

Misfire

The Gun Industry's Lack of Accountability for Defective Firearms



Violence Policy Center

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ACKNOWLEDGMENTS

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The Violence Policy Center (VPC) is a national nonprofit educational organization that conducts research and public education on violence in America and provides information and analysis to policymakers, journalists, advocates, and the general public.

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This study was authored by VPC Research Fellow Gary Klein. Mr. Klein, a long-time consumer advocate and litigator, was responsible for a variety of gun safety and gun violence prevention projects at the Office of the Massachusetts Attorney General. He publishes a blog on gun safety which can be found at www.gunaccidentjournal.net.

This study was edited by VPC Executive Director Josh Sugarmann and VPC Legislative Director Kristen Rand.

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SAFETY WARNING AND RECALL NOTICE

SA-08 SAFETY NOTICE

PRODUCT SAFETY WARNING AND RECALL NOTICE

Remington.

REMINGTON MODEL 700™ AND MODEL SEVEN™ RIFLES

ATTENTION
SPRINGFIELD ARMORY.
3.3 XD-S™ SAFETY RECALL

IMPORTANT SAFETY NOTICE
WEATHERBY® SA-08 SEMI-AUTOMATIC SHOTGUN



PK380 RECALL NOTICE



Beretta U.S.A. Corp. has discovered a potential condition with Beretta .22 caliber NEOS semiautomatic pistols in which the pistol will fire even if the safety is activated and, in some cases, the pistols may fire if the safety is moved from the OFF to the ON position. Chances of either of these situations occurring is extremely remote and no injuries have occurred because of this condition, however, because of safety concerns relating to this situation, Beretta U.S.A. Corp. is immediately implementing a recall of Beretta .22 caliber NEOS semiautomatic pistols. For more information, download a pdf copy of the [Recall Notice](#).

The Insufficient Safety Regulation of Guns

Available evidence shows that there are millions of defective guns in America. Exemption of guns from federal safety regulations that we apply to almost every other type of product in the United States has led to sloppy manufacturing processes at many gunmakers as well as to poor design choices, including elimination of simple mechanical features designed to prevent unintentional injuries. Defective guns frequently fail and cause preventable injury and death.

When a gun is defective because it can go off when dropped or fire without a trigger pull, that gun is dangerous not just to its owner, but to the owner's family and to the general public. Children are killed or injured all too frequently in unintentional shootings.¹ Innocent people can simply be in the wrong place at the wrong time.

Despite these risks, the gun industry is the only manufacturer of a consumer product that is exempt from federal health and safety regulation.² As such, there is no independent premarket testing of guns for safety purposes. No federal agency collects information about gun defects or requires manufacturers to report on the safety complaints they receive from customers. Nor is there an agency that can require a gun manufacturer to recall even the most plainly defective guns to repair or replace them.

1 According to the federal Centers for Disease Control and Prevention, in 2019, 88 victims age 17 and under died from unintentional firearm discharges.

2 Guns do not come under the jurisdiction of the Consumer Product Safety Commission (CPSC) because they are outside the definition of "consumer product" under the Consumer Product Safety Act (CPSA) pursuant to a special exemption, 15 U.S.C. 2052(a)(5)(E). For additional information, see <https://vpc.org/regulating-the-gun-industry/regulate-htm/>.

Just as important is the fact that some manufacturers, for reasons of aesthetics or perhaps sheer machismo, have stripped their guns of safety features designed to protect against unintentional firing by gun owners. Many guns have no loaded chamber indicator, external manual safety, or magazine safety disconnect: features designed to protect against foreseeable unintentional discharges. Despite these deficiencies, there is no federal regulator empowered to implement minimum design standards for firearms.

As evidenced by the recall notices listed later in this report, manufacturers acknowledge that gun defects regularly occur. Some defects are so common, and affect so many guns, that reports of injuries are commonplace. Examples include the following.

Taurus Pistols

First-generation Taurus pistols, imported from Brazil, are notorious for firing when jostled or dropped. Reported incidents include:

- In 2016, 28-year-old Jarred Brown was shot and killed when his still holstered Taurus PT-145 Millennium Pro pistol fired without a trigger pull and tore through his femoral artery. His father and stepmother watched him bleed to death.³
- Eleven-year-old D.J. Simms was shot to death in 2015 when his father was attempting to seat the magazine in his Taurus PT 609 pistol and the gun fired without a trigger pull.⁴
- In 2009, Judy Price's Taurus Model PT-140 pistol discharged with the manual safety lever in the "on" or "safe" position, after she dropped it. The bullet entered her thigh, passed through her colon and intestines, and remains lodged in her liver. Ms. Price had months of medical complications and surgeries.⁵

Taurus Manufacturing's former CEO, Robert G. Morrison, admitted under oath in the trial of a personal injury case: "My answer to the question if you are referring to all [Taurus] PT 111s,

3 Michael Smith and Polly Mosendz, "How Defective Guns Became the Only Product That Can't Be Recalled," *Bloomberg Businessweek* (February 28, 2018), <https://www.bloomberg.com/news/features/2018-02-28/how-defective-guns-became-the-only-product-that-can-t-be-recalled>.

4 Catherine Dunn, "Bullets Beyond Recall: Defective Guns Outside US Government's Reach," *International Business Times* (December 17, 2015), <https://www.ibtimes.com/bullets-beyond-recall-defective-guns-outside-us-governments-reach-2226935>; Kent Faulk, "Alabama Man Files Lawsuit Against Gun Maker Taurus; Claims Safety Defect Killed Son," *AL.com* (November 12, 2015, updated January 13, 2019), https://www.al.com/news/birmingham/2015/11/alabama_man_files_lawsuit_agai.html.

