

Ordinance MJSP Nº 618/2019.

Discipline the procedure of communication of the harmfulness or dangerousness of products and services after its placement in the consumer market, foreseen in art. 10, §§ 1 and 2, of Law No. 8.078, of September 11, 1990.

THE MINISTER OF JUSTICE AND PUBLIC SAFETY, in the use of his attributions provided for in art. 87, sole paragraph, item II, of the Constitution, and in view of the provisions of articles 10, §§ 1 and 2, 55 and 106 of Law No. 8.078, of September 11, 1990, in art. 3 of Decree No. 2.181 of March 20, 1997, and in art. 17 of Annex I of Decree No. 9.662 of January 1, 2019,

SOLVE:

Article 1 This Ordinance regulates the procedure of communication of the harmfulness or dangerousness of products and services after its placement in the consumer market, foreseen in art. 10, Paragraphs 1 and 2 of Law No. 8.078, of September 11, 1990, hereinafter called a recall or recall campaign.

Article 2 The supplier, according to the concept of art. 3 of Law No. 8.078 of 1990, which becomes aware of the possibility that products or services that are harmful or dangerous have been introduced into the Brazilian consumer market, must, within twenty-four hours, communicate to the National Consumer on the initiation of investigations.

Paragraph 1 The investigation of the supplier of products and services, to determine the communication referred to in art. 3, shall not exceed the period of 10 working days, unless the supplier shows in detail that the extension of time is necessary for the completion of the work.

Paragraph 2. Once the investigation referred to in the caput has been concluded, the supplier of products and services must present the communication referred to in article 3 or the reasons why it will not be necessary to initiate a call campaign.

Article 3. The supplier who, after the introduction of the product or service in the consumer market, is aware of its harmfulness or dangerousness, shall communicate the fact, within two working days, counted from the decision to make the call, to the National Secretary of the Consumer and to the competent regulatory or regulatory body.

Paragraph 1 The communication what is it about the caput should be performed, preferably, by means of Electronic Information System–SEI!, or by another system that has been designated therefore through the Secretariat of the National Consumer`s, containing the following information:

I - identification of the product or servisse provider, by providing the following data:

social name;

name of fantasy;
developed economic activities;
registration number in the National Registry of Legal Entity - CNPJ or in the Individual Registry of Individuals – CPF;
address of the establishment's headquarters;
telephone and electronic address to receive communications;
the names of prosecutors who may represent the supplier in administrative or judicial proceedings related to the appeals procedure; and
existence, if any, of representation in the MERCOSUR States Parties, indicating their identification and contact data;

II - detailed description of the product or service and the defective component, with characteristics necessary for its identification, in particular:

brand;
model;
lot, where applicable
series, where applicable
chassis, where applicable
initial and final date of manufacture; and
photograph;

III - detailed description of the defect, accompanied by technical information necessary to clarify the facts, as well as the date, specifying the day, month and year, and how the harmfulness or dangerousness was detected;

IV - detailed description of the risks and their implications, clearly and ostensibly;

V - quantity of products or services subject to the defect, including those still in stock, and number of consumers reached;

VI - geographical distribution of the products and services subject to the defect, placed on the market, by state of the Federation, and the countries for which the products were exported or for which the services were provided;

VII - indication of measures already taken and measures proposed to resolve the defect and remedy the risk;

VIII - description of the accidents related to the defect of the product or service, when applicable, with the following information:

place and date of the accident;
identification of victims;
material and physical damage caused by;

data on the judicial proceedings related to the accident, specifying the actions filed, the names of the perpetrators and defendants, the Counties and Sticks in which they process and the numbers of the assessment of each of the processes; and

measures taken in respect of the victims;

IX - media plan for the information of affected consumers, pursuant to art. 4th;

X - customer service plan, pursuant to art. 5th; and

XI - model of the consumer risk warning, pursuant to art. 6th.

Paragraph 2 The National Consumer Secretariat and the regulatory or regulatory body may, at any time, issue notification requesting additional or complementary information to those described in paragraph 1 of this article, in order to verify the effectiveness of the appeal.

Paragraph 3 The communications referred to in this article shall be registered by electronic means, in a procedure to be defined by the National Consumer Secretariat, preferably using original digital documents, in an open format, machine-processed, pursuant to item IV of art. 2 of Decree No. 8.777, of May 11, 2016.

Paragraph 4 Without prejudice to the period established in the caput of this article, the supplier may justifiably request that the subsequent collection of information from the calling campaign be authorized.

Paragraph 5 Once the request foreseen in paragraph 4 of this article has been granted, the National Consumer Secretariat shall establish a deadline of up to 15 working days from the date the caller filmed the call campaign to gather the remaining information.

Paragraph 6 Once the documentation has been received, the National Consumer Secretariat will appear within a maximum of five working days.

Article 4 The media plan dealt with in art. 3, paragraph 1, item IX, shall contain the following information:

- advertising start and end date;

- means of communication to be used, times and frequency of delivery, considering the need to reach most of the interested parties;

III - model of the warning of risk of accident to the consumer, to be transmitted in the campaign, allowing the understanding of the extension of the risk by all consumers, including lay people;

IV - costs of placement, presented in a discriminated manner by structure employed, respecting the secrecy regarding the respective information; and

V - justification for choosing the means, in terms of paragraph 2 of this article.

Paragraph 1 For purposes of compliance with the provisions of art. 10, paragraph 2, of Law No. 8.078 of 1990, the messages referred to in the caption of this article must be transmitted in written medium, by transmission of sounds and by transmission of sounds and images, admitted as fit any of the following means always considering the need to reach as many interested parties as possible:

I - printed printed media, in addition to being posted on the company's website;

II - sound broadcasting;

III - broadcasting of sounds and images;

IV - digital media written on the internet, in addition to being posted on the company's website; V - transmission of sounds over the internet; and

VI - transmission of sounds and images through the internet.

