



## Recalls By Manufacturers

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### Background

Sometimes, after products have entered the marketplace and have been sold, certain defects become apparent. These defects can be related to safety, such as when a braking system fails in certain automobile modes. Sometimes the problem is another kind of defect, as when a certain model of vacuum cleaner consistently fails to work properly. In these cases, the manufacturer may issue a recall of these products. Recalls are procedures taken by a manufacturer to remove a product from the market. Recalls allow a manufacturer the opportunity to repair or replace the defective product. These are often very costly procedures for manufacturers, but they can be less costly than multiple law suits or the loss of goodwill among consumers.

Recalls fall into three major categories:

- Consumer products, including such common items as clothing, electronics, and toys
- Food, drugs, and cosmetics, including prescription and over-the-counter drugs, shampoos, make-up, perfumes, and other cosmetics
- Motor vehicles, including tires and other vehicular equipment

Several federal agencies oversee the recall process. The Consumer Product Safety Commission (CPSC) oversees about 15,000 types of consumer products; however, automobiles, trucks, and motorcycles are within the [JURISDICTION](#) of the Department of Transportation; food, drugs (with the exception of child resistant-packaging for these products), and cosmetics are covered by the Food and Drug Administration (FDA)

The process of issuing a recall varies somewhat from one class of product to another. For example, among vehicles, state "lemon laws" give dissatisfied consumers a way to [REDRESS](#) their grievances when they have purchased a vehicle with significant defects. This is not the same thing as a recall, which typically includes hundreds or thousands of vehicles in a single recall announcement. LEMON LAWS allow vehicle owners to compel a type of recall when their vehicle are discovered to contain significant defects.

### Consumer Product Recalls

Manufacturers recall many of their own products every year when defects and/or safety risks are discovered in their products. Most recalls occur for safety-related reasons. Sometimes, a manufacturer will voluntarily recall

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products, and sometimes they are compelled to issue recalls. The CPSC announces recalls of products that present risks to consumers because the products are either defective or violate mandatory safety standards issued by CPSC.

When owners discover that a product that they own is recalled they should stop using it, but they should follow the specific guidance in CPSC's recall announcement on that product. In most cases there is no concluding date to a product recall. Even if it has been more than a year since CPSC issued a recall notice, product owners should read and follow the instructions in the recall notice.

Owners may or may not get a refund of their recalled product. There is no single remedy for all recalled products. The remedies for recalled products are specific to each product. Each recall announcement details the remedy for each recalled product. Recalls are as specific as possible. They frequently apply exclusively to products manufactured during specific time periods; these time periods can be lengthy but are often quite brief. For example, CPSC may announce a recall on toy X, manufactured between June 17, 2000 and August 23, 2000.

### Food, Drug, and Cosmetics Recalls

The FDA is charged with overseeing the safety and effectiveness of food, drugs, and many cosmetics products. As with other consumer goods and motor vehicles, recalls may be necessary when it is determined that a consumable product may pose considerable risk of harm to individuals. In terms of food, drugs, or cosmetics, recalls may proceed under a manufacturer's own initiative, by a FDA request, or by a FDA order. There are three classes of recalls in descending order of urgency:

1. Class I recalls are cases in which there is a reasonable chance that the use of or exposure to a product will cause serious adverse health consequences or even death.
2. Class II recalls are cases in which exposure to a product may cause temporary or reversible adverse health consequences, or where the odds of serious adverse health consequences are not great.
3. Class III recalls are situations in which use of or exposure to a product is unlikely to cause adverse health consequences.

Recalls are mandatory procedures for the manufacture. Market withdrawals, on the other hand, are voluntary on the part of manufacturers. They occur when a product has a minor violation that would not otherwise be subject to FDA legal action. In these cases, a firm will remove its product from the market or otherwise correct the violation. For example, a product will be removed from the market if there is [EVIDENCE](#) that its packaging has been compromised. This can happen without any manufacturing or distribution problems. In situations involving a medical device that presents an unreasonable risk of substantial harm, a medical device safety alert can be issued. These are primarily intended to inform potential users of the device of potential hazards. In some cases, these situations also are considered recalls.

