

**THE VEHICLE SAFETY RECALL PROCESS IN THE UNITED STATES OF AMERICA**

Transmitted by the Representative of the United States of America

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## **I. INTRODUCTION**

### **A. Overview**

The National Highway Traffic Safety Administration (NHTSA), the Federal Highway Administration and the Federal Motor Carrier Safety Administration are agencies within the U.S. Department of Transportation responsible for road safety in the United States. NHTSA, specifically, is responsible for motor vehicle safety and traffic safety. Under Chapter 301 of Title 49 U.S.C. (formerly the National Traffic and Motor Vehicle Safety Act, as amended), NHTSA administers safety recalls by manufacturers or distributors of motor vehicles and items of motor vehicle equipment where a safety defect or noncompliance with a Federal motor vehicle safety standard (FMVSS) has been determined. Safety recalls are conducted in accordance with the Act and Federal regulations. The agency also conducts investigations of alleged safety defects and tests for compliance with FMVSS.

While a recall can be a significant and costly step for a manufacturer, its purpose is to eliminate the safety risk posed by noncompliant or defective vehicles or equipment. Over 9,000 safety recalls involving millions of motor vehicles and items of motor vehicle equipment have occurred since the enactment of the National Traffic and Motor Vehicle Safety Act. About 75 percent of these recalls have been initiated voluntarily by the manufacturers, while others have been influenced or ordered via the courts by NHTSA. If a noncompliance or a safety defect is discovered, the manufacturer is required to notify NHTSA and all vehicle or equipment owners, dealers, and distributors, urging the owners to bring their vehicles or items of equipment to their dealer to have the noncompliance or defect remedied at no cost to the consumer. NHTSA is responsible for monitoring the manufacturer's corrective action for adequacy and for compliance with statutory requirements.

The manufacturer has the option to repair or replace the vehicle or item of equipment, or refund the purchase price. Most decisions to recall are made by a manufacturer prior to a formal decision by NHTSA that a safety defect or a noncompliance exists, without a formal order from the agency. If a manufacturer refuses to comply with a NHTSA recall order, the government may seek to enforce the order in Federal court.

### **B. Statutory Authorities**

Title 49, United States Code (U.S.C.), section 30101, et seq. (the Act) authorizes NHTSA to issue safety standards for new motor vehicles and new items of motor vehicle equipment. All motor vehicles and items of motor vehicle equipment manufactured or imported for sale in the United States must comply with all applicable safety standards set forth in title 49 of the Code of Federal Regulations. Manufacturers of motor vehicles must certify compliance of their products in accordance with 49 CFR Part 567, Certification.

The Act prohibits the sale or lease of defective or noncompliant vehicles or equipment except under certain circumstances. It requires manufacturers to notify consumers that a motor vehicle or item of equipment they purchased contains a safety-related defect or failed to comply with the standards, and requires manufacturers to remedy such defects and noncompliances without charge. The following regulations found in title 49 of the CFR relate to the defect and noncompliance notification and remedy campaigns and prohibitions: Part 556, Exemption for Inconsequential Defect or Noncompliance; Part 573, Defect and Noncompliance Responsibility and Reports; Part 577, Defect and Noncompliance Notification; and Part 576, Record Retention, sets forth requirements for motor vehicle manufacturers' retention of complaints, reports and other records concerning safety-related motor vehicle malfunction.

### **C. Definitions**

**49 CFR:** Parts 400-999 of Title 49 of the Code of Federal Regulations.

**49 U.S.C.:** Title 49 of the United States Code.

**Act:** The National Traffic and Motor Vehicle Safety Act of 1966, as amended.

**Dealer:** any person who is engaged in the sale and distribution of new motor vehicles or items of motor vehicle equipment primarily to purchasers who in good faith purchase any such vehicles or item of equipment for purposes other than resale.

**Defect:** any defect in performance, construction, components, or materials in motor vehicles or items of motor vehicles.

**Distributor:** any person who is engaged in the sale and distribution of motor vehicles or items of motor vehicle equipment for resale.

**FMVSS:** Federal Motor Vehicle Safety Standard

**Manufacturer:** any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment, including any person importing motor vehicles or items of motor vehicle equipment for resale.

**Motor Vehicle:** For purposes of safety recalls, is defined within the Act and various sections of Title 49 of the Code of Federal Regulations, as any vehicle driven or drawn by mechanical power and manufactured primarily for use on the public streets and on the Nation's public roadways and highways. This would include cars, trucks, motorcycles, trailers, and vehicles, which are operable, with or without motive power, built in more than one stage, but excluding vehicles operated exclusively on a rail or rails.

**Motor Vehicle Equipment:** any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as any accessory or addition to the motor vehicle, and any device, article, or apparel not a system, part, or component of a motor vehicle (other than medicines, or eyeglasses prescribed by a physician or other duly licensed practitioner), which is manufactured or sold, delivered, offered, or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from risks of accidents, injury, or death.

**Motor Vehicle Safety:** the performance of motor vehicles or items of motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do not occur, and includes nonoperational safety of such vehicles.

**Original Equipment:** [Section 159 of the Act] an item of motor vehicle equipment (including a tire), which was installed in or on a motor vehicle at the time of its delivery to the first purchaser.

**Original Equipment Responsibility:** [Section 159 of the Act] a defect in, or failure to comply of, an item of original equipment shall be deemed to be a defect, or failure to comply of, the motor vehicle in or on which such equipment was installed at the time of its delivery to the first purchaser. If the manufacturer of a motor vehicle is not the manufacturer of original equipment installed in or on such vehicle at the time of its delivery to the first purchaser, the manufacturer of the vehicle (rather than the manufacturer of such equipment) shall be considered the manufacturer of such item of equipment. The term first purchaser means first purchaser for purposes other than resale.

**Replacement Equipment:** [Section 159 of the Act] an item of motor vehicle equipment (including a tire) other than original equipment.

**United States:** includes the United States and its protectorates to which the Act applies, which includes all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

## II. MANUFACTURER RESPONSIBILITY

Each manufacturer of a motor vehicle has recall responsibility for any safety-related defect or any noncompliance determined to exist in a vehicle or in any item of original equipment. The manufacturer of an item of motor vehicle equipment in which a safety defect or noncompliance is determined to exist (1) is responsible for notifying the vehicle manufacturer and (2) with respect to an item of replacement equipment

(including tires), has recall responsibility for the equipment containing the safety defect or noncompliance. [49 CFR Part 579, "Defect and Noncompliance Responsibility."]

Federal Regulation 49 CFR Part 573, "Defect and Noncompliance Reports," identifies the specific requirements for safety recalls including defect/noncompliance information reports and quarterly status reports. If an item of original equipment is determined to contain a safety defect or noncompliance and is installed in the vehicles of more than one manufacturer, then the equipment manufacturer must file a defect/noncompliance information report with respect to the equipment and each vehicle manufacturer must file a defect/noncompliance information report with respect to its vehicles containing that equipment. Either the vehicle manufacturer or the manufacturer of the equipment containing the defect/noncompliance can conduct the actual recall and submit the required quarterly reports. In the case where the item of original equipment containing a defect or noncompliance is sold to only one vehicle manufacturer, the filing of the defect/noncompliance information report, performance of the recall, and the filing of the quarterly reports by either manufacturer is considered compliance by both. However, if the original equipment manufacturer also sells the item as replacement equipment, then that equipment manufacturer must also file and conduct a recall for those items of replacement equipment. [49 CFR Part 573.3]. This means that a vehicle manufacturer has the ultimate responsibility for what is installed in the vehicle. A supplier of the original equipment which may contain either a defect or a noncompliance, can conduct the recall for the vehicle manufacturer. However, if the supplier also sells the item of motor vehicle equipment as replacement parts or assemblies, then that manufacturer must file a 49 CFR Part 573 report and conduct a recall for those items of replacement equipment.

### **III. RECALL REMEDY**

The remedy for the recall must involve both the inventory of recalled, including unsold vehicles or items of motor vehicle equipment, and the population of vehicles or items of motor vehicle equipment sold to purchasers. If the recall remedy provided for the product already distributed or sold is different than the production remedy, the production remedy should be described in the Defect/Noncompliance Information Report. A manufacturer can remedy a defect or noncompliance by refunding, replacing, or repairing the product. Refunds are to be for the purchased price, less reasonable depreciation for use. Replacements are to be for a comparably valued product.

