Regulations on the Administration of the Recall of Defective Automobile Products

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Promulgated by State Council Decree No. 626 on October 22, 2012; amended by the Decision of the State Council on Amending Certain Administrative Regulations dated March 2, 2019.
Effective: January 1, 2013

Article 1 — These Regulations are formulated for the purpose of standardizing the recall of defective automobile products, strengthening supervision and administration, and ensuring the safety of persons and property.

Article 2 — These Regulations apply to the recall of, and the supervision and administration of the recall of, automobiles and automobile trailers (hereinafter collectively “automobile products”) produced or sold within the territory of China.

Article 3 — For the purposes of these Regulations, “defect” means a circumstance in which automobile products of the same batch, model or category generally fail to conform to the national standards or industry standards for ensuring the safety of persons and property, due to design, manufacture, labeling or other reasons, or any other unreasonable danger endangering the safety of persons and property.

For the purposes of these Regulations, “recall” means the activity by which a producer of automobile products takes measures to eliminate defects in the automobile products it has sold.

Article 4 — The product quality supervision department of the State Council shall be responsible for the supervision and administration of the recall of defective automobile products nationwide.

The relevant departments of the State Council shall be responsible for the relevant supervision and administration of the recall of defective automobile products within their respective scopes of duties.

Article 5 — The product quality supervision department of the State Council may, according to work needs, entrust the product quality supervision departments of the people’s governments of provinces, autonomous regions and municipalities directly under the Central Government with part of the work of supervision and administration of the recall of defective automobile products.

The defective product recall technical institution of the product quality supervision department of the State Council shall, in accordance with the provisions of the product quality supervision department of the State Council, undertake the specific technical work for the recall of defective automobile products.

Article 6 — Any entity or individual shall have the right to complain to the product quality supervision department about possible defects in automobile products. The product quality supervision department of the State Council shall, in a manner convenient for the public to know, publicly disclose the telephone numbers, e-mail addresses and correspondence addresses for accepting complaints.

The product quality supervision department of the State Council shall establish an information management system for the recall of defective automobile products to collect, summarize, analyze and process the relevant information on defective automobile products.

The product quality supervision department, the competent automobile product department, the competent commerce department, the customs, the traffic administration department of the public security organ, the competent transport department and other relevant departments shall establish a mechanism for sharing

Source: https://www.danyoungcpa.com/defective-automobile-product-recall-regulations-china/

information on the production, sale, import, registration and inspection, repair, consumer complaints, recall and other matters of automobile products.

Article 7 — The product quality supervision department and the relevant departments, institutions and their staff shall not disclose any trade secrets or personal information learned in the course of performing their duties under these Regulations.

Article 8 — For defective automobile products, the producer shall recall all of them in accordance with these Regulations; where the producer fails to implement the recall, the product quality supervision department of the State Council shall order it to implement the recall in accordance with these Regulations.

For the purposes of these Regulations, “producer” means an enterprise lawfully established within the territory of China that produces automobile products and issues product conformity certificates in its own name.

An enterprise that imports automobile products into China from outside the territory of China for sale within the territory shall be deemed the producer referred to in the preceding paragraph.

Article 9 — A producer shall establish and preserve information records on the design, manufacture, labeling and inspection of automobile products, as well as the owner information records for the initial sale of automobile products, and the preservation period shall not be less than ten years.

Article 10 — A producer shall report the following information to the product quality supervision department of the State Council for record-filing:

(1) the basic information of the producer;

(2) the technical parameters of the automobile products and the owner information for the initial sale of the automobile products;

(3) information on repairs, replacements and returns resulting from failures of automobile products that endanger the safety of persons and property;

(4) information on recalls of automobile products implemented outside the territory of China; and

(5) other information required by the product quality supervision department of the State Council to be filed.

Article 11 — Operators that sell, lease or repair automobile products (hereinafter collectively “operators”) shall, in accordance with the provisions of the product quality supervision department of the State Council, establish and preserve the relevant information records of automobile products, and the preservation period shall not be less than five years.

Where an operator learns that an automobile product has a defect, it shall immediately stop selling, leasing or using the defective automobile product and assist the producer in implementing the recall.

An operator shall report to the product quality supervision department of the State Council and notify the producer of the relevant information it has learned about possible defects in automobile products.

Article 12 — Where a producer learns that an automobile product may have a defect, it shall immediately organize an investigation and analysis and truthfully report the results of the investigation and analysis to the product quality supervision department of the State Council.

Where a producer confirms that an automobile product has a defect, it shall immediately stop producing, selling and importing the defective automobile product and implement the recall.

Article 13 — Where the product quality supervision department of the State Council learns that an automobile product may have a defect, it shall immediately notify the producer to conduct an investigation and analysis; where the producer fails to conduct an investigation and analysis in accordance with the notice, the product quality supervision department of the State Council shall conduct a defect investigation.

Source: https://www.danyoungcpa.com/defective-automobile-product-recall-regulations-china/

Where the product quality supervision department of the State Council considers that an automobile product may have a defect that could cause serious consequences, it may directly conduct a defect investigation.

Article 14 — In conducting a defect investigation, the product quality supervision department of the State Council may enter the production and operation premises of producers and operators to conduct on-site investigation, consult and duplicate the relevant materials and records, and inquire of the relevant entities and individuals about the possible defects in automobile products.

A producer shall cooperate with the defect investigation and provide the relevant materials, products and special equipment needed for the investigation. An operator shall cooperate with the defect investigation and provide the relevant materials needed for the investigation.

The product quality supervision department of the State Council shall not use the materials, products and special equipment provided by producers and operators for purposes other than the technical testing and appraisal required for the defect investigation.