### Automobile Recalls

The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) is the federal agency authorized to issue vehicle safety standards and to require manufacturers to recall vehicles with safety-related defects (49 USC §301). Since the NHTSA's inception, more than 215 million vehicles of all types and some 24 million tires have been recalled to correct safety defects. The NHTSA with the assistance of federal courts have influenced or ordered many of these recalls. Others have been initiated voluntarily by vehicle manufacturers. NHTSA has limited authority; it may not compel recalls for defects that are not

safety-related.

If a manufacturer identifies a safety defect, the manufacturer notifies NHTSA, as well as vehicle or equipment owners, dealers, and distributors. A safety defect is one which poses an unreasonable risk to safety and is common to a group of vehicles of the same manufacture or design. The manufacturer must then fix the problem. There should be no charge to vehicle owners. NHTSA assesses the adequacy of the manufacturers' corrective action and makes sure manufacturers comply with all [STATUTORY](#) requirements. The NHTSA will seek a recall in the following cases:

1. A motor vehicle or item of motor vehicle equipment does not comply with a Federal Motor Vehicle Safety Standard
2. There is a safety-related defect in the vehicle or equipment

If owners think they have an auto safety problem, it is a good idea to report it to the NHTSA. The combined effect of a number of similar complaints can trigger an investigation into the alleged safety defect and ultimately lead to a recall. When they contact the NHTSA, they will be asked to provide certain information necessary for the NHTSA staff to evaluate the problem. They will enter the owner's information into their database, and print a record of the report for evaluation and for use in future investigative procedures. The information provided to the NHTSA will be organized according to vehicle make, model, model year, manufacturer, and the affected part, assembly or system. NHTSA staff monitor such complaints to determine whether a pattern emerges that may indicate potential safety-related problems on any specific vehicle, tires, or equipment.

The NHTSA Office of Defects Investigation (ODI) is responsible for investigating potential safety defects. Their investigative process consists of four parts:

- Screening. ODI determines whether to open an investigation. During this phase, the ODI will conduct a preliminary review of consumer complaints and other information related to the alleged defect.
- Petition Analysis. The ODI processes petitions for defect investigations during petition analysis.
- Investigation. The ODI conducts an investigation of the alleged defect(s).
- Recall Management. Assuming the investigation leads to a recall, the ODI will assess the overall adequacy of safety recalls and the safety-relatedness of service bulletins.

In most cases, manufacturers make voluntary recalls to remedy safety defects on their new vehicles without NHTSA's involvement. Manufacturers often discover safety defects through their own testing procedures. Federal law requires manufacturers to report the findings that safety defects exist in their product, and they must take appropriate action to fix the defects. But, as some vehicles age, certain design and performance problems may occur. Vehicle owners frequently report these kinds of problems to NHTSA. These consumer complaints can form the basis for an NHTSA's defect investigation, which can lead to safety recalls.

After the NHTSA determines that there is indeed a safety defect or other noncompliance, manufacturers are given a reasonable time to notify, by first-class mail, all registered owners and purchasers of the affected vehicles. State motor vehicle offices provide the names of vehicle owners. Manufacturers must inform vehicle owners of the safety problem and provide an evaluation of its risk to the vehicle's safety. Their letter must also instruct consumers on the following details:

- How to get the problem corrected
- That corrections are to be made at no charge
- When the remedy will be available
- How long the remedy will take to perform
- Who to contact if there are difficulties in obtaining the free recall work

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Once NHTSA has made a defect determination, the manufacturer has three general options for correcting the defect: repair, replace, or refund the product. Remember, these are the manufacturer's options—not the consumers'. The circumstances of the defect and the overall cost of remedying the problem will determine the manufacturer's course of action. In the case of tires and equipment, the manufacturer can either repair or replace, but need not refund the tires or equipment.