When the product is remedied, the remedy must be timely and performed without charge. The performance and/or compliance of the remedy should be established prior to implementing the remedy campaign. If the remedy involves a repair or replacement, the manufacturer is expected to have established not only the suitability of the remedy when the repair is made, but also the durability of the remedy when the vehicle or item of motor vehicle equipment is used. The manufacturer must ensure an effective parts supply so that the product can be remedied as soon as possible. Since the underlying purpose of a safety recall is to minimize the safety risk, it is important to maximize the effectiveness and timeliness of the recall. Vehicles and items of motor vehicle equipment that are subject to a recall, but not as yet sold to consumers, should be removed from sale as quickly as possible. As specified in 49 U.S.C. § 30112, 30116, and 30120, the recalled product cannot be sold until remedied.

With respect to motor vehicle recalls, manufacturers should encourage their franchise dealers to ensure that the manufacturer's used vehicles have all applicable recall work completed before resale to the public. It is suggested that for recalls in which the replacement or repair is critical, the manufacturer develop an easily visible marking/identification scheme for the repaired/replaced component or assembly. This will allow the manufacturer, dealer, purchaser, and owners to readily determine whether the recalled item has been replaced or repaired. Also, consideration should be given to packaging the corrected components/assemblies, as well as the remedial parts, distinctly to assist service personnel in ensuring that the correct parts are used. Finally, many manufacturers use a self-adhesive label to attach to the vehicle, or item of motor vehicle equipment, to denote that the recall remedy work was completed. Generally each label is color coded and contains the manufacturer's recall code, the dealer code for the dealer completing the recall, the date the recall work was completed, and if possible, the manufacturer's toll-free telephone number. ODI monitors the performance and effectiveness of all safety recalls and will take immediate action to correct any potential problems that arise during the conduct of the recall.

## IV. NHTSA INVESTIGATION PROCESS

### A. NONCOMPLIANCE INVESTIGATIONS

#### 1. Overview

NHTSA's Office of Vehicle Safety Compliance (OVSC) conducts annual compliance test programs to determine the validity of manufacturer's certification(s) to the performance requirements of the FMVSS. The OVSC randomly purchases present model year vehicles and items of motor vehicle equipment and provides them to contracted test laboratories that conduct the compliance tests. The laboratories follow test procedures that are written by the OVSC specifically to produce data that will clearly indicate compliance or noncompliance. During a typical test year between 80 to 90 vehicles will be subjected to between 160 and 180 tests; in excess of 525 samples of motor vehicle equipment will be tested.

In the event of a test failure, the OVSC will quickly scrutinize all aspects of the test to determine if a possible noncompliance exists. In that event, the manufacturer is promptly notified and provided with all pertinent information concerning both the test specimen and the test protocol. At this point, the manufacturer may determine a noncompliance exists and initiate a recall and remedy campaign. If the manufacturer is not convinced that its product is in noncompliance, the OVSC will initiate an investigation and work with the manufacturer to determine if a noncompliance exists or not.

At the conclusion of the investigation, the government can order the manufacturer to recall all the noncomplying vehicles and items of equipment. In addition, the agency can seek civil penalties for violations of 49 U.S.C. 30112(a), which provides that a persons many not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under 49 U.S.C. 30115.

#### 2. Investigation Procedures

**Problem Identification and Initial Investigation Activities Phase:** The standards engineer may identify a possible noncompliance from many sources including: compliance test failure (this is the primary factor for initiating compliance investigations), consumer complaint, NCAP test results, consumer group pressure, vehicle inspection and external influences. Once a potential compliance problem is identified, it is the standards engineer's responsibility to gather sufficient information to determine if any office resources should be expended on the issue. For example the standard engineer will:

- Work with the laboratory to determine the validity of an apparent test failure
- Explore a consumer complaint by conducting inspections of similar vehicles
- Search the ODI data base
- Search the OVSC OA/PE/CI data base and OVSC previous test data base for applicable information
- Informally request pertinent information from the manufacturer
- Perform a compliance test if compliance data do not exist

After the initial investigation activities are completed, the standard engineer decides if the work should be continued. He or she discusses their decision with the branch chief. At this point there are four options.

- Decide that there is no value in expending additional resources on the problem that has been identified. The information may be stored in an office activity (OA) file for future use.
- Decide that more information is needed and continue in the "initial" stage. An OA file may be initiated to hold the information gathered.

- Decide that there is sufficient probability that either the manufacturer or the agency will determine a noncompliance and it would be beneficial to pursue the possible noncompliance. The investigation process will then be advanced to the “problem verification” stage and a Preliminary Evaluation (**PE**) file should be opened.
- Decide that there is sufficient information available to effectively eliminate the problem verification stage and proceed directly to the third stage of the process. At this point a **CI** file should be opened.

**Manufacturer Letter And Formal Data Gathering Phase:** During the next stage of investigation process, the standards engineer and branch chief are responsible to verify the validity of the test data (if applicable) and determine that the agency’s interpretation of the subject standard supports the investigation. To verify that the test was conducted correctly, the standard engineer uses following steps:

- Verify the validity of the test data with laboratory by determining that each step of the test procedure was properly executed and the data was correctly recorded.
- If there are questions concerning the test, consider a second test or retest to verify the possible problem.

When it is determined that the compliance test was properly conducted the manufacturer of the vehicle or item of equipment is invited to a meeting at the test facility to inspect the test specimen and review the test protocol. At this meeting information is shared by both parties. Often the test specimen is disassembled in search of the reason for the failure.

At that time a formal letter is sent to the manufacturer to gather certification information and other pertinent data.

Concurrent with the above activities the standards engineer will:

- Check previous test history of vehicle or item of equipment including information available from the New Car Assessment Program (NCAP) and Transport Canada.
- Check immediate past test history of the laboratory and laboratory test equipment used

To verify that the agency’s interpretation of the standard supports the investigation, the standard engineer uses the following steps:

- Review the regulation and all legal interpretations: Make contact with the Office of Chief Counsel.
- Consult with the Rulemaking engineer - Review the preamble and all associated rulemaking activities both present and anticipated for the future.
- Check history of test failures and investigations.

In addition, the standard engineer must check for additional consumer complaints, check National Automobile Sampling System (NASS) and Fatal Analysis Reporting System (FARS) for any crashes that the alleged noncompliance may have caused, survey consumers and inspect additional vehicles.

When a response to the letter requesting certification data and other pertinent information is received the standard’s engineer will analyze all available information to determine if addition questions must be asked of the manufacturer. Additional data may be gathered either formally or informally.

At the end of this investigation process, a decision will be made by the standard engineer, branch chief, division chief and office director. The Associate Administrator (AA) will also be briefed. Possible decisions are:

- Not to pursue.
- Additional testing, data gathering, if necessary.
- Continue to Stage Three.

During this phase, the manufacturer may decide conduct a recall in which the investigation may be closed.

**Recall Request Letter and Public Meeting Phase:** In the event OVSC has collected sufficient data to conclude that the subject vehicle or item of motor vehicle equipment is in noncompliance, OVSC may send a Recall Request Letter (RRL) to the manufacturer. If the manufacturer declines to conduct a recall in response to the RRL, the AA for Safety Assurance may issue an Initial Decision that a noncompliance exists. An Initial Decision will be followed by a Public Meeting, at which the manufacturer and interested members of the public can present information and arguments on the issue. Written materials may also be submitted. The entire investigative record is then presented to the NHTSA Administrator, who may issue a Final Decision that a safety defect exists and order the manufacturer to conduct a recall.

## **B. DEFECT INVESTIGATIONS**

### **1. Overview**

Safety defects can also result in a recall. NHTSA typically opens defect investigations on the basis of consumer complaints called into NHTSA's Hotline, or received from other sources. In addition, members of the public can submit petitions seeking a defect investigation.

The Office of Defects Investigation (ODI) investigative process consists of several elements: (1) Defect Assessment -- a preliminary review of consumer complaints and other information related to alleged defects to decide whether to open an investigation; (2) Petition Analysis -- the processing of petitions for defect investigations; (3) Investigation -- the actual investigation of alleged defects; and (4) Recall Management -- the monitoring of safety defect and non-compliance recalls and the review of manufacturer service bulletins. This document describes the Investigation element in detail and gives a brief description of the others.

