

[Products Liability Law Daily Wrap Up, TOP STORY—CONSENT ORDER—NHTSA fines Takata record \\$200M for motor vehicle safety violations, \(Nov. 3, 2015\)](#)

Products Liability Law Daily Wrap Up

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Based on its findings that Takata violated several provisions of the Motor Vehicle Safety Act and federal regulations in relation to defects in its air bag inflators, the National Highway Traffic Safety Administration imposed a record \$200 million penalty on the company. The fine, which was levied pursuant to a [consent order](#), represents the largest civil penalty in NHTSA's history. In conjunction with the consent order, NHTSA issued a [Coordinated Remedy Order](#), which represents the first time the federal regulator has used its authority to accelerate recall repairs to millions of affected vehicles (*NHTSA Press Release*, NHTSA 46-15, November 3, 2015; [80 FR 70866](#), November 16, 2015)

Cited violations. NHTSA charged that Takata failed to notify the agency within a reasonable time (five days) of when it determined, or should have determined or discovered, the existence of a defect which led to six separate recalls launched by the company. NHTSA also found evidence that in a number of instances, Takata provided the agency and its customers with selective, incomplete, or inaccurate information going back to 2009 and continuing through the agency's current investigation. In agreeing to the Consent Order, Takata admitted that it was aware of a defect but failed to issue a timely recall.

Consent Order. In addition to imposing a record civil penalty, the consent order requires Takata to phase out the manufacture and sale of inflators that use phase-stabilized ammonium nitrate propellant, which is believed to be a factor in explosive ruptures that have caused 7 deaths and nearly 100 injuries in the United States. The consent order also lays out a schedule for recalling all Takata ammonium nitrate inflators now on the roads unless the company can prove they are safe or can show it has determined why its inflators are prone to rupture.

The consent order also spells out that of the \$200 million penalty, \$70 million is due in cash; \$60 million in the form of stipulated penalties, with a portion designated to become due if Takata fails to meet the deadlines for the phase-out of its production of phase-stabilized ammonium nitrate-based inflators; and another \$70 million in the form of liquidated penalties with portions due if Takata enters into any new production contracts for certain phase-stabilized ammonium nitrate-based inflators or if NHTSA discovers additional violations of federal law or safety regulations.

The consent order also imposes unprecedented oversight on Takata for the next five years. The oversight includes an independent monitor selected by NHTSA to assess, track, and report on the company's compliance with the phase-out schedule and other requirements of the consent order and to oversee the Coordinated Remedy Program.

Coordinated Remedy Order. In issuing the Coordinated Remedy Order, NHTSA exercised for the first time the legal authority established in the 2000 TREAD Act that allows the agency to accelerate safety defect repairs if manufacturers' remedy plans are likely to put Americans at risk. The Coordinated Remedy Order, which was issued to Takata and the 12 vehicle manufacturers involved in the existing Takata recalls, orders these companies to prioritize their remedy program based on risk and establishes a schedule by which the vehicle manufacturers must have sufficient parts on hand to remedy the defect for all affected vehicles. This schedule calls for vehicle manufacturers to have sufficient replacements on hand for the highest-risk inflators by June 2016 and to provide final remedies for all vehicles—including those that receive interim remedies because of supply and design issues—by the end of 2019. The order also establishes a Coordinated Remedy Program

under which the agency will oversee the supply of remedy parts and manage future recalls with the assistance of an independent third-party monitor.

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