5 Catherine Dunn, "Bullets Beyond Recall: Defective Guns Outside US Government's Reach," *International Business Times* (December 17, 2015), <https://www.ibtimes.com/bullets-beyond-recall-defective-guns-outside-us-governments-reach-2226935>. See *Carter v. Forjas Taurus, S.A.*, 1:13-CV-24583-PAS, (S.D. Fla.) Doc. No. 73, ¶ 45 (First Amended Class Action Complaint).

... is [that] I believe that they can go off if dropped.”⁶ Drop fire has been so common that a class action case for owners of these Taurus guns recently resulted in a settlement requiring nearly one million pistols to be recalled for replacement or repair.⁷

The class action settlement came too late for the guns’ victims who died or were injured in unintentional shootings. In addition, because the settlement will most likely result in fewer than 50,000 handguns actually returned for recall (out of one million sold in the United States),⁸ these pistols, which should have been safety tested by a federal agency before they were approved for import, will continue to present a long term-safety concern.

Remington Rifles

Similarly, certain Remington rifles have long been known to have a trigger defect that can cause them to fire without a trigger pull.⁹ Remington first learned about the problem with its 700 series rifles in 1947.¹⁰ It concluded that a redesign would be too costly and instead produced nearly 7.5 million rifles over many years with defective triggers.¹¹ During that period, it received thousands of reports from its customers that their guns fired without

6 Testimony of Robert G. Morrison, *Maroney v. Taurus International Manufacturing, Inc.*, Case No. 07-73 (Ala. Cir. Ct. dismissed 2009), Trial Transcript, p. 124.

7 *Taurus Carter Settlement Website*, <http://www.tauruscartersettlement.com/>. *Carter v. Forjas Taurus, supra*, Court Order Approving Settlement, Docket No. 197, p. 1 (stating that the case provides a remedy to approximately 955,796 class members).

8 In the class action, counsel for the parties reported to the Court in September 2018 that fewer than 20,000 guns (about two percent of the class guns) had been returned for inspection and repair. Returns were continuing at a rate of approximately 20 a week (about 1,000 per year), making it unlikely that the case could ever result in repair of more than 50,000 of the nearly 1,000,000 defective pistols that Taurus had sold. *Carter v. Forjas Taurus, supra*, Status Conference Hearing Transcript, Docket No. 272, p. 10, lines 4-22.

9 “Gunfight: Remington Under Fire,” *CNBC*, (Videos bearing various dates), <https://www.cnb.com/remington-under-fire/>, *CNBC* catalogs numerous videos by reporter Scott Cohn on the problems associated with the rifle’s trigger. “Remington Under Fire: A *CNBC* Investigation” is at the heart of these materials: “Remington Under Fire: A *CNBC* Investigation,” *CNBC* (December 8, 2015), <https://www.cnb.com/video/2015/12/08/remington-under-fire-a-cnb-investigation.html>. The videos include many interviews with victims of the defect, or the relatives of victims who died, as well as a demonstration of the defect, and a review of many of the most relevant documents from Remington’s files. *60 Minutes* also produced a compelling piece about the defect, by correspondent Lesley Stahl: “Popular Remington 700 Rifle Linked to Potentially Deadly Defect,” *CBS News* (February 19, 2017), <https://www.cbsnews.com/news/popular-remington-700-rifle-linked-to-potentially-deadly-defects/>.

10 *Pollard et al. v. Remington et al.* No. 4:13-CV-00086-ODS (W.D. Mo. 2013), Doc. No. 196-14 (Remington internal memo describing problem dated April 9, 1947). Remington’s own documents, obtained in litigation, show that the company was well aware of the trigger design problem for many decades and chose to hide it. The documents are now posted at <http://www.remingtondocuments.com/>.

11 *Pollard v. Remington, supra*, Doc. No. 196-16 and 196-15. (Remington internal documents showing an inexpensive proposed fix and then concluding that the additional cost wasn’t warranted because the liability wasn’t out of proportion to the legal risk.) In *Pollard*, the parties (including Remington) agreed that there have been approximately 7.5 million rifles manufactured with the potential defect since 1947, though not all presently remain in circulation. *Pollard et al. v. Remington et al.* No. 4:13-CV-00086-ODS (W.D. Mo. 2013) (Doc. No. 221, Order And Opinion (1) Granting Parties’ Joint Motion For Final Settlement Approval, (2) Certifying Classes For Settlement Purposes, (3) Approving Plaintiffs’ Supplemental Fee Application, And (4) Dismissing Matter With Prejudice, p. 38.)

a trigger pull.¹² Remington defended dozens of lawsuits after the defect caused injuries or death, often arguing that the gun owner was negligent.¹³ Reported accounts of resulting injuries include the following.