ODI's objective is to develop the information necessary to assure that vehicles with safety-related defects are recalled in accordance with Chapter 301 of Title 49 of the United States Code. By using the investigative process described in this document, defects that are related to motor vehicle safety can be identified. The process encompasses all aspects of investigative activity, including analyzing and evaluating information necessary to determine whether a safety-related defect exists in motor vehicles or items of motor vehicle equipment.

A brief description of the four above-mentioned ODI elements is given below:

#### **Defect Assessment:**

Under the defect assessment process, available information -- including but not limited to Electronic Vehicle Owner's Questionnaires (EVOQs), Vehicle Owners Questionnaires (VOQs), E-mail, verbal consumer complaints, letters, and anonymous reports -- is reviewed by the Defect Assessment Division (DAD). If DAD believes that the available information indicates that a safety related trend or catastrophic failure is or maybe developing, then the appropriate investigative Division (Vehicle Control Division (VCD), Vehicle Integrity Division (VID), or Medium and Heavy Vehicle Division (MHVD)) is notified.

#### **Petition Analysis:**

Pursuant to 49 U.S.C. ' 30162, and 49 CFR Part 552, any person may submit a petition requesting NHTSA to commence an investigation into an alleged safety defect. After conducting a technical analysis of such a petition, ODI informs the petitioner whether it has been granted or denied. If the petition is granted, an investigation is opened and is conducted by the appropriate Division. If the petition is denied, the reasons for the denial are published in the *Federal Register*.

#### **Investigations:**

Most investigations are conducted in two phases: the first will be either a PE or a Recall Query (RQ) and the second will be the Engineering Analysis (EA). PEs are focused on alleged defects where there has not been a prior recall, while RQs are investigation into the failure or adequacy of a recall remedy. Most PEs and RQs are opened following a review by DAD, but they may be opened on the basis of other information. During the first, ODI obtains certain limited information from the manufacturer (including, but not limited to, data on complaints, crashes, injuries, warranty claims, modifications, and part sales) and determines

whether further analysis is warranted. At this stage, the manufacturer has an opportunity to present its views regarding the alleged defect. PEs and RQs are generally resolved within four months from the date they are opened. They may be closed on the basis that further investigation is not warranted, or because the manufacturer has decided to conduct a recall. In the event that ODI believes further analysis is warranted, the PE and or RQ is upgraded to an EA.

During an EA, ODI conducts a more detailed and complete analysis of the character and scope of the alleged defect. The EA builds on information collected during the PE and RQ and supplements it with appropriate inspections, tests, surveys, and additional information obtained from the manufacturer and suppliers. ODI attempts to resolve all EAs within one year from the date they are opened, but some complex investigations require more time. At the conclusion of the EA, the investigation may be closed without further action. However, if ODI believes that the data developed indicates that a safety-related defect exists, the Associate Administrator (AA) for Safety Assurance is briefed. With AA concurrence, the ODI investigator prepares a briefing to be presented to a panel of experts from throughout the agency for peer review.

The manufacturer is notified (verbally) that a panel will be convened and also of the result of the panel meeting and is given the opportunity to present new analysis or data.

If the agency panel concurs with ODI's view that a safety defect appears to exist, ODI may send a Recall Request Letter (RRL) to the manufacturer. If the manufacturer declines to conduct a recall in response to the RRL, the AA for Safety Assurance may issue an Initial Decision that a safety-related defect exists. An Initial Decision will be followed by a Public Meeting, at which the manufacturer and interested members of the public can present information and arguments on the issue. Written materials may also be submitted. The entire investigative record is then presented to the NHTSA Administrator, who may issue a Final Decision that a safety defect exists and order the manufacturer to conduct a recall.

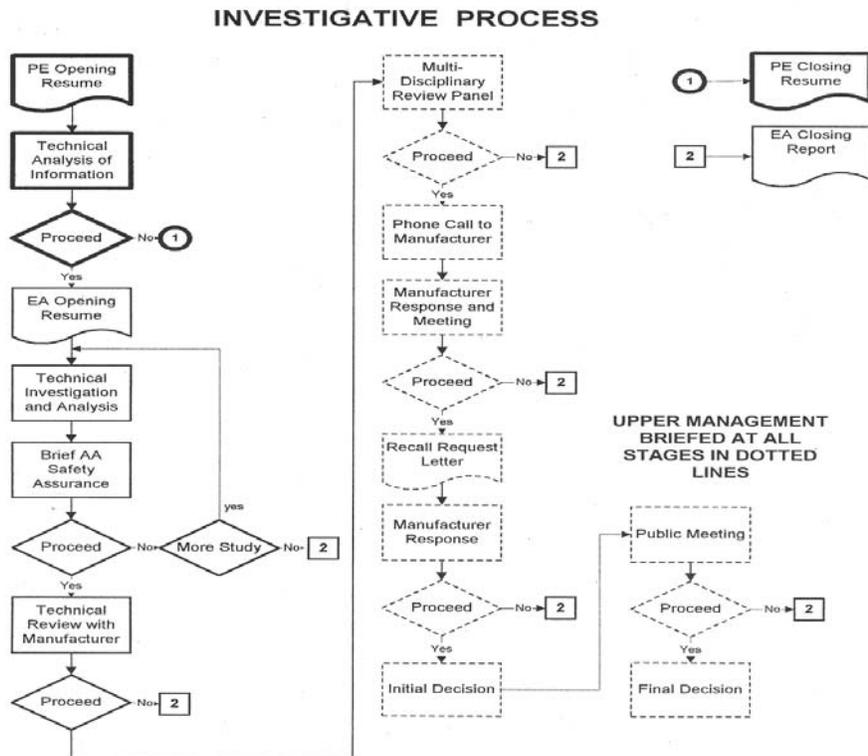
#### **Recall Analysis:**

The Recall Management Division (RMD) maintains the administrative records for all safety recalls, and monitors these recalls to ensure that the recall timing and completion rate are adequate. DAD reviews recalls for adequacy of scope and remedy. It also reviews incoming service bulletins and other documents prepared by manufacturers to determine whether a safety-related defect exists. Any of these reviews may, if warranted, result in new safety recalls, expand the scope of previously announced recalls, or change the recall remedy.

The chart below outlines the key elements of the investigative process and illustrates the major documents produced during investigations. Note, that while not identified in the chart, or in the process description below, the RQ process is similar to that of the PE process. A recall can occur at any point during this process.

## 2. Investigation Procedures

This section provides a detailed description of the procedures used in conducting each phase of the investigative process.



### Preliminary Evaluation (PE)

The PE is usually the first phase of an investigation by ODI concerning an alleged defect. A PE may be opened when the possibility exists that vehicles or items of equipment contain a defect in performance, construction, a component, or material that is related to motor vehicle safety. Most PEs are opened following a review of available information by TAD. Others may be opened on the basis of a recommendation from a member of one of the Investigative Divisions, following a grant of a petition for a defect investigation that occurs early in the petition process, or on the basis of information developed in other ways. The opening of a PE must be approved by the ODI Office Director.

When a PE is opened, a PE Opening Resume is prepared by the investigator to whom the PE is assigned. The Resume describes the alleged defect and summarizes the relevant information known to ODI at the time. An Information Request (PEIR) is usually sent to the manufacturer soon after the PE is opened. The PEIR requests information concerning, at a minimum, vehicle population, complaints, incidents, injuries, fatalities, and lawsuits known to the manufacturer that are relevant to the alleged defect. Additional questions may be asked concerning Technical Service Bulletins, warranty data, production changes, and other information when appropriate. Copies of relevant consumer complaints received by ODI are also enclosed for review by the manufacturer, with the names and addresses of the complainants deleted in accordance with the Privacy Act.

The PE Opening Resume is reviewed and signed by the appropriate Investigative Division Chief and the Office Director. PEs are assigned investigative numbers after they are approved by the Office Director. ODI attempts to notify the manufacturer by phone that a PE has been opened and that a PEIR is being prepared. A copy of the Resume is faxed to the manufacturer. A Public File is then set up by ODI's correspondence

research Division (CRD) and maintained by NHTSA's Technical Information Services (TIS). The Resume, all communications between ODI and the manufacturer that pertain to the investigation, and other appropriate, non-confidential documents are placed in the Public File.

Where appropriate, a follow-up PEIR may be sent. If clarification or additional work is needed to conclude the PE, the investigator and Division Chief will develop a plan to obtain the necessary information, and the Office Director will be apprised. If the investigator and/or the Division Chief believe the decision on whether to upgrade or close is complex or raises important policy issues, a technical briefing for the Office Director and/or the Associate Administrator may take place.

