



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

400 Seventh Street, SW
Washington, DC 20590

**ACKNOWLEDGEMENT FAX SHEET OF RECEIPT OF DEFECT INFORMATION
REPORT SUBMITTED UNDER 49 CFR PART 573**

Assigned Recall No. 04V-381 by the
National Highway Traffic Safety Administration

Part 573 Report Date: August 6, 2004

Date Faxed: August 12, 2004

MANUFACTURER: Kwang Yang Motor Co., LTD.

MANUFACTURER CONTACT: Mr. Joe Wofford, Director of Technical Services

FAX: 800-824-5301

SUBJECT: 923 KYMCO 2004-2005 Super-9 and Vitality scooters with engine number (SF10K & SH10B) and embossed casting number (KEB7-1). The engine mount can break and cause a rear suspension failure.

This is an acknowledgment for this recall. A formal acknowledgment letter will be written only if we have additional comments or concerns.

We have reviewed your proposed owner notification letter and it does not meet the requirements of Part 577.

(1) The "REASON FOR RECALL" paragraph needs to state: "KYMCO has decided that a defect which relates to motor vehicle safety exists in certain 2004-2005 Super-9 and Vitality models manufactured from February through July 2004.

(2) Give a clear description of the problem along with an evaluation of the risk to motor vehicle safety. When a vehicle crash is a potential occurrence, the evaluation should include whichever of the following is appropriate: (1) a statement that the defect can cause vehicle crash without prior warning; or (2) a description of whatever prior warning may occur, and a statement that if this warning is not heeded, a vehicle crash can occur. If a vehicle crash is not the potential occur, the evaluation must include a statement indicating the general type of injury to occupants of the vehicle, or to persons outside the vehicle, that can result from this problem, and a description of whatever prior warning could occur. For example, "The left side engine mount on these scooters can break causing a rear suspension failure, which could result in a crash without warning."

The following statements also need to be added to your letter:

(1) "Federal regulations require that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days." This statement needs to be added even if you don't usually lease these vehicles.

(2) Also, for your information, the reimbursement rule became effective on January 15, 2003. Accordingly, following that date, any 573 Notice that we receive must contain a reimbursement plan. Please read 49 CFR Part 573.13 for the requirements of the plan. Basically, you need to specify in your Part 573 notice to NHTSA whether or not you are providing reimbursement to your customers for any prior repairs performed before receiving this recall notice. If you are not providing reimbursement, you need to state something like "KYMCO is not offering reimbursement for this campaign since all vehicles are still covered under the new vehicle warranty."

If the vehicles are older models, then the owner letter needs to have a paragraph added, i.e., If you had this repair performed before you received this letter, you may be eligible to receive reimbursement for the cost of obtaining a pre-notification remedy of the problem associated with this recall. For more information contact KYMCO at 1-800-845-7007."

(3) Please remove the reference to the Washington, DC telephone number. That number is no longer in service.

As stated in Part 573.6, submission of the first of six consecutive quarterly status reports is required within one month after the close of the calendar quarter in which notification to purchasers occurs. As stated in your report, the recall is expected to begin during July or August 2004. Therefore, the first quarterly report will be due by October 30, 2004. Attached is a quarterly report form for your use in filing the quarterly reports.

Please let me know when the actual mailing takes place and, provide this office with final copies of all documents relating to the recall.

If you have any questions, please call:

Patricia Wallace, Safety Defects Analyst on (202) 366-5232 or
George Person, Chief on (202) 366-5210
or Fax at (202) 366-7882
or e-mail at Patricia.Wallace@nhtsa.dot.gov
Recall Management Division

Attachments:

Quarterly Report Form Guide

Part 573.13 – Reimbursement for pre-notification remedies

Vehicle Safety Recall Quarterly Report Information¹

Required per 49 CFR Part 573.7

Report Date: _____

Calendar Quarter: _____

Safety Recall Quarterly Report from _____ through _____

Manufacturer: _____

Report Author: _____ Phone: (____) _____

Recall Subject: _____

1. NHTSA Safety Recall Campaign Number: _____

Also, for completeness, if your company has assigned a code number to this campaign, please provide your code: _____

2. (a) The date notification to purchasers began: _____

(b) The date notification of purchasers was completed: _____

3. The Total Number of Vehicles Involved: _____

The total number of vehicles involved in the subject campaign (including all items sold or distributed to purchasers, dealers, distributors, and similar entities beyond the immediate control of the manufacturer/importer).

4. (a) Total Number Inspected & Remedied: _____

Total number of vehicles which were inspected and/or otherwise repaired or remedied.