- In 2000, nine-year-old Gus Barber died when his mother released the safety of a Remington rifle to unload it after returning from a day of hunting. The gun fired even though she did not touch the trigger. The bullet passed through the Barbers' horse trailer and struck the child, who was out of sight behind it.¹⁴
- Lanny O'Neal was deer hunting with friends in 2008 near Eagle Butte, South Dakota. His friend, hunting with a Remington rifle, was exiting O'Neal's pickup truck when he moved the safety lever on the rifle from the safe position to the fire position without pulling the trigger. The bullet passed through the seat of the pickup and struck O'Neal, who died from the resulting wound.¹⁵
- In 2014, Randall Zick shot and killed his brother Robert while hunting with a Remington rifle, according to a lawsuit filed on behalf of Robert's three minor children. Randall had stopped to unload his rifle, had pushed the safety to its off position (which should have prevented the gun from firing), and was opening the bolt when the rifle discharged and struck Robert in the back of the head.¹⁶

For more than 60 years, Remington suppressed evidence of how commonly their guns misfired.¹⁷ A class action was recently settled with an agreement to recall 7.5 million defective Remington rifles.¹⁸ Only a small percentage of the guns were actually returned for repair and at least one media report asserts that the repair made sometimes did not even fix the problem.¹⁹

12 *Pollard v. Remington, supra*, Doc. No. 196-17, ¶ 7; Doc. No. 196-19 (complaint log records).

13 *Pollard v. Remington, supra*, Doc. No. 196-9 (list of additional litigation produced to a Plaintiff by Remington in discovery). See, e.g., *Weeks v. Remington Arms Co., Inc.*, 743 F.2d 1485 (11th Cir. 1984) (addressing Remington's claim that a hunter was negligent in light of Remington's failure to turn over evidence of other similar incidents in its files).

14 *Barber v. Remington Arms Corp.*, 2013 WL 496202, *2 (D. Mont. 2013).

15 *O'Neal v. Remington Arms Co., LLC*, 817 F.3d 1055, 1058 (8th Cir. 2015).

16 See *A.M.Z., a minor, et al. v. Remington Arms Co., LLC*, 2017 WL 2963526 (W.D. Wis. 2017). Case No. 16-cv-778-wmc, Doc. No. 8, ¶ 12 (W.D. Wis) (Amended Complaint).

17 A complaint filed in the District of Oregon compiles 15 cases in which a Court found that Remington failed to meet its legal obligation to produce business records including its internal investigations and customer reports about the defect. See *v. Remington Arms Co., Inc.*, No. 3:13-cv-01765-BR (D. Ore. 2015), Doc. No. 25, ¶ 93-94. See also *Weeks v. Remington Arms, supra*.

18 Scott Cohn, "Remington Rifle Settlement, Including Free Trigger Replacement, Is Official," *CNBC* (October 24, 2018), <https://www.cnn.com/2018/10/24/remington-rifle-settlement-is-official.html>.

19 As in the case of Taurus, the Court had evidence that only a tiny percentage of the 7.5 million defective guns (22,000 or fewer than one percent) were returned for repair. *Pollard, et al. v. Remington et al.*, 320 F.R.D. 198, 205 (W.D. Mo. 2017). See Scott Cohn, "Gun Owners Say Rifles Still Malfunction After Remington Class-Action Settlement Repairs," *CNBC* (April 6, 2020), <https://www.cnn.com/2020/04/06/remington-trigger-problems-surface-as-class-action-settlement-deadline-nears.html>.

Glock Pistols and Similar Guns

The popular Glock pistol and its many imitators have few safety features. Because their triggers require very little pressure to pull, there are many reported incidents of Glock pistols being fired by very young children who find them in homes or cars. In addition, the sequence required to take apart the handgun requires that the trigger be depressed. Police officers and others have frequently unintentionally fired their Glock pistols when taking them apart to clean them. Again, examples abound:

- In 2015 in Ocala, Florida, 33-year-old police officer Jared Forsyth was shot and killed by a fellow officer following a firearms training session. The officer who killed Forsyth did not realize that there was a round in the chamber when he depressed the trigger as part of the 40 caliber Glock pistol's normal disassembly procedure.²⁰
- Norwalk, Connecticut police officer Phillip Roselle was shot in the chest in 2017 by another officer who did not realize that his 9mm Glock pistol was loaded when he depressed the trigger in order to disassemble it. Officer Roselle's injuries included nerve and kidney damage.²¹
- In 2019, 20-year-old Christian Collister unintentionally shot himself in the face while taking his 40 caliber Glock handgun apart in his car. Since then, he has undergone nearly a dozen surgeries. As he tells his story:

So to take apart Glocks, you have to empty the chamber and then pull the trigger and slide the chamber back and push it forward. I pulled the trigger and when I did it just blew everything. I looked down at the center console, all I saw was my jaw and the row of teeth just sitting there so I was like okay, this is very serious.²²

- In May 2016, Glock settled a civil case with former Los Angeles Police Department (LAPD) officer Enrique Chavez, who in 2006 was left paralyzed from the waist down

20 Carlos E. Medina, "Ocala Officer Shot to Death Accidentally During Training," *Ocala.com* (April 7, 2015), <https://www.ocala.com/article/LK/20150406/News/604142131/OS/>; "Ocala Police Officer Died From His Injuries After Training Accident," *Ocalapost.com* (April 6, 2015), <https://www.ocalapost.com/ocala-police-officer-died-from-his-injuries/>; Katie Pohlman, "Judge Rules Ocala Not Liable in 2015 Police Officer Death," *Ocala.com* (July 26, 2018), <https://www.ocala.com/news/20180726/judge-rules-ocala-not-liable-in-2015-police-officer-death>.