Based on the analysis of the manufacturer's response, and all other available information, the PE may be: (1) closed on the basis that further investigation is not warranted, (2) closed because the manufacturer has decided to conduct a recall, or (3) upgraded to an EA. Under either of the first two scenarios, a Closing Resume is prepared, which identifies and describes the basis for the action taken. If the investigation is to be upgraded to an EA, an Upgrade Resume is prepared, which documents the reasons for opening the EA. The investigator, the Division Chief, and the Office Director must sign the Resume, and a copy is faxed to the manufacturer and placed in the Public File. The action is effective on the date the Office Director signs the Resume.

### **Engineering Analysis (EA)**<sup>1</sup>

As noted above, most EAs are opened following the completion of a PE on the same or a similar alleged defect. Other EAs are opened following the completion of an RQ or on the basis of a grant of a petition for a defect investigation (DP). In rare circumstances, an EA may be opened without a prior PE or other preliminary investigation. EAs are assigned investigative numbers after they are approved by the Office Director.

When an EA is opened, an EA Opening Resume is prepared by the investigator. The Opening Resume is reviewed and signed by the appropriate Investigative Division Chief and the Office Director. ODI notifies the manufacturer by phone that the investigation has been upgraded to the EA level and that an additional information request may be forthcoming. A copy of the Resume is faxed to the manufacturer, and a new, separate Public File is opened by CRD and maintained in TIS.

Some or all of the following actions may be taken during the EA, depending upon the particular circumstances:

1. In virtually all cases, an EA Information Request (EAIR), with copies of additional consumer complaints, is sent to the manufacturer. This request may ask for clarification of previous responses; updated information regarding consumer complaints, lawsuits, and sales figures; warranty experience; material changes; component modification history; manufacturer's test results; and other detailed, technical questions pertaining to the alleged problem and its causes. The manufacturer's assessment of the problem is normally requested at this time.
2. Consumers who have reported the problem to ODI may be contacted to better identify the scope and nature of the matter under study. Contractors, Vehicle Research and Test Center (VRTC) staff, or ODI staff may be used for these owner interviews or for special surveys involving the subject vehicles, as appropriate.
3. The ODI databases are re-checked for (1) additional consumer complaints; (2) manufacturer service bulletins; (3) previous ODI investigations into problems that may be similar to the alleged defect; and (4) pertinent recalls (both for the subject vehicle manufacturer and peer vehicle manufacturers).

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<sup>1</sup> Prior to August 1, 1995, there was a third phase of the investigative process known as a "Formal Case". The activities that formerly were conducted during the Formal Case are now performed during the EA.

4. Crash data (from, e.g., the FARS, NASS, and State files) may be obtained from NHTSA's National Center for Statistics and Analysis (NCSA), and relevant literature may be obtained from TIS.
5. Test programs and/or surveys may be conducted for a variety of purposes. These purposes include, but are not limited to, identification of the specific failure mode, determining the scope of the alleged defect, comparison with peer vehicles/components, simulation of the failure to determine potential safety consequences, etc.
6. If the alleged problem involves a specific component or assembly, IRs may be sent to the supplier(s) of the component(s). Similarly, IRs may be sent to other vehicle manufacturers who use the allegedly defective component(s) in their products.
7. IRs may be sent to manufacturers of similar ("peer") vehicles to ascertain "peer vehicle failure rates" for comparison with the vehicles covered by the investigation, or for other reasons. "Peer IRs" should not suggest that the agency believes there are problems with the peer manufacturer's products.

The information gathered through these techniques is analyzed to determine the extent and severity of the alleged defect. The investigator may consider some or all of the following factors:

- Failure history and projections, based on parts sales, warranty claims, mileage at failure, time-to-failure, and vehicle population.
- Possible causes of the failure and failure modes; e.g., are there broken parts?; are there quality control issues?; does the alleged defect appear to be related to a design feature?
- Safety-related implications, including an assessment of safety risk (in terms of frequency and severity).
- Engineering issues, such as the relationship between design, material, or manufacturing changes and the failure history.
- The effect of differences in vehicle components (e.g., are the failures concentrated in vehicles with particular engines, transmissions, or other features) or in manufacturing history (e.g., manufacturing date or assembly plant).
- Possible contributing and causal factors, such as environmental conditions (including road surface treatment (e.g., salt), temperature, altitude, and geographical location), vehicle maintenance, vehicle usage, etc.
- The role of "human factors" and driver/vehicle interaction. For example, the physical characteristics of the drivers involved in incidents related to the alleged defect (such as their height, weight, strength, etc.) and other non-vehicle factors, such as alcohol use, which may contribute to some vehicle crashes.
- Comparison with "peer groups." How do the subject vehicles compare to contemporary "peer" vehicles and/or components, to vehicles/components covered by previous ODI investigations, and with vehicles that were recalled previously to correct apparently similar problems?

ODI's goal is to complete EAs within 12 months of opening. However, that is dependent on many factors, such as scope of the investigation, number of complaints, technical complexity, etc.

If the results of the investigation indicate that it should be closed with no further action, an EA Closing Report and a Closing Resume are prepared by the investigator and approved by the Division Chief and the Office Director. The Report should include a discussion as to the problem experience of the vehicle/equipment at issue, and describe the work performed during the EA. Where appropriate, it should also include a discussion of the risk to motor vehicle safety created by the alleged defect. The Report and the Resume become public documents; they ordinarily should contain no judgments, opinions, or recommendations other than those necessary to provide a rationale for the decision to close. The action is effective on the date that the Office Director signs the Closing Resume.

If, during the investigation, a manufacturer initiates a recall which is sufficient to resolve the issues under investigation, the EA may be closed with a Closing Resume that discusses the important facts concerning the recall. Under that circumstance, an EA Closing Report is not required. However, the Resume must indicate whether a Closing Report has been prepared.

If the results of the EA lead ODI to believe that a defect appears to exist and the manufacturer has not conducted a recall, a Multi-Disciplinary Review Panel (Panel), consisting of NHTSA staff who are familiar with the issues raised by the investigation, will be convened to consider what further action would be appropriate. Prior to convening the Panel, ODI briefs the Associate Administrator for Safety Assurance. In addition, ODI informs the manufacturer that it is convening a Panel.

### **Information Request Response Times**

Generally, domestic manufacturers are allowed approximately six (6) weeks and foreign manufacturers seven (7) weeks to respond to a PEIR. Because EAIRs generally include a greater number of questions and those questions are of greater complexity, domestic manufacturers are usually given seven (7) weeks, and foreign manufacturers eight (8) weeks to respond.

If a manufacturer finds that it cannot provide all the requested information within the allotted time, it can request an extension. ODI will grant extensions, generally of the length the manufacturer requests, but a time schedule for the submission should be agreed upon. In cases where a manufacturer cannot complete its response by the original due date, the manufacturer is expected to provide on-time delivery for that portion of the response which is complete. The manufacturer is warned that the failure to provide prompt, complete, and accurate responses can result in the imposition of civil penalties.

If several ODI IRs are sent to the same manufacturer simultaneously and/or a particularly complex request is sent, additional time may be granted for the manufacturer's initial response at the discretion of the Office Director. In addition, extra time may be added to all response times to accommodate a manufacturer's shut-down periods.

### **Multi-Disciplinary Review Panel**

The Panel is generally composed of representatives from the Office of the Administrator (NOA), Chief Counsel (NCC), and several technical Offices, such as Safety Assurance (NSA), Safety Performance Standards (NPS), Plans and Policy (NPP), Research and Development (NRD), and Traffic Safety Programs (NTS). The particular individuals are chosen based on their qualifications to conduct a technical review of the issues raised during the investigation. A representative from the Office of Public and Consumer Affairs (OPACA) normally attends as well, for informational purposes only.

Prior to the Panel meeting the manufacturer is verbally advised of the upcoming panel meeting. Also, prior to the meeting, appropriate materials are provided to each of the Panel members. The ODI staff investigator conducts the briefing for the Panel, which must include a clear presentation of all relevant facts. This will normally include:

1. A description of the subject vehicles, including make, model, model year, population, etc.
2. A detailed description of the problem, including a description of the alleged defect, its likely symptoms, consequences, and causes (if known).
3. A comprehensive description of the component involved, including its function, where it is located, and its relationship to the alleged defect.
4. A presentation of actual components (where feasible), or sketches, photographs, or models, to illustrate the alleged defect.
5. A discussion of the manufacturer's position regarding the alleged defect, including, where applicable, its analysis of the risk to motor vehicle safety.

