



Safety Recalls

Q & A for Franchised Dealers

Q What is a federal motor vehicle safety recall?

A The National Traffic and Motor Vehicle Safety Act (the Act) gives the National Highway Traffic Safety Administration (NHTSA) authority to set safety standards for new motor vehicles built for the U.S. market. When it is determined that a motor vehicle is not in compliance with one of the hundreds of safety standards NHTSA has issued or that it has a safety-related defect, a recall may be initiated. The vast majority of safety recalls are initiated voluntarily by vehicle manufacturers (OEMs), with a minority influenced or ordered by NHTSA. In a typical year, tens of millions of motor vehicles and motor vehicle parts are recalled. Given their expertise, training, and investment in necessary tools and information, franchised dealers remedy almost all safety recalls, thereby helping to promote the safety of the motoring public.

Q How does federal law restrict the sale of new vehicles subject to a safety recall?

A Federal law imposes a “stop sale” on all new, undelivered vehicles and parts subject to a safety recall. Once a dealer receives notice of a safety recall, affected new vehicles or parts may not be delivered until the defect or noncompliance is remedied. However, the Act also mandates that OEMs both reimburse dealers for the cost of remedying recalls and provide additional compensation of at least 1 percent per month of the manufacturer’s (or distributor’s) selling price, prorated from the date of a recall notice until the date a motor vehicle recall is remedied.

Q Does federal law restrict the sale of used vehicles subject to a safety recall?

A No. The Act does not prohibit the sale (by dealers or anyone else) of used vehicles subject to safety recalls. (It does, however, prohibit the sale of used parts subject to recall.) Despite the lack of a federal used-vehicle sales prohibition, dealers should consider the following:

- Given that dealer service departments are authorized, trained, and equipped to remedy safety recalls for the brands the dealer represents, all used inventory of those brands should be checked routinely for unremedied safety recalls and any found should be performed prior to resale. Dealers considering the resale (at retail or wholesale) or lease of such a vehicle prior to performing the remedy should consult with legal counsel about the advisability of doing so.
- Dealers may periodically receive OEM “stop sale” notices covering used vehicles in inventory. Other dealers (both franchised and independent) may learn of such OEM “stop sale” notices through other means (*e.g.*, via the media). It is most prudent for a dealer with actual knowledge of an OEM “stop sale” to refrain from selling (at retail or wholesale) or leasing a covered vehicle until the recall is remedied.



Alternatively, a dealer with actual knowledge of an OEM “stop sale” could sell or lease covered vehicles if accompanied by a clear and conspicuous disclosure of the “stop sale” acknowledged by the purchaser/lessee. However, any dealer considering this latter approach should consult legal counsel (and perhaps its insurance carrier) as to whether such disclosure provides sufficient protection under state liability laws. Dealers should also discuss with counsel whether sales/leases contrary to an OEM “stop sale” may violate the terms and conditions of a franchise agreement and/or undermine the OEM’s product liability indemnity.

- On occasion, dealers may receive OEM recall notices with “stop drive” precautions applicable to certain used vehicles in inventory. As with “stop sales,” other dealers (both franchised and independent) may learn of a “stop drive” notice through other means (*e.g.*, via the media). Any dealer with actual knowledge that certain used vehicles are subject to a “stop drive” should not resell (either at retail or at wholesale) or lease such vehicles until the recall is remedied.

Q Is there a single source of information listing the safety recall status of any vehicle?

A Effective on August 20, 2014, the NHTSA website www.safercar.gov will allow anyone (owners, lessees, prospective purchasers, dealers, etc.) to search safety recalls by model year, make, model, and *vehicle identification number (VIN)*. Currently, the site only allows safety recall searches by model year, make, and model. This new VIN-search function will reflect information gathered from the VIN-searchable public-facing safety recall websites established by each light-duty OEM selling more than 25,000 vehicles per year in the U.S. OEMs must post recall status information on their websites concurrently with the creation of each new recall letter recipient list, must display a description of each unremedied safety recall applicable to a particular VIN dating back at least 15 years, and must update their sites at least once every seven days. Once a vehicle subject to recall is reported as remedied, it will no longer appear on an OEM or the NHTSA data base.

Q Does the new NHTSA VIN-searchable site impose additional requirements on dealers?

A No. The new NHTSA VIN-searchable site does not directly impose new mandates on dealers. However, prudence dictates that dealers consider checking the NHTSA VIN-searchable site (or applicable OEM-specific VIN-searchable sites) prior to purchasing or reselling used vehicles. Dealers should also consider periodically rechecking the safety recall status of used vehicles in inventory for more than seven days. It is expected that most dealer management systems and other dealership information vendors will offer products designed to assist dealers with running used-vehicle safety recall VIN searches. Prudence also dictates that, at the least, dealers disclose to purchasers and lessees the existence of any unremedied safety recall information discovered with a VIN search (although it may be necessary to include in such disclosures disclaimers regarding the information’s accuracy). Note: given the potential for liability under state law, dealers should consult with their legal counsel concerning what additional impact these new VIN-searchable tools may have on their operations.

Q What’s the best course of action to take when a service customer, informed of an outstanding safety recall, refuses to authorize the work?

A You can’t force customers to have safety recall remedies performed. In fact, for any given safety recall, many owners/lessees opt not to have the defect or noncompliance remedied, despite the best efforts of OEMs and dealers to get them to do so. It’s best not to do the work surreptitiously. Instead, when a service customer refuses to have the work done, dealers should document that fact by asking the customer to acknowledge on the repair order that repair of the recall at issue was refused.