

manufacturers, suggests repairs required under multiple NHTSA safety recalls were not made prior to the rental of such affected vehicles to Hertz customers.

NHTSA opened Audit Query (AQ22-003) and is issuing this Special Order to further investigate these issues and evaluate Hertz's compliance with Federal law. Violations of the prohibition on renting vehicles with open recalls are subject to civil penalties and other enforcement action. *See* 49 U.S.C. § 30165.

Hertz's response to this Special Order must be provided to NHTSA's Office of the Chief Counsel by February 20, 2023. The response should be sent to Sean Ward, Office of the Chief Counsel, at Sean.Ward@dot.gov or, for large submissions, through the DOT Secure Large File Transfer Solution system.²

Hertz's response must be signed under oath, *i.e.*, accompanied by a declaration, signed by a responsible officer of Hertz, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Hertz to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 28 U.S.C. § 1746; 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses, and may subject Hertz to civil penalties of up to \$24,423 per day, up to a maximum penalty of \$122,106,996 for a related series of daily violations. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R.

² In order to use the File Transfer System, please email Sean.Ward@dot.gov for a link.

§ 578.6(a)(3). Falsifying or withholding information in response to this Special Order may also lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C.

§ 30170(a)(1).

DEFINITIONS

Unless otherwise stated in the text, the following definitions apply to the information request set forth below:

- **The Hertz Corporation:** “Hertz” or “you” means The Hertz Corporation, 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 its headquarters, regional, zone and other offices and its 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 Hertz (including all business units and persons previously referred to), who are or were involved in any way as of December 1, 2017, with recalls of vehicles owned by Hertz.
- **Vehicle Manufacturer:** “Vehicle Manufacturer” means any person engaged in the manufacturing or assembling of new motor vehicles, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles.
- **Document:** “Document(s)” is used in the broadest sense of the word and means 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, documents generated through litigation, arbitration, or mediation, pleadings, mediation statements, 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 includes any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by The Hertz Corporation, 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 The Hertz Corporation or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Recall Notice**: “Recall notice” refers to any action in which a Vehicle Manufacturer notifies its owners and purchasers, pursuant to 49 U.S.C. §§ 30118-19 and 49 C.F.R. Part 577, of a safety recall.
- **Communications**: “Communications” is used in the broadest sense of the word and means the exchange, transfer, or relay of any ideas, messages, or information by speech, writing, or other means, whether electronic, paper, or in person.
- **Person**: “Person” includes natural persons, proprietorships, partnerships, firms, corporations, federal, state, and local governments, all departments and agencies thereof, and any other governmental agencies, political subdivisions, groups, associations, or organizations, whether located in the United States or abroad.
- **Relate To**: “Relate to” or “relating to” means constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, directly or indirectly.
- **Recall**: “Recall” refers to vehicle safety recall pursuant to 49 U.S.C. §§ 30118-30120.
- **Recall Remedy**: “Recall remedy” refers to a repair for the vehicle pursuant to 49 U.S.C. § 30120(a)(1).

- **Explain**: “Explain,” “describe in detail,” or “state in detail” means describe fully by reference to underlying facts rather than ultimate facts or conclusions of law or fact.

INSTRUCTIONS

Please follow the instructions below when providing responses to the numbered information requests in the next section.

1. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration by email to Sean Ward at Sean.Ward@dot.gov or through the DOT Secure Large File Transfer Solution system.³
2. Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.
3. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.
4. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. If, on the basis of attorney-client, attorney

³ In order to use the File Transfer System, please email Sean.Ward@dot.gov for a link.

work product, or other privilege, you do not submit one or more requested documents or items of information in response to this Special Order, you must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, name and position of the person(s) who sent the document, 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.

5. After your response to each request, state whether you previously had any responsive documents that are no longer within your possession, custody, or control, including, but not limited to, because the documents were lost or destroyed. If such documents ever existed: describe the documents; identify the reason that the documents are no longer in your possession, custody, or control; identify the date that you last had the documents; and identify who may have copies of such documents.

6. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of the Chief Counsel (NCC-100), National Highway Traffic Safety Administration as instructed below.

7. NHTSA is treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the agency under 49 C.F.R. Part 512.⁴ Since Part 512 submissions are handled by NHTSA's Office of the Chief Counsel, any Part 512 submission

⁴ See <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>.

should be sent to the Office of Chief Counsel electronically. Specifically, any CBI submissions sent via email should be sent to Sean Ward at Sean.Ward@dot.gov. For CBI submissions via a secure file transfer application, Sean Ward (Sean.Ward@dot.gov) must be notified when files are submitted and have access to retrieve the submitted files. Please refer to AQ22-003 in your response to this letter and in the subject line of any confidentiality request submitted to the Office of the Chief Counsel. At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters.

For questions about CBI issues, including these modified submission procedures, please contact Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov or 202-366-8534.

8. All documents shall be produced electronically, as described below, in a common format (*e.g.*, Word, PDF, Microsoft Access) or other electronic formats commonly used by Hertz and discernable to NHTSA.