6. Where available, “peer group” analyses comparing failure or complaint rates of the subject vehicles with other appropriate vehicle groups, based on make, model, model year, and other considerations.
7. An analysis of the reported failures, by date of incident and by source (ODI, manufacturer, consumer groups, etc.) and the anticipated future failure trend.
8. Results of tests or surveys conducted during the investigation.
9. Identification of any known design or manufacturing changes, including a description of the likely effect of the changes on the failure rate and (if available) on test performance.
10. Service Bulletins and other manufacturer/dealer communications.
11. Identification of prior investigations of similar alleged defects and their outcome.
12. Previous pertinent safety recall campaigns by this manufacturer and others.
13. A discussion of the risk to motor vehicle safety associated with the alleged defect.

At the end of the presentation by the investigator, the Panel discusses the issues and can ask ODI for further information/explanation. If the Panel concludes that more information or further analysis is required, the investigation is resumed to address those unresolved issues.

If the Panel believes that a safety recall appears to be warranted, the ODI Director advises the manufacturer of that fact by telephone and notifies the manufacturer that a Recall Request Letter (RRL) will be sent, usually within 10 days. However, if the manufacturer requests a meeting for further technical discussions or to discuss a possible recall, ODI may defer the issuance of the RRL.

### **3. Recall Request Letter**

If the manufacturer declines to determine that a defect exists after being advised that the Panel believes that a safety recall is warranted, NHTSA’s upper management is briefed as to the status of the investigation and the fact that a RRL will be sent. Before the RRL is sent, the investigator prepares an EA Action Report (EAAR), which includes a full analysis and discussion of all of the facts and issues developed during the investigation. This Report must be reviewed by an attorney from the Litigation Division of the Office of Chief Counsel.

The RRL is short and concise. It states the basis for ODI’s belief that the product contains a safety-related defect and requests that the manufacturer undertake a recall of certain specified vehicles or equipment items. The letter explicitly states that it should not be construed as an agency “decision” that a defect exists pursuant to 49 U.S.C. ' 30118. The RRL is to be signed by the Office Director, with concurrence by the Associate Administrator for Safety Assurance and the Office of Chief Counsel.

The letter gives the manufacturer 10 working days to indicate whether it will take the requested action. It also directs the manufacturer to explain in detail the basis for any refusal to take the requested action.

If the manufacturer rejects ODI’s recall request, and it is still ODI’s opinion (after reviewing the manufacturer’s reasons for refusing to make a defect determination) that a safety defect exists, the Associate Administrator for Safety Assurance must decide whether to issue an “Initial Decision” that a safety-related defect exists. Senior agency management must be briefed before such a decision is issued.

### **4. Initial Decision**

The following procedure is used when, after a thorough review of the entire investigative file, the Associate Administrator for Safety Assurance makes an Initial Decision, pursuant to 49 U.S.C. ' 30118(a), that the vehicles or equipment items in question contain a safety-related defect:

1. The investigator ensures that the index of all items in the investigative file is complete. NCC then determines (pursuant to the Freedom of Information Act (FOIA), 18 U.S.C. § 1905, and applicable evidentiary privileges) which items should be placed in the “public file” that is to be provided to the manufacturer and made available to the public. The public file must include “the information on which the decision is based,” as required by statute.
2. The investigator drafts the Initial Decision letter to the manufacturer, for the Associate Administrator’s signature. This letter summarizes the basis for the Initial Decision. It also specifies the time and place of the Public Meeting at which the manufacturer and other interested persons can present information, views, and arguments on the issue of whether a defect exists and/or whether the defect affects motor vehicle safety. In addition, it sets a date by which written comments must be submitted, which is normally 30 working days after the Initial Decision.
3. All the information on which the decision is based should be furnished to the manufacturer as required by 49 U.S.C. § 30118. Generally, the EA Action Report will be an enclosure to the decision letter. Depending on the size of the public file, either the entire file or an index to the file will also be enclosed.
4. The investigator drafts a notice to be published in the Federal Register. The notice
  - a. Identifies the applicable motor vehicle or item of equipment and its manufacturer;
  - b. Summarizes the information upon which the Initial Decision is based;
  - c. Gives the location of all information available for public examination; and
  - d. States the time and place of the Public Meeting and the deadline for written submissions in which the manufacturer and interested persons may present information, views, and arguments concerning the Initial Decision.
5. The deadlines for the submission of information and the date of the Public Meeting can be extended at the discretion of the Associate Administrator for Safety Assurance.
6. The Office of Chief Counsel must review and concur with both the decision letter and the Federal Register notice.
7. Normally, the investigator is primarily responsible for organizing the Public Meeting. This includes, e.g., reserving an appropriate conference room, assuring that a court reporter is present, drafting a news release to further notify the public of the Meeting, inviting participants (including consumer complainants and experts), obtaining exhibits (such as failed parts, displays, and photographs), preparing an agenda, and preparing an opening statement for the presiding official. Normally, an attorney from the Litigation Division of the Office of Chief Counsel assists in these tasks. The investigator also oversees necessary travel and lodging arrangements for invited participants.
8. The Public Meeting is an informal proceeding at which manufacturers and interested members of the public may make oral presentations of information, views, and arguments with respect to the Initial Decision. Normally, the Associate Administrator for Safety Assurance presides at the Meeting, but in certain cases higher or lower ranking officials may preside. Other agency officials also participate, as appropriate. There is no formal examination or cross examination of speakers, but agency officials may ask clarifying questions. A transcript of the Public Meeting is prepared, which is placed in the public file. Exhibits may be offered by the agency, the manufacturer, or members of the public.

## **5. Final Decision**

If the manufacturer continues to refuse to conduct a recall following the Public Meeting, the Administrator is briefed on the matter and is provided with the appropriate portions of the investigative record. This includes, at a minimum, the EA Action Report (which describes the basis for the Initial Decision), a summary of the written comments on the Initial Decision, and the transcript of the Public Meeting. In addition, on the relatively rare occasions when ODI conducts further investigative activities after the Public Meeting

(e.g., where issues raised at the Meeting require further exploration), the results of those activities are also provided. All supplemental investigative activities must be identified in the public file. Also, the manufacturer is given the opportunity to comment on the results of those activities.

If the Administrator concludes that the investigative record demonstrates that a safety-related defect exists, NCC prepares the Final Decision, with input from ODI. That decision document summarizes the basis for decision and includes a formal order directing the manufacturer to furnish notification of the defect to owners, purchasers, and dealers and to provide a cost-free remedy as specified in 49 U.S.C. §§ 30118-30120.

If the Administrator does not conclude that the investigative record demonstrates that a safety-related defect exists, the investigation is closed and the manufacturer is notified of the closing in a letter signed by the Administrator. The investigator prepares a Closing Report which, after NCC review and approval, is placed in the public file. This report includes a statement of the reason(s) for the closing the investigation.

## **V. MANUFACTURER SUBMISSIONS TO NHTSA**

### **1. The Defect/Noncompliance Information Report [49 U.S.C. § 30166, 30118, and 30119 and 49 CFR Part 573.5(c)]**

A manufacturer who has determined that a safety defect or noncompliance exists, must report such a determination to NHTSA within 5 working days. These reports are required whether or not NHTSA influenced the recall by conducting an investigation. A manufacturer need not have identified the cause, scope, or remedy in order to make a determination that a safety defect or noncompliance exists, at least in some vehicles or items of motor vehicle equipment. If part of the information which is required to fully describe the recall is unknown, notification to the agency must still be made with the existing information within 5 working days. The remaining information is to be provided as it becomes available.

Part 573.5 addresses Defect and Noncompliance Information Reports, commonly referred to as 573 reports, which must be filed within 5 working days of a determination by the manufacturer, or its agent, that a defect or noncompliance exists in its vehicles or items of motor vehicle equipment. Key elements of the information report to the agency are the recall population, problem description, chronological summary, remedy, and recall schedule. As noted above, not all information is necessary in order to make a determination that a defect or noncompliance exists; and as a result, need not be submitted with the initial 573 report. Such information must, however, be submitted as it is identified.

Some submitted Defect/Noncompliance Information Reports have resulted in follow-up requests for certain additional information, particularly concerning the recall scope, the cause of the defect or noncompliance, the supplier of the recalled component/assembly (if applicable), the remedy, or the remedy schedule. Complete information in these areas is necessary as soon as it is identified in order for the agency to ensure that the recall program is adequate to address the safety concerns of the agency and the public.