Paragraph 2. The employment of the chosen media should be duly justified among the alternatives that guarantee the most effective reach of the message to the target audience that the campaign aims to achieve.

Paragraph 3. The supplier shall choose at least one written placement structure, a structure for the placement of sounds and a structure for the placement of sounds and images.

§ 4 The placement on the company's website should be made in a way that allows the visualization of the Risk Notice in up to two clicks and should be available to the consumer for a period of five years and may be extended at the discretion of the National Consumer Secretariat, 9 of this Ordinance.

§5 In case the supplier is unable to carry out the effective repair of the product or service, the media plan must present a new placement forecast when the possibility of repair is possible.

Article 5 The consumer assistance plan referred to in art. 3, paragraph 1, item X, shall take into account best national and international practices and contain the following information:

I - forms of assistance available to the consumer, preferably with the provision of assistance by the platform consumer.gov.br for the resolution of eventual conflicts;

II - places and opening hours;

III - average length of service;

IV - date of beginning of service; and

V - contingency plan and estimated deadline for complete adaptation of all affected products or services.

Single paragraph. The guidelines and other documents and studies of the Working Group on Consumer Goods Safety of the Organization for Economic Cooperation and Development, notably those relating to the application of consumer behavioral insights, should be taken into account by suppliers when drawing up of the documentation related to the service plan.

Article 6 The supplier shall, in addition to the communication referred to in Article 3, inform consumers immediately about the harmfulness or dangerousness of the product or service he places on the market, by means of a warning of an accident to the consumer, in compliance with the provisions of art. 10, paragraph 2, of Law No. 8.078 of 1990.

Paragraph 1 The consumer risk warning shall contain clear and accurate information on:

I - the affected product or service and the defective component, containing the information necessary for its identification, in particular:

(a) trade mark;

b) model;

c) lot, when applicable;

d) series, when applicable;

- e) chassis, where applicable;
- f) initial and final date of manufacture; and
- g) photo.

II - date of beginning of service;

III - defect presented, risks and their implications, clearly and ostensibly, allowing the understanding of the extent of the risk by any consumer;

IV - preventive and corrective measures that the consumer must take, when applicable; V - measures to be taken by the supplier;

VI - contact information and customer service locations;

VII - information that the call does not represent any cost to the consumer; and

VIII - other information intended to protect the safety of consumers of the product or service, in compliance with the provisions of arts. 12 to 17 of Law No. 8.078 of 1990.

Paragraph 2 The consumer risk warning must be sized enough to ensure the information and understanding of the consumer community about the harmfulness or dangerousness offered by the product or service that is the subject of the calling campaign.

Paragraph 3. The individual direct communication to the consumers does not remove the obligation of the collective communication to the whole society about the harmfulness or dangerousness of products and services introduced in the market.

Article 7 The supplier shall provide the consumer, by physical or electronic means, a certificate of attendance to the call, indicating the place, date, time and duration of service and the measure adopted.

Article 8. The supplier shall submit to the National Consumer Secretariat:

I - service reports, which shall be due by the last working day of the month following the reference period and shall inform the quantity of products or services actually collected or repaired, including those in stock, and their distribution by the respective federative units; and

II - final report of the call, informing the number of consumers reached in number and percentage, in global terms and by federative unit, justification and measures to be adopted in relation to the percentage of products or services not collected or repaired, and identification of how consumers became aware of the risk warning.

Paragraph 1 The periodic attendance reports shall be presented quarterly.

Paragraph 2. The National Consumer Secretariat may request the submission of a report at a periodicity lower than that stipulated in this article.

Paragraph 3. At the discretion of the supplier concerned, partial reports may be submitted before the end of the respective reference period.

Paragraph 4 After the closure of the fifth year of the call campaign, the supplier may request the waiver or delay of the period for the submission of periodic reports.

Paragraph 5. The request referred to in paragraph 4 of this article will be analyzed in view of the peculiarities of the calling campaign, the number of consumers who became aware of the campaign, the attendance rate, and other factors that the National Consumer Secretariat relevant to the case.

Paragraph 6 In case of approval of the request for waiver of the report, the supplier shall submit the final report of the call referred to in item II of the caput of this article.

Paragraph 7 The final report of call will also be demandable when the campaign reaches a hundred percent of attendance or when it is the case of its archival by loss of object.

Article 9. The National Consumer Secretariat may determine, individually or cumulatively, the extension or extension of the call, at the expense of the supplier, if it is shown that the results were not satisfactory.

Article 10. The supplier does not release the free repair or replacement of the product or service covered by the call campaign, even with the waiver of the presentation of the service report by the National Consumer Secretariat.

Article 11. The system of communication of warnings of risk to the consumer is maintained, which may lead to measures by the regulatory or regulatory bodies responsible for recording, controlling and monitoring the quality and safety of products and services placed on the consumer market.

Article 12. The National Consumer Secretariat shall inform the opening of campaigns to call the state and municipal Procons located in capitals of the states of the federation, by physical or electronic means.

Art. 13. The supplier of products or services that, after the communication of the call campaign, is aware of accidents related to the defect of the product or service, must provide the same information required in art. 3, paragraph 1, item VIII, of this Ordinance.

Article 14. Failure to comply with the provisions of this Ordinance will subject the supplier to the penalties provided for in Law No. 8.078 of 1990 and Decree No. 2.181 of March 20, 1997.

Art. 15. Ordinance No. 487, of March 15, 2012, of the Ministry of Justice is revoked.

Art. 16. This Ordinance shall enter into force on the date of its publication.

SÉRGIO MORO