



MINISTÉRIO DA JUSTIÇA
E SEGURANÇA PÚBLICA
Assessoria Especial Internacional

TRADUÇÃO DE LEGISLAÇÃO BRASILEIRA RELACIONADA À ÁREA DE JUSTIÇA E SEGURANÇA PÚBLICA PARA O INGLÊS E O ESPANHOL

Portaria nº 618, de 01 de julho de 2019.

Disciplina o procedimento de comunicação da nocividade ou periculosidade de produtos e serviços após sua colocação no mercado de consumo, previsto nos parágrafos 1º e 2º do art. 10 da Lei nº 8.078, de 11 de setembro de 1990.

VERSÃO EM INGLÊS



Projeto da Assessoria Especial Internacional

Como forma de divulgar o arcabouço legislativo brasileiro a autoridades estrangeiras e a Organismos Internacionais e, ainda, de aprimorar a cooperação internacional, em diversas áreas, a Assessoria Especial Internacional do Ministério da Justiça e Segurança Pública desenvolveu projeto para a compilação e tradução¹, para os idiomas inglês e espanhol, de parte das legislações brasileiras relacionadas às áreas de Justiça e Segurança Pública. A seleção das leis traduzidas ficou a cargo das áreas técnicas do Ministério, levando em consideração, igualmente, trabalhos já realizados por outros órgãos brasileiros, os quais serão disponibilizados como link externo no site da Assessoria Especial Internacional.



¹Traduções não juramentadas ou oficiais.

ORDINANCE OF THE MINISTER Nº 618 of July 1st, 2019.

Regulates the organization of the National Consumer Defense System (SNDC in Portuguese), establishes the general provisions for applying administrative sanctions pursuant to Law nº 8,078 of September 11th, 1990, repeals Decree nº 861 of July 9th, 1993, and sets forth other provisions.

The MINISTER OF STATE FOR JUSTICE AND PUBLIC SECURITY, in the use of the duties provided for in article 87, sole paragraph, item II of the Constitution, and given the provisions of paragraphs 1 and 2 of articles 10, 55, and 106 of Law nº 8,078 of September 11th, 1990, article 3 of Decree nº 2,181 of March 20th, 1997, and article 17 of Annex I of Decree nº 9,662 of January 1st, 2019,

ORDAINS:

Art. 1. This Ordinance regulates the procedure for communicating the harmfulness or dangerousness of products and services after their placing on the consumer market, established in paragraphs 1 and 2 of article 10 of Law nº 8,078 of September 11th, 1990, hereinafter denominated call campaign or **recall**.

Art. 2. The supplier who becomes aware of the possibility that products or services that present harmfulness or dangerousness have been introduced into the Brazilian consumer market, must notify the National Consumer Secretariat of the beginning of investigations, within twenty-four hours, according to article 3 of Law nº 8,078 of 1990.

Paragraph 1. The investigation of the supplier of products and services, to determine the communication referred to in article 3 of this Ordinance must not exceed ten working days unless the supplier demonstrates in detail that the extension of the period is necessary for completing the work.

Paragraph 2. Once the investigation referred to in the head provision has been completed, the supplier of products and services must present the communication established in article 3 or the reasons why it shall not be necessary to begin a call campaign.

Art. 3. The supplier who obtains knowledge of the harmfulness or dangerousness of the product or service after its introduction into the consumer market must communicate the fact, within two working days counted from the decision to make the call, to the National Consumer Secretariat and the competent regulatory body.

Paragraph 1. The communication referred to in the head provision must be conducted, preferably, through the Electronic Information System (SEI in Portuguese) or by another system that has been designated by the National Consumer Secretariat, containing the following information:

I - identification of the supplier of the product or service, by providing the following data:

- a) company name;
- b) assumed name;
- c) economic activities developed ;

d) registration number in the Corporate Taxpayer Identification Number (CNPJ in Portuguese) or in the Individual Taxpayer Registrar (CPF in Portuguese);

e) address of the head office of the establishment;

f) telephone and email address for receiving communications;

g) the name of the prosecutors who shall represent the supplier in administrative or judicial proceedings relative to the call procedure; and

h) existence, if any, of representation in the states parties of Mercosur indicating their identification and contact details;

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

a) brand;

b) model;

c) lot, where applicable;

d) series, where applicable;

e) chassis, where applicable;

f) beginning and end date of manufacture; and

g) photo;

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

IV – detailed, clear, and ostensible description of the risks and their implications;

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

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

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

VIII - description of accidents related to the defect of the product or service, when

applicable, containing the following information:

a) place and date of the accident;

b) identification of the victims;

c) material and physical damages caused;

d) information of the legal proceedings related to the accident, specifying the actions filed, the names of the authors and defendants, the judicial district and courts in which they are processed, as well as the numbers of each proceeding; and

e) measures adopted in relation to the victims;

- IX - media plan for informing the consumers affected, pursuant to article 4;
- X - consumer service plan, in the terms established by article 5; and
- XI - model of the risk notice to the consumer, under the terms established by article 6.

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

Paragraph 3. The communications referred to in this article shall be electronically recorded in a procedure to be defined by the National Consumer Secretariat, preferably using originally digital documents in open format, processable by machine, in the terms established by item IV of article 2 of Decree nº 8,777 of May 11th, 2016.