### **2. Identifying the Recalling Manufacturer, Importer, Distributor, or Brand Name Owner**

The full corporate and/or individual identification of the fabricating manufacturer/brand name/trademark owner of the vehicle or item of motor vehicle equipment being recalled must be identified in the report. If the recalled vehicle or item is imported, the name and address of the designated agent must be provided. [as prescribed by 49 U.S.C. § 30164(a) and 49 CFR Part 573.5(c)(1)] If the recalling manufacturer has an identification code for the recall, and that code is not identical to the identification number assigned by NHTSA, then the manufacturer's code for the recall must be provided with the recall report. [Revised 49 CFR Part 573.5(c)(11)]

### **3. Recall Scope and Application**

Part 573.5(c)(2) specifies that the recalled population of vehicles or items of motor vehicle equipment be identified as follows:.

(i) **Passenger Cars** - The manufacturer shall furnish the make, model, model year, the inclusive dates (by month and year) the vehicles were manufactured, and the number of vehicles potentially containing the defect or noncompliance for each model vehicle recalled. Furnish any other information necessary to describe or distinguish the recalled vehicles. It is requested that the Vehicle Identification Number (VIN) range of the recalled vehicles be provided.

(ii) **All Other Vehicles** - The manufacturer shall furnish the make, model (if applicable), bodystyle/type, model year (if applicable), the inclusive dates (by month and year) the vehicles were manufactured, and the number of vehicles potentially containing the defect or noncompliance for each model or applicable vehicle line. Furnish any other information necessary to describe or distinguish the recalled vehicles, such as gross vehicle weight rating or class for trucks, engine displacement (cc) for motorcycles, and number of passengers for buses. Photographs or illustrations may be submitted, as appropriate. It is requested that the VIN range of the recalled vehicles be provided.

(iii) **Motor Vehicle Equipment** - The manufacturer shall furnish the generic name of the item (i.e., tire, axle, cruise control, etc.), brand or trade name, part number, size and function (where applicable), the inclusive dates (by month and year) the item was manufactured, and the number of items potentially containing the defect or noncompliance for each recalled item series or product line. Furnish any other information necessary to describe or distinguish the recalled item or product line. In addition, the manufacturer of the equipment must provide the name, address, and telephone number of every manufacturer that purchases the defective or noncomplying component for use or installation in new motor vehicles or new items of motor vehicle equipment. [49 CFR Part 573.5(c)(2)(iii) & (v)]

(iv) **Motor Vehicle or Motor Vehicle Equipment Containing a Component** that contains a defect or noncompliance produced by a manufacturer other than the reporting manufacturer (i.e., when the defective or noncomplying product is from a vendor or supplier). The reporting manufacturer shall identify the component and the manufacturer of the component by name, business address, and telephone number. If the reporting manufacturer does not know the manufacturer of the component, then it shall identify the name, address, and telephone number of the entity from which the component was obtained. The total number of vehicles or items of motor vehicle equipment recalled potentially containing the defect or noncompliance and the approximate percentage of the total number of vehicles or items of motor vehicle equipment estimated to actually contain the defect or noncompliance shall be provided. [49 CFR Part 573.5(c)(3) & (4)]

The scope of the recall, how it was determined, and whether other vehicles or manufacturers may be involved is extremely important. This includes information concerning how the inclusive dates of manufacture and the involved vehicles were determined. If the initial date of the recalled population is the start of production for the vehicle (or item of motor vehicle equipment), then it should be identified as such. In any case, an explanation on how the starting and ending dates of manufacture for the recalled population was determined must be provided. Also, the agency needs a clear definition of the recalled population. As appropriate, this includes a description of why a particular model or model year vehicle was included, but some other similar vehicle was not.

#### 4. Description of the Safety Defect or Noncompliance

The description should include, but not be limited to, a brief summary of the **nature** (addressing the contributing factors and known causes), **physical location**, and the **consequence** of the defect or noncompliance. Photographs or illustrations should be provided where appropriate. [49 CFR Part 573.5(c)(5)] A description of the cause of the defect or noncompliance should allow the agency to ascertain whether the problem may be supplier-related, and whether other vehicle manufacturers may also have the same problem. A complete discussion of the cause of the defect or noncompliance is needed in order to determine if the remedy is appropriate and adequate.

When the defect/noncompliance is in a particular component or assembly which is: (a) supplied by another manufacturer, or (b) that component or assembly is possibly sold to other manufacturers or distributors in virtually the same form and manufacture; all these entities are to be identified. In the case of a defect: a chronological summary (**including dates**) of all the principle events that were the basis for the determination of the defect must be provided. The summary should include, but not be limited to, the number of reports, consumer complaints, accidents, injuries, fatalities, and warranty claims. [49 CFR Part 573.5(c)(6)] With

respect to a noncompliance: the test results or other data (**including dates**) on which the manufacturer determined the existence of the noncompliance are to be provided. [49 CFR Part 573.5(c)(7)]

## **5. Remedy Development**

The manufacturer's program for the remedy of the defect or noncompliance is to be included as part of the report. The manufacturer should include a full description of what the remedy is, how the remedy will be implemented, and how the remedied vehicle or item of motor vehicle equipment can be distinguished from the recalled motor vehicle or item of motor vehicle equipment. If the motor vehicle or item of motor vehicle equipment is still manufactured at the time of the recall, identify and describe the production remedy if it is different than the field fix. [49 CFR Part 573.5(c)(8)] It is the manufacturer's responsibility to ensure that the recall remedy will perform satisfactorily, both as installed and in-service. As such, the agency is concerned with how the remedy, or the durability of the remedy, was established. In noncompliance recalls involving performance, testing to demonstrate compliance is likely to be requested. For motor vehicles, a vehicle manufacturer must provide the parts and instructions necessary to remedy new vehicles in dealer or distributor inventory as soon as possible. Once notified that a new vehicle in the dealer's possession contains a safety-related defect or noncompliance, a dealer cannot sell the vehicle until the defect or noncompliance is remedied. [49 U.S.C. § 30116 and 30120]

For items of motor vehicle equipment, manufacturers must immediately offer to repurchase all unsold inventory of distributor and dealer/retailer stock which may contain a safety defect or noncompliance. Once notified that a new item of equipment in the dealer's possession contains a safety-related defect or noncompliance, a dealer cannot sell the item of equipment until the defect or noncompliance is remedied. [49 U.S.C. § 30116 and 30120]

## **6. Recall Schedule**

The recalling manufacturer is to provide the estimated date on which it will begin sending notifications to owners of a safety-related defect or noncompliance that the remedy without charge will be available, and the estimated date on which it will have completed such notification. If a manufacturer subsequently becomes aware that either the beginning or the completion date reported to the agency for notifying owners involved in the recall will be delayed by more than 2 calendar weeks, that manufacturer shall promptly advise the agency of the delay, including the reasons for the delay, and a revised estimate. [49 CFR Part 573.5(c)(8)(ii)] The remedy program and schedule provided by the recalling manufacturer should include the approximate or actual date of the principle events (e.g., date the remedy will be developed, date the manufacturer will have sufficient parts to begin the campaign, date the owner notification list of names and address will be ready, date the dealer/distributor/retailer notice will be sent out, date the owner notification letter will be sent out, date and form of media notification, projected dates for follow-up notification, etc.).

The schedule should also clearly identify how the notification campaign implementation plan is to be conducted, i.e., nationally and uniformly, phased, or some other permutation. If the implementation plan for the public notice campaign is other than national and uniform, the basis for the particular implementation plan should be fully explained. If a manufacturer intends to file a petition for an exemption from the recall requirements of Chapter 301 of Title 49 U.S.C. on the basis that a defect or noncompliance is inconsequential as it relates to motor vehicle safety, it shall notify NHTSA of that intention in its report to NHTSA of the defect or noncompliance under this section. In addition, if a manufacturer notifies NHTSA of its intention to file a petition for inconsequentiality as it relates to motor vehicle safety, and does not do so within the 30-day period described in 49 CFR Part 556.4(c), the manufacturer must submit the information described above and the estimated dates for the public notification and remedy campaign, no later than the end of the referenced 30-day period. [49 CFR Part 573.5(c)(8)(ii-iv)].

