



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 or more of the federal safety standards or that it has a safety-related defect, it may be recalled. Vehicle manufacturers (OEMs) initiate the vast majority of safety recalls, 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 recalled vehicles, 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 safety recalls. Once a dealer receives a safety recall notice, affected new vehicles or parts may not be delivered until the defect or noncompliance is remedied. But the Act 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 OEM’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. However, if the remedy or parts are not available for a particular vehicle, dealers considering its resale (at retail or wholesale) 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 also learn of such OEM “stop sale” notices (e.g., via the media). It is prudent for a dealer with actual knowledge of an OEM “stop sale” to refrain from selling (at retail or wholesale) a covered vehicle until the recall is remedied. Alternatively, a dealer with actual knowledge of an OEM “stop sale” could sell covered vehicles if accompanied by a clear and conspicuous disclosure of the “stop sale” acknowledged by the purchaser.



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 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. And, as with “stop sales,” other dealers (both franchised and independent) may learn of a “stop drive” notice through other means, for example, through the VIN look-up tool described below. A dealer with knowledge of a “stop drive” notice should not resell a used vehicle subject to it (either at retail or at wholesale) until the recall is remedied.

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

A The NHTSA website www.safercar.gov/vinlookup allows anyone (owners, lessees, prospective purchasers, dealers, etc.) to search safety recalls by model year, make, model, and vehicle identification number (VIN). This lookup function reflects 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.

Search results will show whether a vehicle is covered by an incomplete recall(s) for which a remedy is available, by an incomplete recall(s) for which the remedy is not yet available, or by no incomplete recalls. The website will not detail recalls if the remedy has been completed. Mobile application versions of the lookup are available, but the site

is not designed for “batch” submissions. Printing search results using the built-in “Print” button should result in a copy with the date/time on it.

Q Does the NHTSA VIN look-up site impose additional requirements on dealers?

A The NHTSA VIN look-up site does not directly impose new mandates on dealers.

However, prudence dictates that dealers consider checking the NHTSA VIN look-up site (or applicable OEM-specific VIN look-up sites) prior to purchasing or reselling used vehicles. Dealers should also consider periodically rechecking the safety recall status of used vehicles in inventory. It is expected that many dealer management systems and 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 through a VIN search and 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 any additional impact these VIN-searchable tools may have on their operations.

Q What’s the best course of action to take with service customers?

A As of December 4, 2015, federal law effectively requires franchised dealers to notify service customers of any open recalls on their vehicles if the dealer has the franchise for that vehicle brand (e.g., an XYZ dealer servicing an XYZ vehicle). Although this provision technically only applies where OEMs specifically mandate in their franchise agreements that such notifications be given, dealers should consider giving notices of open recalls for every “in-brand” vehicle serviced.

Customers may refuse to have safety recall remedies performed, in which case avoid doing the work surreptitiously. Document on the repair order any customer’s refusal of recall work or any unavailability of a recall remedy or parts; be sure to obtain customer’s acknowledgement.