21 Ethan Fry, "Former Norwalk Cop Shot in On-The-Job Accident Sues Gunmaker," *The Hour* (September 3, 2019), <https://www.thehour.com/news/article/Former-Norwalk-cop-shot-in-on-the-job-accident-14411520.php>; "Veteran Officer Still Suffering 1 Year After Accidental Shooting," *News 12 Connecticut* (September 7, 2018), <http://connecticut.news12.com/story/39050365/veteran-officer-still-suffering-1-year-after-accidental-shooting>.

22 Kailey McCarthy, "Local Boy Recovering After Gun Accident, Benefit Tuesday to Help with Hospital Expenses," *KALB* (December 9, 2019), <https://www.kalb.com/content/news/Local-boy-recovering-after-gun-accident-benefit-Tuesday-to-help-with-hospital-expenses-565994351.html>.

after his service weapon, a Glock 21 pistol, was unintentionally discharged by his three-year-old son from the back seat of the officer's truck. After a Court found that a jury should decide whether the absence of safety features on the Glock are a safety defect, the case was settled for an undisclosed amount.²³

Millions of Glock pistols have been sold in the United States.²⁴ Yet no federal safety agency has the power to set standards that might require a more prominent loaded chamber indicator (to better warn users that there is a round in the chamber) or to mandate features that would make the gun difficult for a three-year-old to fire. Similarly, there is no regulator with the power to require that Glock change its disassembly process so that it does not require a trigger pull as part of the procedure for cleaning the gun.

The Gun Industry's Long History Of Producing Defective Firearms

The gun industry's public position is that unintentional shootings almost always are caused by human error. For example, the firearm industry's primary trade organization, the National Shooting Sports Foundation (NSSF), claims: "If everyone handled a firearm so carefully that the muzzle never pointed at something they didn't intend to shoot, there would be virtually no firearms accidents. It's as simple as that, and it's up to you."²⁵

Yet the industry itself is aware of many serious safety defects that cause guns to go off unexpectedly, often based on customer complaints. Below are recent notices of safety hazards, collected by the VPC, issued by top gun manufacturers.²⁶ (The list is not intended to be exhaustive.)

23 See *Chavez v. Glock, Inc.*, 207 Cal.App.4th 1283, 1298, 1309 (Court of Appeals, 2d District, 2012). Bob Owens, "Glock Settles Negligent Discharge Case With Paralyzed Ex-LAPD Cop," *Bearing Arms* (May 12, 2016), <http://bearingarms.com/bob-o/2016/05/12/glock-settles-negligent-discharge-case-paralyzed-ex-lapd-cop/>.

24 "Celebrating 30 Years in the U.S.," stating, "Our pistols are the choice of millions for personal or home protection and target shooting," <https://us.glock.com/en/learn/brand/celebrating-30-years-in-the-us>.

25 *Firearms Safety – 10 Rules of Safe Gun Handling*, National Shooting Sports Foundation (NSSF), <https://www.nssf.org/safety/rules-firearms-safety/>.

26 See <https://vpc.org/regulating-the-gun-industry/gun-product-safety-notices/> for a continuously updated version of this list. In addition, "Firearm Recalls/Warnings Index," a summary of more than 280 older recall notices related to gun and ammunition defects, apparently collected privately until August of 2003, could, until recently, be found on the Internet at FirearmsID.com, (<http://firearmsid.com/Recalls/Firearm%20Recall%20Index.htm>). As of date of writing, the web address now refers the viewer to a Facebook page. Copy of the original list in files of Violence Policy Center.

Armalite safety alerts and recalls

[AR-10, SPR MOD 1, SPR MOD 2, M15, Eagle-15 Rifles](#)

Beretta safety alerts and recalls

[ARX100 Rifles](#)
[NEOS Pistols](#)

Browning safety alerts and recalls

[BAR MK3 Rifles](#)

Bushmaster safety alerts and recalls

(Bushmaster was part of Remington)
[ACR Rifle](#)

Caracal safety alerts and recalls

[F and C Model Pistols](#)

Charter Arms safety alerts and recalls

[Lady .38 Special Revolvers](#)

Daniel Defense safety alerts and recalls

[Disconnecter Safety](#)

FMK Firearms safety alerts and recalls

[9C1 Pistol](#)

FN safety alerts and recalls

[FN SCAR 17S Rifles](#)
[FN M249S Semiautomatic Belt-Fed Rifles](#)
[FNS Pistols](#)

Glock safety alerts and recalls

[Gen 4 Pistols](#)
[Model 17M Pistols](#) (police department recall)

Henry safety alerts and recalls

[H015 Single Shot Rifles and Shotguns](#)

Honor Defense safety alerts and recalls

[Honor Guard Pistols](#)

Howa safety alerts and recalls

[1500, 1550, and 1700 LS Rifles](#)

IWI safety alerts and recalls

[Galil ACE Pistols](#)

Kel-Tec safety alerts and recalls

[SUB-2000 Rifles](#)

Knight safety alerts and recalls

[Revolution Muzzleloading Rifles](#)

Lyman safety alerts and recalls

[Black Powder Rifles and Pistols](#)

Mossberg safety alerts and recalls

[Maverick Hunter Over/Under Shotgun](#)
[Model 685 Bolt Action Shotguns](#)

Remington safety alerts and recalls

[Model 887 Shotgun](#)
[Model 700 Rifle](#)
[Model Rimfire 22 Thunderbolt TB-22A Rifle](#)
[Law Enforcement Reduced Recoil 8 Pellet 00 Buckshot](#)
[270 Win. 150 Grain Soft Point Ammunition](#)
[.223 Remington 62 Gr Hollow Point \(Match\) Ammunition](#)
[22 Hornet 45 Grain PSP Ammunition](#)
[17 HMR Ammunition and Model 597 HMR](#)
[Model 710 Bolt-Action Rifles](#)
[38 Special +P Ammunition](#)
[R51 Pistol](#)