Manufacturers are required only to correct at no charge those defects that exist at the time of the recall. The recall laws make do not apply to vehicle owners who experienced a problem before a recall is announced, even if the vehicle owner had repairs made at their own expense. Additionally, manufacturers are not liable for damages caused by the defect. If owners have a defective tire, it blows out leading to brake damage, the manufacturer will not be required to pay for the brake damage. Because of this, consumers affected by a recall are wise to have recall work done as soon as possible after a recall notice has been announced. There are a few exceptions to this rule, however. In some cases where consumers have been able to present sound documentation of damage incurred as a result of a defect, manufacturers have voluntarily agreed to cover the costs of the related damage. This helps the manufacture to retain or repair damage to its public image.

There are a few restrictions on consumers' rights to take advantage of recalls. For example, there is a limitation regarding the age of the vehicle. In order to be eligible for free repairs, refund, or replacement, the vehicle must be less than 8 years old on the date the defect. The age of the vehicle is based on the date it was sold to the first purchaser. Even so, consumers should realize that while manufacturers may not be compelled to remedy safety defects in older cars, a safety problem may exist nonetheless.

Sometimes a manufacturer will challenge the NHTSA's recall in court. In these cases, the manufacturer is not required to perform any repairs while the case is pending. If owners take their vehicle in for repairs after NHTSA's decision to order a recall, but before the case is finally decided and the court finds in favor of the manufacturer, the law will not require the manufacturer to reimburse them for that repair work. But save all the receipts from the repairs. If the court rules against the manufacturer, owners may be entitled to reimbursement.

If there is a recall on a vehicle, consumers are entitled to repair or replacement of the defective part without charge and the repair or replacement must occur within a reasonable time. After a defect has been discovered and a recall ordered, manufacturers are given time to identify vehicle owners who should be included in the recall. They are given time to do the following:

- Develop procedures to remedy the defect
- Instruct dealers or distributors about how to repair the defect
- Provide the parts necessary for repair or replacement
- Communicate with consumers about how the recall will be conducted

Because of the many time-consuming steps in a recall, manufacturers are given a reasonable time (usually 60 days) to remedy the defect. This time is calculated from the date that replacement parts are available. The manufacturer in its recall notification letter should specify this information. The law does not require a dealer to remedy a defect in a vehicle brought in before that date. In most cases auto dealers will honor a recall on vehicles that they sell and will remedy defects at no charge, regardless of where the vehicle or item of equipment was purchased.

### **"Lemon Laws"**

Every state has a "Lemon Law." These laws protect people who buy new vehicles against defective vehicles,

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commonly referred to as "lemons." Lemon Laws entitle aggrieved consumers to a replacement vehicle, or a full refund, as long as the vehicle meets certain qualifications set by state law. Lemon laws usually apply to purchases or leases of new cars, trucks, motorcycles or motor homes, even if they register the vehicle in another state. Additionally, lemon laws cover "demonstrator" or "executive" vehicles that are less than a year old and still under their original warranties. Generally, the laws do not apply to purchases of mopeds or trailers.

If owners think they have purchased a "lemon," they should write the manufacturer and request a replacement vehicle or a refund. Assuming their request is granted, they will not get to keep the defective vehicle. If their defective vehicle is replaced, the manufacturer should refund their repair costs and charge them nothing for mileage. If they end up with a refund instead of a replacement vehicle, their refund should include:

- The entire purchase price
- Any [SALES TAX](#) paid on the vehicle
- Finance charges
- The cost of repairs to the defective vehicle
- A [DEDUCTION](#) for mileage

If the manufacturer refuses to give a refund or provide a replacement of a defective vehicle, owners may be able to get relief by submitting their complaint to an [ARBITRATION](#) forum. This is often quicker and less expensive than [LITIGATION](#). In some states, if the manufacturer of the vehicle has a state certified arbitration program, the owner must use it before they can sue the manufacturer in court for a refund or replacement vehicle.

In some cases, a court may need to decide if a vehicle is a lemon and what remedy to provide. If the owner sues the manufacturer and they win, some jurisdictions allow damages worth double the vehicle purchase price and repair costs plus other costs and attorney fees.