## **7. Notices and Communications**

A manufacturer must submit a copy of its proposed owner notification letter, including any stop delivery notices, written in accordance with 49 CFR Part 577, "Defect and Noncompliance Notification," to the Office of Defects Investigation (ODI) no fewer than five (5) Federal government business days before it intends to begin mailing notification letters to owners. The letter can be submitted by any means that permit

the manufacturer to verify promptly that the copy of the proposed letter was received by ODI. For efficacy, we recommend that the letter be submitted in draft by FAX to (202) 366-7882 [49 CFR Part 573.5(c)(10)]. The letter will be reviewed and the manufacturer notified within 3 business days. A representative copy of **all** notices, bulletins, and other communications that relate directly to the defect or noncompliance and which are sent to more than one manufacturer, distributor, dealer/retailer, or purchaser are to be furnished to NHTSA.

The representative copies are to be submitted to ODI not later than 5 days after they are **first** sent to manufacturers, distributors, dealers/retailers, or purchasers. The representative copies of notifications or communications are to consist of all initial and/or subsequent communications **actually sent by any means**, including draft, intermediate, and final notifications or communications. The submissions should include printed copies (or transcripts) of all communications regardless of the media used to transmit the information. [49 CFR Part 573.5(c)(9)] **Please note that submissions of documents pertaining to a safety recall are to be made separately and in reference to NHTSA's assigned safety recall number.** This is in addition to the requirements of 49 CFR Part 579.5, "Notices, bulletins, and Other Communications," which requires that all manufacturer communications with more than one owner, dealer, and/or distributor be submitted to ODI on a monthly basis.

#### **8. Petitions for Inconsequentiality Determination [49 CFR Part 556]**

A manufacturer that has determined that a safety defect or noncompliance with an Federal motor vehicle safety standard (FMVSS) exists in certain motor vehicles or items of equipment, and has filed a Defect/Noncompliance Information Report with NHTSA, has the option of petitioning the agency for a determination of inconsequentiality. The petition must be filed within 30-days from the date of the determination of a safety defect or noncompliance. A determination of inconsequentiality means that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. Such a conclusion allows the manufacturer to be exempted from the statute's notification and remedy requirements for motor vehicles or items of motor vehicle equipment identified in the Defect/ Noncompliance Information Report. However, any additional production after the inclusive dates identified in that report, must be remedied or otherwise not contain the defect or noncompliance.

Only rulemaking (such as provided in 49 CFR Part 552, "Petition for Rulemaking, Defect, and Noncompliance Orders") can change the requirements of a FMVSS. Note that motor vehicles or items of motor vehicle equipment containing a safety defect or noncompliance cannot be sold while a manufacturer's petition for a determination that the defect or noncompliance is inconsequential with respect to motor vehicle safety is under consideration. [49 U.S.C. § 30112 and 30120]

### **VI. PUBLIC NOTIFICATION AND REMEDY CAMPAIGN [49 U.S.C. § 30119; 49 CFR Part 577]**

#### **A. Defect and Noncompliance Notification to Purchasers**

When a manufacturer has decided that a defect or a noncompliance exists in vehicles or items of motor vehicle equipment of its manufacture or import, the manufacturer is also required to notify owners, purchasers, and dealers. [49 U.S.C. § 30119] The following minimal information must be provided: (1) a clear description of the defect; (2) an evaluation of the risk to motor vehicle safety; (3) a statement of the measures to be taken to obtain the remedy; (4) a statement that the defect/noncompliance will be remedied without charge; (5) a statement of the earliest date on which the defect/noncompliance will be remedied; and (6) a description of the procedure to be followed by the recipient of the notification in informing NHTSA whenever a manufacturer, distributor, or dealer fails to or is unable to remedy without charge such defect or failure to comply.

#### **B. Dealer Notice of Recall**

Besides advising the dealer personnel of how to technically remedy the recall condition or to provide instruction on the administrative reporting of the recall work, the dealer notice (most often a technical service bulletin) also must advise the dealer of its responsibilities in a safety recall. Dealers, retailers, distributors, and non-retail purchasers are prohibited from selling defective or noncomplying vehicles or items of motor

vehicle equipment until the defect or noncompliance is remedied. A dealer can be fined up to \$5,000 per violation. It is up to the recalling manufacturer to notify dealers, retailers, distributors, and purchasers.

Owner notification is to be initiated within a reasonable amount of time after the manufacturer first determines the defect or noncompliance condition. Although this time varies according to the nature of the recall and the population affected, notification usually occurs within 30 days. 49 U.S.C. § 30119 describes the notification requirements to purchasers and dealers for motor vehicles, tires, and items of motor vehicle equipment. Note that for motor vehicles, notification is to be made to registered owners determined from state motor vehicle registration records, augmented with corporate records. Notifications to purchasers are by first class mail.

Notifications to dealers and NHTSA are to be by certified mail. However, dealers may be notified by other, more expeditious means. In accordance with Chapter 301 of Title 49 U.S.C., all safety recall campaigns are to be conducted throughout the United States, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Puerto Rico.

### C. The Notification Letter

Federal Regulation 49 CFR Part 577, entitled "Defect and Noncompliance Notification," specifically requires notification to purchasers, owners, and lessees where the manufacturer or the NHTSA Administrator has determined a defect or noncompliance exists in the manufacturer's vehicles or items of motor vehicle equipment. The intent of this notification requirement is to inform owners/purchasers of motor vehicles or items of motor vehicle equipment of a safety-related defect or noncompliance, the consequences and a description of the corrective action. The notification is also intended to "effectively motivate" the owner/purchasers/lessees to have their vehicle or item of motor vehicle equipment inspected and corrected as soon as possible. The first sentence of the notification letter is prescribed by regulation and must be used verbatim. The language and form of the second sentence of the letter is specified also and is provided for both defect and noncompliance type notifications. The appropriate sentence must be selected and provided to owners and purchasers verbatim. [49 CFR Part 577.5(b) and (c)]

The manufacturer must describe to the owner/purchaser its program for remedying the defect/noncompliance condition and that the remedy will be provided without charge. The description of the program must include the earliest date when the remedy can be made (both instructions and parts availability) and a general description of the actual remedy. If the remedy involves repairing the vehicle or item of motor vehicle equipment, a description must be provided of the repair work and time required to perform the work. Where the remedy is to replace the vehicle or equipment item, a description of the replacement must be provided. If the remedy involves refunding the purchase price of the vehicle or equipment item less depreciation, a description of how the depreciation was assessed must be given. [49 CFR Part 577.5(g)(1)] Owners/purchasers must be advised in the letter that a complaint can be submitted to the NHTSA Administrator if the manufacturer has failed or is unable to remedy the defect/noncompliance condition without charge or within a reasonable amount of time. [49 CFR Part 577.5(g)(1)(vii)] The procedure for owners to notify NHTSA must clearly state that if an owner is unable to have the defect/noncompliance remedied without charge within a reasonable amount of time, the owner can notify:

Administrator  
National Highway Traffic Safety Administration  
400 Seventh Street, SW  
Washington, DC 20590  
or call the toll-free DOT Auto Safety Hotline at 1-888-DASH-2-DOT (1-888-327-4236).  
[49 U.S.C. §30119]

Under certain conditions, a manufacturer is not required to provide remedy without charge, such as if the vehicle or equipment was first purchased more than 10 years before the recall. In such instances, the manufacturer must meet the requirements of 49 CFR Part 577.5(g)(2). A manufacturer's notification letter cannot include any statement or implication that **there is no defect or noncompliance condition, or that the condition does not exist**, in the owner's vehicle or item of motor vehicle equipment. Also, with respect to a safety defect, the manufacturer cannot state or imply that the defect **does not** relate to motor vehicle safety. [Under 49 CFR Part 577.8].