Article 15 — Where the product quality supervision department of the State Council, upon investigation, considers that an automobile product has a defect, it shall notify the producer to implement the recall.

Where the producer considers that its automobile product has no defect, it may, within 15 working days from the date of receipt of the notice, raise an objection with the product quality supervision department of the State Council and provide certification materials. The product quality supervision department of the State Council shall organize experts who have no interest in the producer to conduct argumentation over the certification materials and, where necessary, conduct technical testing or appraisal of the automobile products.

Where the producer neither implements the recall in accordance with the notice nor raises an objection within the time limit specified in the second paragraph of this Article, or where the product quality supervision department of the State Council, upon organizing argumentation, technical testing or appraisal in accordance with the second paragraph of this Article, confirms that the automobile product has a defect, the product quality supervision department of the State Council shall order the producer to implement the recall; the producer shall immediately stop producing, selling and importing the defective automobile product and implement the recall.

Article 16 — In implementing a recall, a producer shall formulate a recall plan in accordance with the provisions of the product quality supervision department of the State Council and file it with the product quality supervision department of the State Council. Where a filed recall plan is modified, it shall be re-filed.

A producer shall implement the recall in accordance with the recall plan.

Article 17 — A producer shall simultaneously notify sellers of the recall plan filed with the product quality supervision department of the State Council, and sellers shall stop selling the defective automobile products.

Article 18 — In implementing a recall, a producer shall publish information in a manner convenient for the public to know, informing owners of the defects in the automobile products, the emergency response methods for avoiding damage, the producer’s measures to eliminate the defects and other matters.

The product quality supervision department of the State Council shall promptly publish to the public the information on confirmed defective automobile products and the relevant information on the producer’s implementation of the recall.

Owners shall cooperate with the producer in implementing the recall.

Article 19 — For defective automobile products subject to recall, the producer shall promptly take measures such as correcting or supplementing labels, repairing, replacing or taking back the products to eliminate the defects.

Source: https://www.danyoungcpa.com/defective-automobile-product-recall-regulations-china/

The producer shall bear the costs of eliminating the defects and the necessary costs of transporting the defective automobile products.

Article 20 — A producer shall, in accordance with the provisions of the product quality supervision department of the State Council, submit staged recall reports and a recall summary report.

Article 21 — The product quality supervision department of the State Council shall supervise the implementation of the recall and organize experts who have no interest in the producer to assess the effect of the producer's elimination of defects.

Article 22 — Where a producer violates these Regulations under any of the following circumstances, the product quality supervision department shall order it to rectify; where it refuses to rectify, a fine of not less than 50,000 yuan and not more than 200,000 yuan shall be imposed:

(1) failing to preserve the relevant information records on automobile products and owners in accordance with the provisions;

(2) failing to file the relevant information and recall plan in accordance with the provisions; or

(3) failing to submit the relevant recall reports in accordance with the provisions.

Article 23 — Where, in violation of these Regulations, any of the following circumstances exists, the product quality supervision department shall order rectification; where rectification is refused, a fine of not less than 500,000 yuan and not more than 1 million yuan shall be imposed; where there are illegal gains, the illegal gains shall be confiscated concurrently; where the circumstances are serious, the licensing authority shall revoke the relevant license:

(1) the producer or operator fails to cooperate with the defect investigation of the product quality supervision department;

(2) the producer fails to implement the recall in accordance with the filed recall plan; or

(3) the producer fails to notify sellers of the recall plan.

Article 24 — Where a producer violates these Regulations under any of the following circumstances, the product quality supervision department shall order it to rectify and impose a fine of not less than 1% and not more than 10% of the value of the defective automobile products; where there are illegal gains, the illegal gains shall be confiscated concurrently; where the circumstances are serious, the licensing authority shall revoke the relevant license:

(1) failing to stop producing, selling or importing the defective automobile products;

(2) concealing the defect; or

(3) refusing to implement the recall after being ordered to do so.

Article 25 — Where, in violation of these Regulations, personnel engaged in the supervision and administration of the recall of defective automobile products commit any of the following acts, they shall be given sanctions in accordance with the law:

(1) using the materials, products and special equipment provided by producers and operators for purposes other than the technical testing and appraisal required for the defect investigation;

(2) disclosing the trade secrets or personal information of the parties concerned; or

(3) other acts of neglecting duties, engaging in malpractices for personal gain or abusing powers.

Article 26 — Where a violation of these Regulations constitutes a crime, criminal liability shall be pursued in accordance with the law.

Source: https://www.danyoungcpa.com/defective-automobile-product-recall-regulations-china/

Article 27 — Where tires not equipped with the automobile products at the time of delivery have defects, the producer of the tires shall be responsible for the recall. The specific measures shall be formulated by the product quality supervision department of the State Council by reference to these Regulations.

Article 28 — The recall of defective automobile products by a producer in accordance with these Regulations shall not exempt the producer from the liability it shall bear in accordance with the law.

Where an automobile product has quality problems other than the defects specified in these Regulations, the owner shall have the right, in accordance with the Product Quality Law, the Law on the Protection of Consumer Rights and Interests and other laws, administrative regulations and relevant state provisions, as well as the contractual agreements, to require the producer or seller to bear the corresponding legal liability for repair, replacement, return or compensation for losses.

Article 29 — These Regulations shall take effect on January 1, 2013.

Disclaimer: This document is an unofficial English translation of the original Chinese regulatory document, provided for reference purposes only. While every effort has been made to ensure accuracy, the Chinese-language version is the sole authoritative text. This translation does not constitute legal advice, and no liability is accepted for any reliance placed upon it. For matters with legal implications, please consult the official Chinese source and seek qualified professional advice.