Rossi safety alerts and recalls

[.38 Special and .357 Magnum Revolvers](#)
(class action notice)

Savage Arms safety alerts and recalls

[B.MAG Rifles](#)

Sig Sauer safety alerts and recalls

[CROSS Rifle](#)
[P320 Pistol](#)
[P238 Pistol](#)
[MCX Rifle](#)
[SIG716 DMR, SIG516 Carbon Fiber, and SIGM400 Predator Rifles](#)

Smith & Wesson safety alerts and recalls

[M&P Shield](#)
[M&P Shield EZ Pistol manufactured between March 1, 2020 and October 31, 2020](#)
[Model 22A Pistols](#)
[i-Bolt Rifle \(November 2008\)](#)
[i-Bolt Rifle \(January 2008\)](#)
[Performance Center Model 460 Revolvers SW 1911](#)
[Performance Center Model 329 Revolvers](#)
[M&P 15-22 Pistols and Rifles – Alert – Alert FAQ](#)

Springfield Armory safety alerts and recalls

[3.3 XDS Pistol](#)
[XD-S Pistols](#)

Sturm, Ruger safety alerts and recalls

[Precision Rifle](#)
[SR-556VT Rifles](#)
[American Rimfire Rifles](#)
[LCP Pistols](#)
[SR9 Pistols](#)
[P85 Pistols](#)
[M77 Rifles](#)
[Old Model Revolver – “Pre-1973” – “The Empty Chamber” – “Handle with Care”](#)

[Mark IV Pistols](#)
[American Pistols \(9mm\)](#)

Taurus safety alerts and recalls

[Curve Pistol](#)
[PT Series Pistols](#)

Thompson/Center safety alerts and recalls

[T/C Compass Rifles](#)
[Venture Rifles](#)
[Icon, Venture, Dimension Rifles](#)

Walther safety alerts and recalls

[CCP Pistol](#)
[PK380](#)
[PPK and PPK/S pistols](#)
[PPS M2 Pistol](#)

Weatherby safety alerts and recalls

[SA-08 28 Gauge Shotgun \(2013\)](#)
[SA-08 Shotgun \(2011\)](#)
[Vanguard Rifles](#)
[Vanguard Stainless Steel Rifles](#)

Winchester safety alerts and recalls

[SXP Shotgun](#)
[Model 94 Rifles](#)
[XPR Rifles](#)
[38 Special 130 Grain Full Metal Jacket Ammunition](#)
[Super-X 17 HMR 20 Grain Jacketed Hollow Point Ammunition](#)

The VPC collected these notices because there is no legally mandated central repository for these voluntary recalls of guns, some of which are referred to as “Warnings,” “Product Safety Notices,” or “Service Bulletins,” rather than recalls.²⁷ Sometimes, these notices are buried obscurely on manufacturers’ websites, rather than well-publicized where gun owners might be more likely to see them.

Many of the notices identified by the VPC describe potentially deadly defects and urgent public safety problems. For example:

- A recall notice for the popular Winchester XPR rifle states: “In our continual product testing, we have learned of an issue that is important to the safety of all XPR owners. It has come to our attention that a manipulation of the safety switch may cause movement in the trigger system that could result in unintended firing of certain XPR rifles.”²⁸
- A Winchester shotgun recall notice carries the following information: “Winchester Repeating Arms has discovered that a limited number of SXP (3 ½” chamber) shotguns (also called the Super X Pump) may, under certain circumstances, unintentionally discharge while closing the action. Failure to return any affected shotguns for inspection and/or repair may create a risk of harm, including serious personal injury or death.”²⁹
- A safety notice issued by Sturm, Ruger for its popular Mark IV pistols indicated that the pistol could fire without a trigger pull in some circumstances: “Ruger recently discovered that all Mark IV pistols (including 22/45 models) manufactured prior to June 1, 2017 have the potential to discharge unintentionally if the safety is not utilized correctly. In particular, if the trigger is pulled while the safety lever is midway between the ‘safe’ and ‘fire’ positions (that is, the safety is not fully engaged or fully disengaged), then the pistol may not fire when the trigger is pulled. However, if the trigger is released and the safety lever is then moved from the mid position to the ‘fire’ position, the pistol may fire at that time.”³⁰

27 By contrast, the Consumer Product Safety Commission (CPSC) publishes a comprehensive list of all recalls of other consumer products: <https://www.cpsc.gov/Recalls> and <https://www.cpsc.gov/Recalls/search-by-company>. Motor vehicle recalls overseen by the National Highway Traffic Safety Administration (NHTSA) are searchable by vehicle identification number: <https://www.nhtsa.gov/recalls>.

28 See <http://www.winchesterguns.com/support/current-recalls-and-safety-announcements/winchester-xpr-recall.html>.

29 See <http://www.winchesterguns.com/support/current-recalls-and-safety-announcements/sxp-recall-information---2015.html>.

30 See <https://ruger.com/dataProcess/markIVRecall/>. There is no obvious link to Ruger’s several recall notices on its website.

