



AUTO MANUFACTURERS ALERT! NEW RULES FOR MANDATORY RECALL AND FINE

Auto part manufacturers have been seeing a rise in claims on account of allegedly defective parts. This has also resulted in an increased demand from customers and more disputes on liability. Ultimately, the consumer bears the burden as all this aggregates into increased price of the vehicle. With a view to make manufacturers more responsible and to bring the frequency of defects into common knowledge, the Central Government has enacted specific rules that enhance the accountability of the manufacturer in case of defects.

The extant legislation provided for vehicle recall in the event the motor vehicle posed imminent threat to the environment or human life, however, by way of the Central Motor Vehicles (Fifth Amendment) Rules , 2021 ("Rules") under the Motor Vehicle Act 1988 ("Act"), the Central Government has not only broadened the purview of vehicle recall but also created slabs for fines based on the nature of vehicles and the number of recalls. Imposition of penalty is aimed at putting checks and balance in place and improving the quality of components and parts, as well as vehicles.



These Rules will come into effect from April 1, 2021*. Key changes made by the Rules are summarized below:

- The definition of manufacturer or importer of motor vehicles has been amended to include agricultural tractor, construction equipment vehicle, combine harvester, and power tillers
- Vehicle Recall Portals have been introduced, as the data base of the safety recalls maintained by the Ministry of Road Transport
- Vehicle manufacturers and importers, need to get each type of vehicle tested. The testing agency will establish compliance with the quality standard, automotive industry-standard within one year from the date of publication of such standards. To begin with, a vehicle owner, a testing agency or any other source as notified by the government, can make an appointment through a vehicle recall portal to designate a specific vehicle as defective, the process of which should be initiated within 12 months. The designated officer may also suo motu recall defective vehicles. The cost and fees of any tests conducted will be borne by the manufacturer, importer or retrofitter
- The concept of self certification for bus body builders has been introduced, subject to the other Rules
- In case of an application or suo motu decision to declare a vehicle as defective, the Designated Officer, with prior permission from an officer not below the designation of Deputy Secretary, Ministry of Road Transport & Highways can issue a show cause notice to the manufacturer, importer or retrofitter who will have to respond within 30 days, failing which a designated officer will initiate an investigation on their own to determine whether the vehicle is defective
- Where the Testing Agency approves a vehicle as a type vehicle, they shall issue a Type Approval Certificate. If a vehicle having a Type Approval Certificate is recalled, the government can cancel the accreditation and registration of the testing agency that certified the vehicle
- Investigating officers have the power to conduct an investigation and enforce compliance of the standards under the Act. On receipt of the findings of the investigation officer, the Central Government, or such officer as may be designated by the Central Government in this regard, may initiate proceedings against the manufacturer, retrofitter, or importer, as the case may be

*Source: MINISTRY OF ROAD TRANSPORT AND HIGHWAYS NOTIFICATION, 11th March, 2021, G.S.R. 173(E).





- The designated officer may suo moto issue a recall notice to the manufacturer, importer, or retrofitter as the case may be of a motor vehicle, where such officer has reasonable grounds to believe that a motor vehicle is a defective motor vehicle, and that the defect exists in a group of vehicles of the same design or manufacture, or items of equipment or design, and, that it has already been made available to consumers. Where possible, this notice may be issued to the consumers as well
- Manufacturers may be fined for recalls other than the recall of motor vehicles that may pose a threat to the environment, driver and/or road users. The fines have been specified for all categories of motor vehicles and range from INR 10 lakhs to INR 1 crore, based on the type of vehicles and the number of recalls
- The manufacturers, importers and retrofitters of recalled motor vehicles have the following obligations:
 - a. Lay down procedures within the organization for regulating the recall of motor vehicles as specified in the rules
 - b. Inform the registered owners, of the recalled vehicles of the risks posed by the motor vehicles, provide information regarding the initiation of recall action of the affected vehicles, provide information regarding the existence of the defect for which recall has been initiated and evaluation of its risk to the safety of occupants and road users. This information shall be notified through their website or registered post or electronic mail and shall also include information on the available remedies and modalities for availing from the manufacturer, importer or retrofitter, of the motor vehicle as the case may be
 - c. If the registered owner does not respond to the first recall notice within 90 days, a second reminder shall be sent within the next 30 days as well. If the registered owner does not respond to the second reminder, then the manufacturer, importer or retrofitter of the motor vehicle, as the case may be, shall not be held liable for failure to complete the recall process in such cases
 - d. Take appropriate action necessary to avoid recall-related risks, including recall of the motor vehicle from the market, adequately and effectively warning consumers

- If the manufacturer, importer, or retrofitter of a motor vehicle have reason to believe that the motor vehicle is defective, they may conduct a recall in the manner prescribed under the Rules. However, the obligation to conduct a recall shall not apply if a manufacturer, importer, or retrofitter, of the motor vehicle, as the case may be, identifies a defect in their product before it is delivered to the customer
- The designated officer has been vested with the power to conduct an audit if he has sufficient reason to believe that the manufacturer, importer, or retrofitter, as the case may be, have not complied with the provisions of these Rules

The Rules try to ring a balance between restrictive measures imposed on manufacturers coupled with provision for self-certification and voluntary recall of the vehicle on account of the manufacturer's investigation. This creates a responsibility on the manufactures while giving them the power to remedy faulty production and rectify the identified defects



Interface with insurance

- The Indian auto industry churns out a copious amount of new vehicles to meet the growing demand from Indian consumers and also export to other countries. Despite various quality controls in place, sometimes something gets overlooked, or a certain batch of components arrives with defects in the manufacturing process. Some of these issues might not be apparent until later. In such a case, automakers are forced to recall these vehicles, correct the mistake, and also pay hefty fines
- Basis reports available on public portals, in 2020 alone, the Indian auto industry recalled a total of 3,37,082 vehicles. The growing number of recalls is an indication of dwindling adherence to the quality parameters and regulations enforced by the government. Given the enforcement of these Rules where voluntary recall is covered as well, these numbers will only soar thereby increasing costs borne by manufacturers
- This clearly makes recall a consistent risk in this industry and therefore, relevance of insurance is more today than ever. The recall policies in the Indian market, whether as an extension to the commercial general liability policies or stand alone, usually exclude recalls that have been initiated by the government or public authority and which the assured would not have made but for the intervention of the said government or public authority. The policies may also exclude cover towards costs incurred to remedying the defects and re-caliber the defective parts. The definition of what recall gets covered usually restricts the coverage to recalls arising out of defects which have caused or were likely to cause a bodily injury or property damage
- This also shows that there are several types of recall or parts of costs associated with covered recalls, that may get excluded from coverage or not be covered in the first place. For instance, government mandated recall under the new Rules could find themselves excluded under most Indian wordings. Across most liability policies, fines and penalties are excluded as well
- Given the value of the fines levied under these rules, and the surging vehicle recall, it is also time to relook at the legislations around the coverage of fines and penalties. The Rules also require publication of the recall to be uploaded on the manufacturers' and importers' websites and communication needs to be sent to the owners of the recalled vehicles as well. This, now, also requires the Insured to read the fine print of the policy to verify whether these interrelated costs would find coverage
- In light of the recent legislative development coupled with the ever-improving insurance market in India, we do expect a change in the policy wordings to cater to the new form of risks being identified. While the manufacturers may need to be more careful about their products, the issuance of these Rules is likely to widen the ambit of insurance products related to auto parts and vehicles, and benefit the vehicle owners, manufacturers as well as the Indian insurance market





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