(b) Total Number Inspected & NOT REQUIRING REMEDY: _____

Total number of vehicles involved in the recall and inspected, but determined to NOT REQUIRE REMEDIAL or recall repair work.

5. Vehicles Determined to be Unreachable

Total Number Exported: _____

Total Number Stolen: _____

Total Number Scrapped: _____

Total Number Unable to Notify: _____

Total Number Otherwise Unreachable: _____

Describe Other: _____

¹Any Questions please contact Mrs. Kelly Schuler or Mr. George Person at (202) 366-5227 or by FAX at (202) 366-7882.

49 CFR - CHAPTER V - PART 573

View Part

§ 573.13 Reimbursement for pre-notification remedies.

(a) Pursuant to 49 U.S.C. 30120(d) and § 573.6(c)(8)(I) of this part, this section specifies requirements for a manufacturer's plan (including general reimbursement plans submitted pursuant to § 573.6(c)(8)(I)) to reimburse owners and purchasers for costs incurred for remedies in advance of the manufacturer's notification of safety-related defects and noncompliance with Federal motor vehicle safety standards under subsection (b) or (c) of 49 U.S.C. 30118.

(b) Definitions. The following definitions apply to this section:

(1) *Booster seat* means either a backless child restraint system or a belt-positioning seat.

(2) *Claimant* means a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

(3) *Pre-notification remedy* means a remedy that is performed on a motor vehicle or item of replacement equipment for a problem subsequently addressed by a notification under subsection (b) or (c) of 49 U.S.C. 30118 and that is obtained during the period for reimbursement specified in paragraph (c) of this section.

(4) *Other child restraint system* means all child restraint systems as defined in 49 CFR 571.213 S4 not included within the categories of rear-facing infant seat or booster seat.

(5) *Rear-facing infant seat* means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

(6) *Warranty* means a warranty as defined in § 579.4(c) of this chapter.

(c) The manufacturer's plan shall specify a period for reimbursement, as follows:

(1) The beginning date shall be no later than a date based on the underlying basis for the recall determined as follows:

(i) For a noncompliance with a Federal motor vehicle safety standard, the date shall be the date of the first test or observation by either NHTSA or the manufacturer indicating that a noncompliance may exist.

(ii) For a safety-related defect that is determined to exist following the opening of an Engineering Analysis (EA) by NHTSA's Office of Defects Investigation (ODI), the date shall be the date the EA was opened, or one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part, whichever is earlier.

(iii) For a safety-related defect that is determined to exist in the absence of the opening of an EA, the date shall be one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part.

(2) The ending date shall be no earlier than:

(i) For motor vehicles, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter.

(ii) For replacement equipment, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter (where applicable) or 30 days after the conclusion of the

manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to § 577.7, whichever is later.

(d) The manufacturer's plan shall provide for reimbursement of costs for pre-notification remedies, subject to the conditions established in the plan. The following conditions and no others may be established in the plan.

(1) The plan may exclude reimbursement for costs incurred within the period during which the manufacturer's original or extended warranty would have provided for a free repair of the problem addressed by the recall, without any payment by the consumer unless a franchised dealer or authorized representative of the manufacturer denied warranty coverage or the repair made under warranty did not remedy the problem addressed by the recall. The exclusion based on an extended warranty may be applied only when the manufacturer provided written notice of the terms of the extended warranty to owners.

(2)(i) For a motor vehicle, the plan may exclude reimbursement:

(A) If the pre-notification remedy was not of the same type (repair, replacement, or refund of purchase price) as the recall remedy;

(B) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance; or

(C) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(A).

(3)(i) For replacement equipment, the plan may exclude reimbursement:

(A) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance;

(B) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect and noncompliance; or

(C) In the case of a child restraint system that was replaced, if the replacement child restraint is not the same type (*i.e.*, rear-facing infant seat, booster seat, or other child restraint system) as the restraint that was the subject of the recall.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(B).

