



U.S. Department of Transportation
National Highway Traffic Safety
Administration



1200 New Jersey Avenue SE.
Washington, DC 20590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

QCT - 5 2017

R. Thomas Brunner
Department Manager VCA
Mercedes USA, LLC
One Mercedes Drive
Montvale, New Jersey 07645-0350

NEF-104mm
EA17-003

Dear Mr. Brunner:

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has opened Engineering Analysis EA17-003 to investigate incidents of engine compartment fire in model year (MY) 2008 through 2009 Smart Fortwo vehicles, and to request information to assist us in our investigation.

To date, ODI's analysis of incidents reported by consumers and provided by Mercedes has identified 27 incidents of open flame fires originating in the engine compartments of the subject vehicles, 14 of which were reported to ODI by Vehicle Owner Questionnaires (VOQs) and 18 involving complaints or field reports to Mercedes. Five of the incidents were reported to both ODI and Mercedes. One incident reported to Mercedes includes an allegation of an injury from smoke inhalation. Nineteen of the incidents occurred since January 2015.

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject vehicles:** All MY 2008 through 2009 Smart Fortwo vehicles manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.
- **Peer vehicles:** All MY 2010 through current Smart Fortwo vehicles manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.
- **Fire:** As defined in 49 CFR 579.4, fire means combustion or burning of material in or from a vehicle as evidenced by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke and melting, but does not include events and phenomena associated with a normally functioning vehicle such as combustion of fuel within an engine or exhaust from an engine.

- **Subject systems/components:** All systems/components determined by Mercedes, or alleged by consumers, third party, or other, investigations, to have caused or contributed to incidents of engine compartment fire in the subject or peer vehicles.
- **Mercedes:** Mercedes USA, LLC, Smart Distributer LLC, (collectively, Mercedes), all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, subsidiaries (whether or not incorporated) and affiliated enterprises 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 Mercedes (including all business units and persons previously referred to), who are or, in or after January 1, 2000, were involved in any way with any of the following related to the alleged defect in the subject and peer vehicles:
 - a. Design, engineering, analysis, modification or production (e.g. quality control);
 - b. Testing, assessment or evaluation;
 - c. Consideration, or recognition of potential or actual defects, reporting, record-keeping and information management, (e.g., complaints, field reports, warranty information, part sales), analysis, claims, or lawsuits; or
 - d. Communication to, from or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.
- **Alleged defect:** All non-crash fire incidents originating in the engine compartment.
- **Document:** "Document(s)" is used in the broadest sense of the word and shall mean 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, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall

include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Mercedes, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Mercedes or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Other Terms:** To the extent that they are used in these information requests, the terms "claim," "consumer complaint," "dealer field report," "field report," "fire," "fleet," "good will," "make," "model," "model year," "notice," "property damage," "property damage claim," "rollover," "type," "warranty," "warranty adjustment," and "warranty claim," whether used in singular or in plural form, have the same meaning as found in 49 CFR 579.4.

In order for my staff to evaluate the alleged defect, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. Insofar as Mercedes has previously provided a document to ODI, Mercedes may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). 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 repeat the applicable request verbatim above each response. After Mercedes' response to each request, identify the source of the information and indicate the last date the information was gathered.

1. State the total number of each of the following, received by Mercedes, or of which Mercedes is otherwise aware, which relate to, or may relate to, ANY non-crash fire in the subject and peer vehicles.
 - a. Consumer complaints, including those from fleet operators;
 - b. Field reports, including dealer field reports;
 - c. Reports involving a fire, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;

- d. Property damage claims;
- e. Third-party arbitration proceedings where Mercedes is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Mercedes is or was a defendant or codefendant.

For subparts “a” through “d,” state the total number of each item (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint).

In addition, for items “c” through “f,” provide a summary description of the alleged problem and causal and contributing factors and Mercedes’ assessment of the problem, with a summary of the significant underlying facts and evidence. For items “e” and “f,” identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

2. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 1, state the following information:
 - a. Mercedes’s file number or other identifier used;
 - b. The category of the item, as identified in Request No. 1 (i.e., consumer complaint, field report, etc.);
 - c. Vehicle owner or fleet name (and fleet contact person), street address, email address and telephone number;
 - d. Vehicle’s VIN;
 - e. Vehicle’s make, model and model year;
 - f. Vehicle’s mileage at time of incident;
 - g. Incident date;
 - h. Report or claim date;
 - i. Collateral damage, if any (i.e., all alleged property damage from smoke or fire beyond the incident vehicle and articles contained therein);
 - j. Number of alleged injuries, if any;
 - k. Number of alleged fatalities, if any;
 - l. Whether an open-flame fire is alleged;
 - m. The vehicle operating conditions when the fire was first detected (if the vehicle was parked with the ignition off, include an estimated period of time since the ignition was turned off);
 - n. The area of origin of the fire (e.g., upper-left engine compartment) including the specific component(s) involved, if known;
 - o. For fires involving localized damage, identify the components that were damaged/ repaired;
 - p. The alleged cause of the fire;
 - q. A summary of all vehicle modifications or service factors Mercedes believes could have caused or contributed to the incident;

- r. Whether Mercedes investigated the incident; and
- s. Mercedes assessment of the most likely cause of the fire.

