, or analysis of Takata inflators conducted by Applicant in accordance with the terms of Exhibit A to the Preservation Order, and that it has included with this application an executed copy of Exhibit A to the Preservation Order. Applicant also agrees to pay all costs associated with the shipping and handling of the requested inflators to Applicant. The individuals responsible for providing information regarding Applicant’s inspection, testing, or analysis of Takata inflators to NHTSA are:

Name(s): _____

Address(es): _____

Phone number(s): _____

Email address(es): _____

Your signature below indicates that the facts stated above are true to the best of your knowledge and your agreement to abide by the terms set forth herein.

Sincerely,

By: _____

Name of Applicant:

Name of Authorized Representative:

Address:

Phone:

Email:

RELEASE OF TAKATA

WHEREAS, pursuant to the Preservation Order and Testing Control Plan issued by the National Highway Traffic Safety Administration (“NHTSA”) on February 25, 2015, as amended (the “Preservation Order”), the undersigned Applicant has requested that TK Holdings Inc. through its affiliate TK Services Inc. (“Takata”) provide it for inspection, testing, and/or analysis certain inflators collected by Takata as part of certain recalls or other safety actions being conducted by certain vehicle manufacturers in the United States;

WHEREAS, if Applicant’s request is approved by Takata, Applicant will take into its possession, custody, and control certain inflators provided by Takata pursuant to the Preservation Order;

WHEREAS, neither Takata nor any of its parents, subsidiaries, or affiliates will retain custody or control over the inflators provided to Applicant pursuant to the Preservation Order;

WHEREAS, neither Takata nor any of its parents, subsidiaries, or affiliates will participate in any storage, handling, inspection, or testing of such inflators transferred to Applicant;

WHEREAS, such storage, handling, inspection, and testing may involve both known and unknown risks of injury to persons or property, as well as the potential for destruction, degradation, or loss of the inflator units;

NOW THEREFORE, Applicant, on behalf of its parents, subsidiaries, affiliates, officers, successors, or assigns, does hereby agree to release and discharge Takata, as well as all of its parents, subsidiaries, affiliates, officers, employees, agents, successors, or assigns, from any and all liabilities, claims, demands, actions, or causes of action of any kind or nature, whether in law or in equity, whether anticipated or unanticipated, that may in any manner arise out of or relate to Applicant’s possession, custody, or control of such inflators, including but not limited to the storage, handling, testing, or inspection of such inflators, from the date of the signing of this Release forward. Any storage, handling, inspection, testing, or related activities shall be undertaken entirely at the discretion of the Applicant and with full intent to assume any related risks, including but not limited to risks of injury or death to persons or of damage to property that might occur in the course of storing, handling, inspecting, or testing such inflators.

Applicant further agrees that prior to having its employees, agents, experts, and/or other third-party contractors handle, inspect, and/or test the inflators, it will require such employees, agents, experts, and/or other third-party contractors to agree, in writing, to comply with, and be bound by, this Release.

Dated: _____

APPLICANT

By: _____

Name of Applicant: _____

Name of Authorized
Representative: _____

Address: _____

Phone: _____

Email: _____