- In August 2017, gunmaker Sig Sauer announced with respect to its P320 pistols: “Recent events indicate that dropping the P320 beyond U.S. standards for safety may cause an unintentional discharge.”³¹
- Smith & Wesson, which as of date of writing lists 14 recalls on its website,³² issued the following recall for certain Model 22A pistols: “Based on our ongoing product review, we have determined that the slides of certain pistols manufactured from August 1, 2008 to February 19, 2009, may not meet the design specification. This can create a situation where insufficient headspace exists creating a risk of unintended discharge.”³³
- In November 2018, Walther Arms, Inc., a German company that distributes guns in the United States, issued the following recall involving a drop-fire problem affecting some of its pistols: “Walther Arms, Inc., has recently discovered a potential safety issue with certain PPS M2 pistols. Walther is voluntarily initiating a recall to protect the safety of its customers because under certain conditions it is possible that some of these pistols may fire when dropped.”³⁴

None of the notices meet the content requirements for Consumer Product Safety Commission supervised recalls of other consumer products, including, in particular, the requirement for information about known defect-related incidents, injuries, and deaths.³⁵ In addition, each of these recall notices minimizes the risk of harm and weakens its warning to customers by creating doubt about whether compliance with the recall is really necessary.

The Winchester XPR rifle recall says, for example, “In order to exercise an abundance of caution on behalf of all XPR owners, we have decided to replace certain trigger group parts at no charge,” implying that the repair may not even be necessary at all.³⁶

31 Angelica LaVito, “Sig Sauer Announces ‘Voluntary Upgrade’ of Its P320 Pistol That May Discharge When Dropped,” (August 8, 2017), <https://www.cnn.com/2017/08/08/sig-sauer-offers-voluntary-upgrade-of-p320-pistol-that-can-discharge-erroneously.html>; and, “Sig Sauer Issues Voluntary Upgrade of P320 Pistol,” Sig Sauer press release (August 8, 2017), in files of Violence Policy Center. The “U.S. Standards for safety” referred to in the press release only apply to pistols for procurement by law enforcement agencies and are limited to dropping the gun from a height of four feet onto a rubber mat. See “Autoloading Pistols for Police Officers,” NIJ Standard 0112.03, National Institute of Justice (July 1999), <https://www.ncjrs.gov/pdffiles1/nij/249929.pdf>.

32 See <https://www.smith-wesson.com/safety/recalls>.

33 See <https://www.smith-wesson.com/safety/recalls/model-22a-pistols-safety-recall>. Unintended discharge might occur, for example, when the trigger is jostled or partially pulled because the firing pin would unexpectedly hit the chambered round.

34 A link to the notice appears among the 14 notices listed on the Smith & Wesson website. For a period of time, Smith & Wesson was Walther’s United States distributor (<https://www.smith-wesson.com/safety/recalls> and <https://waltherarms.com/recall/>).

35 16 C.F.R. §§ 1115.27, 1115.29.

36 See <http://www.winchesterguns.com/support/current-recalls-and-safety-announcements/winchester-xpr-recall.html>.

The notice for Sturm, Ruger Mark IV pistols says, “Although only a small percentage of pistols appear to be affected and we are not aware of any injuries, Ruger is firmly committed to safety and would like to retrofit all potentially affected pistols with an updated safety mechanism,” insinuating that a large percentage of the pistols work properly and therefore might not need to be fixed.³⁷

The Sig Sauer press release announcing its recall begins with two full paragraphs of language stating that the pistols meet applicable standards before acknowledging a drop-fire problem, raising doubt about why a gun owner would need to have the P320 pistols fixed at all.³⁸ It fails to warn customers not to use the gun and suggests that the proposed repair is “voluntary” rather than mandatory.³⁹ The Smith & Wesson, Sig Sauer, and Walther notices all suggest that the recalled guns “may” have a problem rather than that they *do* have a problem.⁴⁰

These types of limitations in recall notices and safety warnings are inconsistent with recall practice mandated by the CPSC⁴¹ for other consumer products and they appear likely to undermine compliance by consumers with the requirements of the recall.

Because there is no third party or government agency supervising these gun recalls, there is no way to know how many consumers are availing themselves of the recall remedy in order to determine the number of defective guns still in circulation. And there is some doubt about whether gun recall and safety warnings are advertised according to best practices or sent by mail to those consumers who filled out warranty cards when they bought their guns.⁴²

In fact, some recall notices might be cynical attempts to obscurely post a warning about the gun that could then be used as a legal defense in the event of a death or injury caused by the firearm. A frequent argument in personal injury cases is that the manufacturer failed to warn of a known defect. These notices identified by the VPC could, arguably, thwart such claims.

37 See <https://ruger.com/dataProcess/markIVRecall/>.

38 “Sig Sauer Issues Voluntary Upgrade of P320 Pistol,” Sig Sauer press release (August 8, 2017), in files of Violence Policy Center.

39 “Sig Sauer Issues Voluntary Upgrade of P320 Pistol,” Sig Sauer press release (August 8, 2017), in files of Violence Policy Center.

40 See <https://www.smith-wesson.com/safety/recalls/model-22a-pistols-safety-recall>; <http://dev.waltherarms.com/wp-content/uploads/2019/09/PPS-M2-Recall-PressRelease.png>; and, “Sig Sauer Issues Voluntary Upgrade of P320 Pistol,” Sig Sauer press release (August 8, 2017), in files of Violence Policy Center.

41 16 CFR § 1115.27.