#### **D. Leased Vehicles**

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) include code citation requires that lessees have the responsibility of notifying lessees when a vehicle manufacturer makes a determination of a defect or noncompliance. Therefore, a vehicle manufacturer conducting a safety recall must notify lessees of their obligation to provide a copy of the owner notification letter to each vehicle lessee. The lessees must notify the lessee by first class mail within ten (10) days from receipt of their owner notification letter from the manufacturer; both for initial notification and all subsequent notification. [49 CFR Part 577.5(I)]

#### **E. Approval of Owner Notification Envelopes**

The recalling manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the words "SAFETY," "RECALL," and "NOTICE" all in capital letters and in type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. Each manufacturer must submit the envelope format it intends to use to NHTSA at least 5 Federal government business days before mailing to owners. Once an envelope format has been approved by NHTSA, samples of the envelope do not have to be re-submitted (unless the manufacturer wishes to change the envelope format). [49 CFR Part 577.5(a)]

#### **F. Contacting Unregistered Owners of Motor Vehicle Equipment**

When a recall involves items of motor vehicle equipment, it has been found that notification to specific owners is extremely limited because the owners are not registered and are not otherwise known to the manufacturers (except child restraints). In these instances it appears that point-of-sale posters and other media comparable to the approaches and techniques used to originally market the item are appropriate. This procedure is similar to that employed by the Consumer Product Safety Commission, the Food and Drug Administration, and other agencies where owners are largely unknown. The information conveyed should be simple, short, and clear. The information should include a declaration that the product manufactured or distributed by the manufacturer is involved in a safety campaign; a clear identification of the recalled product; a statement describing the consequences of the product failure, the remedy, and the procedure for obtaining the remedy; and the toll-free telephone number of the manufacturer. The consumer can then contact the manufacturer for further information on the recall and how to obtain the remedy. A number of manufacturers have adopted some form of poster. **Before any poster is printed or distributed**, the poster should be provided to NHTSA in draft for comment first. While a poster is generally developed for the point-of-sale, there are instances where distribution to places where owners are likely to be found, such as doctor's offices for child seats, may be appropriate as well.

#### **G. Public Notification: Press Releases and Other Media**

In preparing for the safety recall, the manufacturer should consider issuing a press release describing the nature and consequences of the defect or noncompliance, the scope of the problem and vehicles involved, and the remedy. A press release is strongly encouraged whenever a number of consumers may benefit. The press release should be appropriate to the market and/or demographics of the consumers. There are instances where a specific media market is appropriate rather than a national news release. A press release is particularly appropriate whenever the public would benefit from the information, such as when a remedy will not be available for some time, but in the interim there are steps an owner can take to avoid the likelihood of the defect/noncompliance from occurring or to alleviate the consequences. Similarly, a press release is important in reaching owners of used vehicles and items of motor vehicle equipment which may not be registered or otherwise known to the manufacturer.

#### **H. Recalled New Vehicles and New Equipment in Inventory [49 U.S.C. § 30116]**

It is important that manufacturers notify distributors, dealers, retailers, and other purchasers of the recall as soon as possible to ensure that the product is not sold prior to remedy. The manufacturer or distributor is obliged to offer to repurchase any item of motor vehicle equipment in the inventory of the manufacturer, distributor, dealer, or retailer which contains a safety defect or noncompliance prior to sale to the public. The sale of any motor vehicle or item of motor vehicle equipment which fails to conform to all applicable Federal motor vehicle safety standards is prohibited. A dealer is prohibited from selling to the public any new motor

vehicle or item of motor vehicle equipment which might contain a safety-related defect, until the defect is remedied. There is a civil penalty of up to \$5,000 per violation, not to exceed \$15,000,000, for any related series of violations that can be imposed. [49 U.S.C. § 30112, 30120, and 30165 and Part 578]

## **VII. Recall Monitoring and Performance**

### **A. Quarterly Status Reports [49 CFR Part 573.7]**

A quarterly status report is required to be submitted on each safety recall campaign beginning with the calendar quarter in which owner notification begins. The quarterly status report is required to be submitted on the 30th day of the month following the end of each calendar quarter (i.e., April 30th, July 30th, October 30th, and January 30th).

Quarterly status reports will be required from the quarter the notification begins through 6 consecutive quarters **after all owners are notified**. As a matter of policy, recalls in which owner notifications begin within the last 15 calendar days of the end of the third month of each quarter, will be requested to provide an additional quarterly report.

Pre-delivery type recalls in which none of the recalled vehicles or items of motor vehicle equipment have been sold to retail owners, will require at least one report. If any of the recalled items are sold to a retail customer prior to completion of the recall work, a purchaser/owner notification and remedy campaign will be necessary, as well as additional quarterly reports. Owner notification is generally expected to occur within 30 days of a determination of a defect or from the date a remedy is developed. Notification is expected to be conducted uniformly and nationally. If for some reason a public notification campaign is not conducted uniformly or nationally, the manufacturer must inform the agency when describing the remedy program.

### **B. Quarterly Status Report Guide**

In addition to providing the agency's assigned recall campaign code, it is requested that manufacturers provide their company's recall campaign code (if applicable) which corresponds to NHTSA recall code. There is no obligation to follow the Guide, however, the Quarterly Report Guide outlines information that this office will review for evaluation of the recall performance.

Manufacturers of motor vehicle equipment, including tires, are required to report on the number of recalled items returned or retrieved from inventory for corrective action prior to sale. [49 CFR Part 573.6(b)(6)] The number of vehicles or items of motor vehicle equipment determined to be unreachable for the campaign are to be reported according to the following categories: exported, stolen, scrapped, did not receive notification, or other identified reason. [49 CFR Part 573.6(b)(5)]

### **C. Toll-Free Telephone Numbers**

The agency believes that a toll-free number for consumers to call to identify themselves to the manufacturer as owners of the recalled product and to receive aid in attaining the recall remedy is invaluable to the success of a safety recall, particularly recalls involving unregistered owners. The toll-free number can be provided to owners and purchasers through press releases and other media.

### **D. Record keeping and Maintenance [49 CFR Part 573.7]**

Each manufacturer must maintain a list of the names and addresses of owners of the items involved in the recall. The list is to include the vehicle identification number (or tire identification number or equipment serial number, as appropriate) and the recall status for each vehicle (or tire or item of motor vehicle equipment, as appropriate). For vehicles and items of motor vehicle equipment, the list must be maintained for 5 years after owners are notified. For tires, the list must be maintained for 3 years.

For items of motor vehicle equipment which are not uniquely identified by serial number or similar coding, the purchaser (distributors, dealer/retailers, and other purchasers) list must include the number of items sold to each purchaser and the date of shipment. The list shall show, as far as is practical, the number of items remedied or returned to the manufacturer and the dates of such remedy or return.

**E. NHTSA Monitoring and Audits**

A manufacturer is responsible for the remedy of the defect or noncompliance regardless of mileage, ownership, or age of the recalled product. The agency closely monitors the performance and effectiveness of each safety recall. Consumer complaints, as well as review of the quarterly status reports, are used to assess recalls. Unresolved problems are investigated for identification and resolution.

A manufacturer may be requested to renotify owners of motor vehicles or items of equipment that have not been reported as having the recall work performed. The scope, timing, form, and content of such follow-up notification will be established by NHTSA, in consultation with the manufacturer, to maximize the number of owners, purchasers, and lessees who will present their vehicles or items of equipment for remedy. A renotification letter will comply with all the requirements of the initial notification, except as determined by NHTSA. Language which will motivate owners and purchasers to present their vehicles or items of equipment for remedy is strongly encouraged. NHTSA may authorize the use of other media, besides first class mail, for follow-up notification. [49 CFR Part 577.10]

Should a recall remedy or notification appear to be unreasonable or inadequate, the agency can conduct a public hearing to investigate whether the manufacturer has reasonably met its obligation to notify (49 U.S.C. § 30118 and 49 CFR Part 577) and to provide a remedy (49 U.S.C. § 30120). NHTSA audits a number of recalls each year to verify the reported performance and recall process of each recall. An audit will typically involve an information request to the manufacturer for specific information on the recall, as well as to request owner names and addresses and the reported recall remedy status of each item involved in the recall. A follow-up survey of owners, and possibly dealers, will generally complete the audit.

**F. NHTSA Consumer Complaints**

The agency provides a copy of all consumer complaints on a recall to the recalling manufacturer. Unresolved problems or potential trends may result in an ODI inquiry. Also, owners are typically advised of their ability to petition the agency if they believe the manufacturer has not met the requirements of Chapter 301 of Title 49 U.S.C. with respect to notification or remedy. It is to everyone's advantage to resolve problems early and quickly.

**G. Recall Campaign Renotification**

Sometimes in the course of a safety recall, the manufacturer does not meet agency expectations or industry averages for similar recalls. Consequently, we may request the manufacturer to re-notify owners of uncorrected vehicles to encourage having the recall work performed. Such renotification is often requested when the completion rate is unusually low, the corrective action is available, and where notification to the owner is likely to result in completion of the recall work. This request is usually faxed to the manufacturer after the fourth reporting quarter

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