Provide this information in Microsoft Access 2010, or a compatible format, entitled "EA17-003 REQUEST NUMBER TWO DATA."

3. Produce copies of all documents related to each item within the scope of Request No. 1. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Mercedes used for organizing the documents. Describe in detail the search methods and search criteria used by Mercedes to identify the items in response to Request No. 1. For all incidents investigation by Mercedes, include copies of all photographs and a summary of the investigation report. As noted above, insofar as Mercedes has previously provided a document to ODI, Mercedes may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located.
4. Provide monthly updates to Requests 1 through 3 until the publication of the closing resume for EA17-003.
5. Describe all modifications or changes made by, or on behalf of, Mercedes in the design, material composition, manufacture, quality control, supply, or installation of the engine air intake components and engine exhaust components, from the start of production to date, which relate to, or may relate to, the alleged defect in the subject and peer vehicles. For each such modification or change, provide the following information:
 - a. The date or approximate date on which the modification or change was incorporated into vehicle production;
 - b. A detailed description of the modification or change;
 - c. The reason(s) for the modification or change;
 - d. The part number(s) (service and engineering) of the original component;
 - e. The part number(s) (service and engineering) of the modified component;
 - f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
 - g. When the modified component was made available as a service component; and
 - h. Whether the modified component can be interchanged with earlier production components.
6. Provide the following information for the engine air intake and engine exhaust components on the subject and peer vehicles:
 - a. Provide top, front, and side view diagrams of the engine compartment identifying the orientation/ location of the components;
 - b. Hot surface ignition temperatures of the engine air intake materials and any non-metallic materials surrounding the exhaust header, catalytic converter, and heat shielding components;

- c. Provide top, front and side view diagrams showing the locations and relative distances to surrounding components or structure for all major exhaust components, including heat shields, and the maximum operating temperatures for each component (during vehicle operation and the hot soak period following engine shutoff); and
- d. Provide counts of part sales by part number, vehicle applicability and, year/month of sale for all resonator box assemblies sold for use in the subject or peer vehicles.

Legal Authority for This Request

This letter is being sent to Mercedes pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information.

Civil Penalties

Mercedes' failure to respond promptly and fully to this letter could subject Mercedes to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) The Vehicle Safety Act, as amended, 49 U.S.C. § 30165(a)(3), provides for civil penalties of up to \$21,000 per violation per day, with a maximum of \$105,000,000 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. *See* 49 CFR 578.6 (as amended by Fixing America's Surface Transportation Act (the "FAST Act"), Pub. L. 114-94, § 24110(a)(2), 129 Stat. 1312 (Dec. 4, 2015)). This includes failing to respond completely, accurately, and in a timely manner to ODI information requests.

If Mercedes cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, Mercedes does not submit one or more requested documents or items of information in response to this information request, Mercedes must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Confidential Business Information

All business confidential information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office. In addition, do not submit any business confidential information in the body of the letter submitted to this office. Please refer to EA17-003 in Mercedes' response to this letter and in any confidentiality request submitted to the Office of Chief Counsel.

If Mercedes claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, Mercedes must

submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512, as amended, to the Office of Chief Counsel (NCC-100), National Highway Traffic Safety Administration, Room W41-227, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Mercedes is required to **submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted.** Please remember that the phrase "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONTAINS CONFIDENTIAL BUSINESS INFORMATION" (as appropriate) must appear at the top of each page containing information claimed to be confidential, and the information must be clearly identified in accordance with 49 CFR 512.6. If you submit a request for confidentiality for all or part of your response to this IR, that is in an electronic format (e.g., CD-ROM), your request and associated submission must conform to the new requirements in NHTSA's Confidential Business Information Rule regarding submissions in electronic formats. *See* 49 CFR 512.6(c) (as amended by 72 Fed. Reg. 59434 (October 19, 2007)).

If you have any questions regarding submission of a request for confidential treatment, contact Otto Matheke, Senior Attorney, Office of Chief Counsel at otto.matheke@dot.gov or (202) 366-5253.

Due Date

Mercedes' response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by **November 20, 2017**. Mercedes' response must include all non-confidential attachments and a redacted version of all documents that contain confidential information. If Mercedes finds that it is unable to provide all of the information requested within the time allotted, Mercedes must request an extension from Jeff Quandt at (202) 366-5207 no later than five business days before the response due date. If Mercedes is unable to provide all of the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information Mercedes then has available, even if an extension has been granted.

Please send email notification to me at jeff.quandt@dot.gov and to ODI_IRresponse@dot.gov when Mercedes sends its response to this office and indicate whether there is confidential information as part of Mercedes' response.

If you have any technical questions concerning this matter, please call Matthew Martens at (202) 366-2252.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Ridella". The signature is fluid and cursive, with the first name "Stephen" and last name "Ridella" being clearly legible.

Stephen A. Ridella, Director
Office of Defects Investigation