42 See, e.g., <https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Recall-Checklist/>.

Regulated vs. Unregulated Recalls

In order to understand the importance of government involvement in manufacturer recalls, it is helpful to review an example of the differences between an unsupervised voluntary gun recall and a recall carried out with the oversight of the Consumer Product Safety Commission.

The Olin Corporation, which manufactured Winchester rifles that were prone to fire when dropped, defended its popular “Model 94” hunting rifles in personal injury cases for several decades, arguing that there was no proof of a manufacturing defect. Yet in 2014, Olin issued the following safety warning.⁴³

PRODUCT SAFETY NOTICE – WARNING

**WINCHESTER® Model 94 Family of Lever-Action Rifles, Carbines,
and Muskets with Half-Cock Safety**

Winchester Model 94 (including commemoratives); Winchester Model 1894; Winchester Model 9422 and Model 9422M; Winchester Model 55; Sears® Model 54 and Ted Williams® Model 100; Winchester Model 64 and 64A; Winchester Centennial '66; Winchester Canadian Centennial '67

Olin Corporation, through its Winchester Division, is warning users of the above firearms that when there is a live cartridge in the chamber, dropping, jarring or bumping the firearm may cause an accidental discharge, which may result in property damage, serious personal injury or death to the user or others:

- With the hammer in the full-down position, a slight impact to, or bumping the hammer can cause a discharge.
- With the hammer in the half-cock safety position, a hard impact to the hammer, such as from dropping the firearm, can break the safety mechanism and cause a discharge.
- With the hammer in any position, a hard impact, such as from dropping or jarring the firearm, can cause a discharge, even if the hammer is not impacted.

To reduce the risk of accidental discharge, follow safe firearm handling practices, including:

- Always maintain control of the firearm and keep your firearm pointed in a safe direction at all times.
- Never place the hammer in the full-down position when there is a live cartridge in the chamber.
- Never rely on the half-cock safety to prevent accidental discharge due to dropping or jarring the firearm, or hard impacts to the hammer.
- When there is a live cartridge in the chamber, avoid activities that increase the risk of dropping or jarring the rifle, such as running, climbing, crossing a fence, and taking the firearm up and down from a tree stand.

This is not an ammunition or firearm recall.

For Winchester firearm owner’s manuals please go to www.winchesterguns.com/customerservice/ownersmanuals

© 2014 Winchester Ammunition, 600 Powder Mill Road, East Alton, IL 62024-1273

43 Product Safety Notice – Warning, Winchester Ammunition (2014), <https://www.winchesterint.com/services/ownermanual/PDF/carabine/levier/MODEL%2094.pdf>. See *Trask v. Olin Corp.*, Civil Action No. 12-340 (W.D. Pa. Mar. 28, 2016) describing the issuance of various safety notices over time.

Although the Model 94 was discontinued in 2006, more than 6.5 million of the rifles had previously been manufactured and many are still in use, primarily for hunting deer.⁴⁴ The safety warning represents an acknowledgement that the rifle can, in fact, fire when dropped, without a trigger pull, even when the gun's user believes that the rifle is not fully cocked.

Certainly, each of the circumstances described halfway through the safety warning are foreseeable in the context of hunting. The company acknowledges the potential for "serious personal injury or death to the user or others." Nevertheless, there is no recall and no instruction not to use the weapon because of the defect. Instead, users are instructed to follow the types of basic safety procedures that one should implement with respect to any gun. Users are simply told to avoid the circumstances in which injuries might occur from the consequences of the defect.

The deficiencies in this Safety Notice are best understood when compared with a notice issued under CPSC standards.⁴⁵ A close analogy to a gun recall is a 2014 crossbow⁴⁶ recall involving a defect in which the recalled crossbow could apparently fire an arrow without a trigger pull.⁴⁷ The recall notice for certain Mission Archery crossbows clearly states the potential hazard without limiting language: "The crossbow can fire an arrow unexpectedly without the trigger being pulled, posing an injury hazard to the user and to bystanders."⁴⁸ More specific information is then offered (see form on following page).

Like the Winchester rifle recall safety warning shown previously, this notice was issued in 2014 to address a dangerous defect in which a projectile may be unintentionally fired. It is for a product, a crossbow, with a similar range of retail prices to the Winchester rifle. Although there are only three reports of the crossbow's defect, without reported injuries, the notice provides for a recall rather than a "safety warning."

44 Charles M. Robinson III, "The Winchester 94 Gone With the Wind," *www.historynet.com* (June 2007), <https://www.historynet.com/winchester-94-gone-wind.htm>.

45 Hundreds of examples of CPSC supervised recall notices can be found on its website at <https://www.cpsc.gov/Recalls/>.

46 Modern crossbows are based on ancient weapons that use a trigger to release an arrow, often with great force. Crossbow hunting is an activity in which a crossbow is used to hunt game, such as deer. According to the National Rifle Association's *American Hunter* magazine, "Modern crossbows are fast, accurate, and plenty powerful enough to cleanly take the largest big-game animals in North America." Bob Robb, "12 Crossbow Do's and 3 Don'ts," February 21, 2013), <https://www.americanhunter.org/articles/2013/2/21/12-crossbow-dos-and-3-donts/>.

47 "Mission Archery Recalls Crossbows Due to Injury Hazard; Can Fire Unexpectedly," (CPSC Recall No. 14-197, June 13, 2014), <https://www.cpsc.gov/Recalls/2014/mission-archery-recalls-crossbows>.