Lemon laws vary from state to state. Basically, a mechanical defect must be one in which the vehicle substantially impairs the use, value, or safety of a vehicle before a lemon law will offer a remedy for a consumer. Lemon laws usually have time or mileage limits. A defect must be presented to the manufacturer or authorized dealer within these limits in order to be covered under the Lemon Law.

Once notified of a problem with a vehicle, the manufacturer must be allowed to repair the defect within a reasonable number of repair attempts. If the manufacturer cannot repair the defect in the vehicle within a reasonable number of repair attempts, the lemon law will entitle the vehicle owner to a refund or replacement of the vehicle. Just how many repair attempts constitutes a "reasonable number" will vary from state-to-state. The nature of the defect will also bear on the number of repair attempts. If the defect is so serious that there is potential for death or serious bodily injury if the vehicle is driven, the vehicle will be presumed to be a lemon if the defect continues to exist after just one repair attempt. If the defect is not so serious or potentially dangerous, then the manufacturer will be permitted additional repair attempts to correct the defect.

Owners will need [DOCUMENTARY EVIDENCE](#) to demonstrate that their car is a lemon. Make sure to save all records of any repairs done. The receipts should include dates of service and descriptions of the exact repairs made. This is most critical when the owner's car is repaired under the auspices of someone other than the dealership where they bought the car. In addition to repair records, it is a good idea to retain the purchase contract and any written warranties. It is also a good idea to note on a calendar all of the days the vehicle is at a dealership or other shop for [WARRANTY](#) repairs. If their vehicle is operable, it is permissible to drive it while the appropriate authorities determine whether it is a lemon. If the vehicle is indeed a lemon, the dealership is often allowed to deduct a certain amount for mileage from the refund. This applies to both new and used cars.

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In many states owners will be covered under a lemon law even if they purchased a used car. If owners have recently purchased a used car and it fails a safety inspection they may be entitled to cancel the purchase and receive a refund. Vehicle safety inspections are mandatory in most states. Owners may be able to receive a refund if their used car fails a safety inspection within a certain period of time from the purchase of the car, and if the repairs exceed a stated percentage of the purchase price of the car (which vary from state to state). Some states define their lemon laws for used cars the same way they do for new cars, so that even if the car passes inspection, if it has met the other qualifications, owners can still cancel the sale.

### **Additional Resources**

*Consumer Product Safety.* Howells, Geraint G., Dartmouth Publishing Co., 1999.

*Product Warnings, Defects, and Hazards, Second Edition.* O'Reilly, James T., Aspen Publishers, Inc., 1998.

*Safer by Design: A Guide to the Management and Law of Designing for Product Safety, Second Edition.* Abbott, Howard and Mark Tyler, Gower Publishing Co., 1997.

*Safety Recall Compendium: A Guide for the Reporting, Notification, and Remedy of Motor Vehicle and Motor Vehicle Equipment in Accordance with Title 49 of the United States Code, Chapter 301 and Supporting Federal Regulations.* NHTSA, 2001.

### **Organizations**

#### ***Consumer Reports***

101 Truman Avenue

Yonkers, NY 10703 USA

URL: <http://www.consumerreports.org/Recalls/>

#### ***Federal Consumer Information Center (FCIC)***

1800 F Street, NW, Room G-142, (XC)

Washington, DC 20405 USA

Phone: (800) 326-2996

URL: <http://www.pueblo.gsa.gov/>

#### ***U. S. Consumer Product Safety Commission (CPSC)***

4330 East-West Highway

Bethesda, MD 20814-4408 USA

Phone: (301) 504-0990

Fax: (301) 504-0124

E-Mail: [info@cpsc.gov](mailto:info@cpsc.gov)

URL: <http://www.cpsc.gov/>

#### ***U. S. Food and Drug Administration (FDA)***

5600 Fishers Lane

Rockville, MD 20857-0001 USA

Phone: (888) 463-6332

URL: <http://www.fda.gov>

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