(4) The plan may exclude reimbursement if the claimant did not submit adequate documentation to the manufacturer at an address or location designated pursuant to § 573.13(f). The plan may require, at most, that the following documentation be submitted:

(i) Name and mailing address of the claimant;

(ii) Identification of the product that was recalled:

(A) For motor vehicles, the vehicle make, model, model year, and vehicle identification number of the vehicle;

(B) For replacement equipment other than child restraint systems and tires, a description of the equipment, including model and size as appropriate;

(C) For child restraint systems, a description of the restraint, including the type (rear-facing infant seat, booster seat, or other child restraint system) and the model; or

(D) For tires, the model and size;

(iii) Identification of the recall (either the NHTSA recall number or the manufacturer's recall number);

(iv) Identification of the owner or purchaser of the recalled motor vehicle or replacement equipment at the time that the pre-notification remedy was obtained;

(v) A receipt for the pre-notification remedy, which may be an original or copy:

(A) If the reimbursement sought is for a repair, the manufacturer may require that the receipt indicate that the repair addressed the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, and state the total amount paid for the repair of that problem. Itemization of a receipt of the amount for parts, labor, other costs and taxes, may not be required unless it is unclear on the face of the receipt that the repair for which reimbursement is sought addressed only the pre-notification remedy relating to the pertinent defect or noncompliance or manifestation thereof.

(B) If the reimbursement sought is for the replacement of a vehicle part or an item of replacement equipment, the manufacturer may require that the receipt identify the item and state the total amount paid for the item that replaced the defective or noncompliant item;

(vi) In the case of items of replacement equipment that were replaced, documentation that the claimant or a relative thereof (with relationship stated) owned the recalled item. Such documentation could consist of:

(A) An invoice or receipt showing purchase of the recalled item of replacement equipment;

(B) If the claimant sent a registration card for a recalled child restraint system or tire to the manufacturer, a statement to that effect;

(C) A copy of the registration card for the recalled child restraint system or tire; or

(D) Documentation demonstrating that the claimant had replaced a recalled tire that was on a vehicle that he, she, or a relative owned; and

(vii) If the pre-notification remedy was obtained at a time when the vehicle or equipment could have been repaired or replaced at no charge under a manufacturer's original or extended warranty program, documentation indicating that the manufacturer's dealer or authorized facility either refused to remedy the problem addressed by the recall under the warranty or that the warranty repair did not correct the problem addressed by the recall.

(e) The manufacturer's plan shall specify the amount of costs to be reimbursed for a pre-notification remedy.

(1) For motor vehicles:

(i) The amount of reimbursement shall not be less than the lesser of:

(A) The amount paid by the owner for the remedy, or

(B) The cost of parts for the remedy, plus associated labor at local labor rates, miscellaneous fees such as disposal of waste, and taxes. Costs for parts may be limited to the manufacturer's list retail price for authorized parts.

(ii) Any associated costs, including, but not limited to, taxes or disposal of wastes, may not be limited.

(2) For replacement equipment:

(i) The amount of reimbursement ordinarily would be the amount paid by the owner for the replacement item.

(ii) In cases in which the owner purchased a brand or model different from the item of motor vehicle equipment that was the subject of the recall, the manufacturer may limit the amount of reimbursement to the retail list price of the defective or noncompliant item that was replaced, plus taxes.

(iii) If the item of motor vehicle equipment was repaired, the provisions of paragraph (e)(1) of this section apply.

(f) The manufacturer's plan shall identify an address to which claimants may mail reimbursement claims and may identify franchised dealer(s) and authorized facilities to which claims for reimbursement may be submitted directly.

(g) The manufacturer (either directly or through its designated dealer or facility) shall act upon requests for reimbursement as follows:

(1) The manufacturer shall act upon a claim for reimbursement within 60 days of its receipt. If the manufacturer denies the claim, the manufacturer must send a notice to the claimant within 60 days of receipt of the claim that includes a clear, concise statement of the reasons for the denial.

(2) If a claim for reimbursement is incomplete when originally submitted, the manufacturer shall advise the claimant within 60 days of receipt of the claim of the documentation that is needed and offer an opportunity to resubmit the claim with complete documentation.

(h) Reimbursement shall be in the form of a check or cash from the manufacturer or a designated dealer or facility.

(i) The manufacturer shall make its reimbursement plan available to the public upon request.

(j) Any disputes over the denial in whole or in part of a claim for reimbursement shall be resolved between the claimant and the manufacturer. NHTSA will not mediate or resolve any disputes regarding eligibility for, or the amount of, reimbursement.

(k) Each manufacturer shall implement each plan for reimbursement in accordance with this section and the terms of the plan.

(l) Nothing in this section requires that a manufacturer provide reimbursement in connection with a fraudulent claim for reimbursement.

(m) A manufacturer's plan may provide that it will not apply to recalls based solely on noncompliant or defective labels.

(n) The requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment other than a tire, it was bought by the first purchaser more than 10 calendar years before notice is given under 49 U.S.C. 30118(c) or an order is issued under section 49 U.S.C. 30118(b). In the case of a tire, this period shall be 5 calendar years.

[67 FR 64063, Oct. 17, 2002]