48 "Mission Archery Recalls Crossbows Due to Injury Hazard; Can Fire Unexpectedly," (CPSC Recall No. 14-197, June 13, 2014), <https://www.cpsc.gov/Recalls/2014/mission-archery-recalls-crossbows>. A clear and concise statement of the hazard without limiting language is a hallmark of CPSC recall notices (15 CFR § 1115.27(f)). See <https://www.cpsc.gov/Recalls/>.

Importantly, the notice warns consumers to stop using the product “immediately.” In short, on the basis that injuries and deaths from the defect are likely and foreseeable, the crossbow recall provides a meaningful consumer remedy rather than instructions for the consumer to use care to avoid manifestation of the defect.

Recall Details

Description:

This recall involves Mission Archery crossbows that have the automatic safety located behind the trigger at rear of scope mount, models MXB 320, MXB Dagger, MXB 400 and MXB 360; and serial numbers ranging from XB04879 to XB16555. The crossbows were sold in black, lost camo AT (a three-color camouflage pattern with light brown, dark brown, dark green), white camo and pink camo pattern. The crossbows measure between 29 and 35 inches long and were available individually or as part of a package that included a black scope, quiver, three bolts and a rope cocking aid. Mission by Mathews is engraved on the left rear side of the crossbow's rail. The serial number is located on the underside of the rail directly behind the safety. Mission and the model name are printed on each limb.

Remedy:

Consumers should immediately stop using the recalled crossbows and return them to a Mission Archery authorized dealer for a free repair, or contact Mission Archery for instructions on shipping the product directly to them for a free repair, including shipping.

Incidents/Injuries:

Mission Archery has received three reports of the crossbow firing unexpectedly. No injuries have been reported.

Sold At:

Archery and hunting sporting goods stores nationwide including from May 2013 through April 2014 for between \$600 and \$1,300.

Importer:

Mathews Archery Inc., dba Mission Archery, of Sparta, Wis.

Manufacturer:

Mathews Archery Inc., dba Mission Archery, of Sparta, Wis.

Manufactured In:

United States

Recall number:

14-197

Not surprisingly, given the potency of the crossbow recall notice, it generated a participation rate above 60 percent, meaning that more than 60 percent of the affected crossbows were made safe by repair or replacement.⁴⁹ This stands in stark contrast to the negligible participation rates in the Remington and Taurus class action recall programs described earlier.⁵⁰

⁴⁹ Recall participation rate for Recall No. 14-197 received in response to a FOIA request by memo from the CPSC dated February 13, 2020, in files of Violence Policy Center.

⁵⁰ See Notes 8 and 19, *supra*.

The existence of dozens of voluntary gun recalls and defect-related safety warnings illustrates that guns, like any manufactured consumer product, are vulnerable to defects. Indeed, those defects are likely to present serious public safety problems that in many cases, exceed the safety risks associated with other consumer product defects. Yet, the unsupervised voluntary recall practices of the gun industry lack the rigor of those overseen by the CPSC. The gun manufacturers' voluntary recall notices identified by the Violence Policy Center:

- are inconsistent about the level of warning and severity of potential injury they convey;
- fail to provide information about the number of customer complaints, injuries, and deaths associated with the defect;
- undermine their messages with caveats and exculpatory language;
- often convey a warning rather than an effective remedy;
- often are issued long after a problem became known to the manufacturer;
- usually fail to offer to pay the costs of shipping associated with completing recall work; and,
- are not consistently publicized according to best practices.

Under these circumstances, it is likely that such recalls, despite the high level of danger associated with the defects at issue, are less effective than those that are properly supervised by the Consumer Product Safety Commission, an independent government agency.

Summary: The Consequences Of Exempting Guns From Safety Regulations

The exemption of guns from the federal regulatory safety oversight that applies to other consumer products has many consequences that affect public safety, including the following.

- There are no manufacturing standards set for guns.
- There are no requirements that guns have basic safety features.
- There are no independent pre-market testing requirements at the federal level to assure that guns meet basic safety requirements.
- There is no central entity to which consumers can make reports about defects.
- No agency is empowered to obtain or receive information, known to manufacturers, about consumer complaints.
- No agency has the power to require a recall when public safety is at issue.

- Recalls are unsupervised and are not advertised according to best practices.
- There are no content requirements for recall notices.
- There is no central repository for gun owners to determine if their guns have known safety problems.
- There is no way to know how effective recalls have been.
- There is no way to punish manufacturers that don't play by the rules.

All of these protections are available, for virtually every other consumer product, under the Consumer Product Safety Act.⁵¹

Conclusion

Firearms, by design, are dangerous. But that does not mean that we should tolerate gun defects that cause them to fire when they should not. All guns should be designed to help users prevent foreseeable unintentional discharges, just as coffeemakers, toasters, ladders, and baby cribs must meet basic safety requirements.

Not all guns perform as advertised. Tragedies can be prevented at minimal cost by requiring that manufacturers design and build safer guns and that they implement practices, applicable to other consumer products, that alert customers quickly when defects are identified.

Guns are inherently dangerous consumer products and should be subject to the same product safety oversight as other products. Congress should vest comprehensive oversight authority in an agency with expertise in firearms and the firearms industry. A first step would be to give the Bureau of Alcohol, Tobacco, Firearms and Explosives explicit authority to recall guns and ammunition that contain dangerous defects in design or manufacture.

51 15 U.S.C. § 2051, et seq.



Violence Policy Center

1025 Connecticut Avenue, NW Suite 1210

Washington, DC 20036

202-822-8200

WWW.VPC.ORG