- a. Hard copy documents shall be imaged in PDF format. They shall be provided as multi-page PDFs with document level optical character recognition (OCR).
- b. Electronically Stored Information (ESI) shall be converted to multi-page PDFs and produced along with document level OCR/extracted text.
- c. You shall organize the documents as instructed in the request to which they respond or, if no instruction is given in a request, in chronological order by project, report, or other similar categorization responsive to that numbered request.
- d. After the documents are so organized, and in sequential order to the request to which each responds, you shall apply Bates Numbers to the entire production.

- e. You shall produce an index that lists the title of each document produced, the Bates Numbers on the document, and the request to which it corresponds.

9. When a request calls for a detailed, narrative response, do not identify business records or other documents in lieu of providing a written narrative. A response to a request for a written narrative that solely directs NHTSA to documents will be considered non-responsive, and may result in civil penalties. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). A response to a request for a detailed, narrative response that includes references to specific Bates Number(s) in addition to a written narrative will not be considered a violation of this Instruction.

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

11. Hertz’s response to this Special Order must be under oath, *i.e.*, accompanied by a declaration, signed by a responsible officer of Hertz, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Hertz to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA,

and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

12. The requests in this Special Order are deemed to be continuing in nature so as to require additional or amended responses from you should you obtain or become aware of any new, additional, or differing responsive information or documents.

REQUESTS

1. For each and every recall of which Vehicle Manufacturers notified Hertz from December 1, 2017, produce a spreadsheet table detailing the following about each vehicle that was in Hertz's possession and subject to that recall:

- a. The VIN;
- b. The Vehicle Manufacturer recall number;
- c. The NHTSA recall number;
- d. The date the Vehicle Manufacturer first notified Hertz about the recall;
- e. The means of transmission of the recall notification (e.g., email, fax, etc.);
- f. The date the Vehicle Manufacturer transmitted or otherwise first made available to Hertz a VIN list or other information from which to ascertain the vehicle's inclusion in the recall;
- g. The means of transmission for the VIN list or other information from which to ascertain the vehicle's inclusion in the recall and recall notice, (e.g., email, fax etc.);
- h. The date on which Hertz first took possession of the vehicle;
- i. The date on which Hertz demarcated the vehicle as "hold" or "do not rent" or any other proprietary nomenclature denoting removal from service due to an open recall;

- j. The date(s) on which Hertz rented the vehicle to a customer, from the date Hertz first received the recall notification from the Vehicle Manufacturer through the date the final recall remedy was performed on the vehicle;
- k. Whether an interim recall remedy was performed on the vehicle;
- l. The date on which an interim recall remedy was performed on the vehicle, if applicable;
- m. The name and address of the entity that performed the interim recall remedy on the vehicle (e.g., Hertz, dealership, etc.), if applicable;
- n. The date on which the final recall remedy was available to Hertz;
- o. Whether the final recall remedy was performed on the vehicle;
- p. The date on which the final recall remedy was performed on the vehicle;
- q. The name and address of the entity that performed the final recall remedy on the vehicle (e.g., Hertz, dealership, etc.).

If a vehicle was subject to more than one recall, please provide a separate response for each associated recall (e.g., if a vehicle was subject to two different recalls, the vehicle should have two separate responses organized and identified by their respective NHTSA recall number).

Provide your responses in a table in Microsoft Excel entitled “All Hertz Vehicles Requiring Recall Repair.”

2. Describe how Hertz’s Repair Order System (aka Fleet EAM), hold systems and rental history records (aka DASH), and contracts databases communicate with each other to safeguard against manual overrides for recalled vehicles that have not been repaired. If this changed during the period December 1, 2017 to the present, please describe the changes.

3. Has any unremedied, recalled vehicle in Hertz's possession since December 1, 2017 experienced or been alleged to have experienced a safety issue that is related to or potentially related to the unremedied recall? If yes, describe the circumstances in detail, including identifying information for the vehicle(s) involved.

4. Provide a copy of all policies, procedures, processes, and/or training that Hertz has or had in effect from December 1, 2017 to the present regarding compliance with the prohibition on renting unremedied recalled vehicles in 49 U.S.C. § 30120(i). Additionally, please provide the following:

- a. The date when each such policy, procedure, process, and/or training was implemented.
- b. State whether each such policy, procedure, and/or process currently is in effect. If no longer in effect, state when it ceased being in effect.
- c. Identify the categories of Hertz employees that received or were subject to each such policy, procedure, process, and/or training.
- d. Describe how each such policy, procedure, process, and/or training was provided or made available to Hertz employees.
- e. Describe what changes have been made since December 1, 2017, if any, to each such policy, procedure, process, and/or training and the reasons for each change.

5. Describe any actions Hertz has taken from December 1, 2017 to present to evaluate or audit compliance with the prohibition on renting unremedied recalled vehicles in 49 U.S.C. § 30120(i). Describe the findings of any such evaluation or audit, provide a copy of any documents addressing the findings, and describe any actions Hertz took in response to the findings along with a copy of any supporting documents.

6. Provide any additional information Hertz considers important for the agency to consider in reviewing and evaluating Hertz's responses to any of the requests above, or relevant to the subject matter of this investigation. As one example, identify any anomalies in the data or documents and explain the reason(s) for those anomalies.

Dated: December 20, 2022



John Donaldson
Acting Chief Counsel