Paragraph 4. Without prejudice to the period established in the head provision of this article, the supplier may justifiably request the authorization of the subsequent collection of information from the call campaign.

Paragraph 5. After the request provided for in paragraph 4 of this article is granted, the National Consumer Secretariat shall establish a period of up to fifteen working days counted from the date on which the communicant registered the call campaign to add the remaining information.

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

Art. 4. The media plan covered by article 3, paragraph 1, item IX, must contain the following information:

- I - beginning and end date of advertising;
- II - communication media to be used, time, and frequency of delivery, considering the need to reach most interested parties;
- III - model of the warning of risk of accident to the consumer to be served in the campaign, allowing all consumers to understand of the extent of the risk, including lay people;
- IV - delivery costs, in a detailed structure, respecting the confidentiality of the respective information; and
- V - justification of the choice of media, under the terms established by paragraph 2 of this article.

Paragraph 1. For the purposes of compliance with the provisions of paragraph 2 of article 10 of Law nº 8,078 of 1990, the messages referred to in the head provision of this article must be conveyed in writing, by transmission of sounds, and by transmission of sounds and images, admitted as suitable any of the following media of conveyance, always considering the need to reach most interested parties:

- I - printed media and the broadcasting on the company's website; II - sound broadcasting;
- III - sound and image broadcasting;
- IV - written digital media on the internet and broadcasting on the company's website;
- V - sound transmission over the internet; and
- VI - sound and image transmission over the internet.

Paragraph 2. The use of the chosen media must be duly justified among the alternatives that ensure the highest effectiveness of the message reaching the target audience of the campaign.

Paragraph 3. The supplier shall choose at least one written, one sound, and one sound and image broadcasting structure.

Paragraph 4. The broadcasting on the company's website must allow the viewing of the risk notice in up to two clicks and must be available to the consumer for five years, which may be extended at the discretion of the National Consumer Secretariat, according to article 9 of this Ordinance.

Paragraph 5. If the supplier is unable to effectively repair the product or service, the media plan must present a forecast of a new propagation method, when the repair is possible.

Art. 5. The consumer service plan referred to in article 3, paragraph 1, item X, should consider national and international best practices and contain the following information:

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

II - places and times of service;

III - average duration of the service;

IV - date of the beginning of the service; and

V - contingency plan and time estimate for the full adaptation of all affected products or services.

Sole paragraph. The guidelines and other documents and studies of the Working Group on the Safety of Consumer Goods of the Economic Cooperation and Development Organization, notably those regarding the application of behavioral inducers (insights), should be considered by the suppliers when preparing the documentation regarding the service plan.

Art. 6. The supplier shall immediately inform consumers of the harmfulness or dangerousness of the product or service placed on the market, in addition to the communication referred to in article 3, through an risk of accident notice to the consumer, in accordance with the provisions of article 10, paragraph 2, of Law nº 8,078 of 1990.

Paragraph 1. The consumer risk notice must contain clear and accurate information regarding:

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

a) brand;

b) model;

c) lot, where applicable;

d) series, where applicable;

e) chassis, where applicable;

f) beginning and end date of manufacture; and

g) photo.

II - date of the beginning of the service;

III - clearly and ostensibly, defect presented, risks and their implications, allowing all consumers to understand the extent of the risk;

IV - preventive and corrective measures that the consumer must take, when applicable;

V - measures to be adopted 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 aimed at protecting consumer safety, observing the provisions of arts. 12 to 17 of Law nº 8,078 of 1990.

Paragraph 2. The consumer risk notice must have enough distribution to ensure the information and understanding of the consumers regarding the harmfulness or dangerousness offered by the product or service object of the call campaign.

Paragraph 3. The direct individual communication to consumers does not detract from the obligation of collective communication regarding the harmfulness or dangerousness of products and services introduced to the market.

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

Art. 8. The supplier must present the following to the National Consumer Secretariat:

I - service reports, which shall be due until the last working day of the month following the reference period, informing the amount of products or services collected or repaired, including those in stock, and their distribution by the respective federal entities; and

II - final report of the call, informing the quantity of consumers reached in number and percentage, in overall terms, and by federal entity, justification and measures to be adopted concerning the percentage of products or services not collected or repaired, and the form in which consumers became aware of the risk notice.

Paragraph 1. The periodic service reports shall be presented quarterly.

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

Paragraph 3. Partial reports may be submitted before the end of the respective reference period at the discretion of the supplier concerned.

Paragraph 4. The supplier may request the waiver or extension of the deadline for the submission of periodic reports after the end of the fifth year of the call campaign.

Paragraph 5. The request referred to in paragraph 4 of this article shall be analyzed concerning the specificities of the call campaign, the number of consumers who became aware of the campaign, the service rate, and other factors that the National Consumer Secretariat considers relevant to the case.

Paragraph 6. In the event of the request for waiver of reporting, the supplier shall submit the final call report referred to in item II of the head provision of this article.

Paragraph 7. The final call report shall also be due when the campaign reaches one hundred percent service or when it is filed for loss of object.

Art. 9. The National Consumer Secretariat may determine the extension of the call, individually or cumulatively, at the supplier's expense, if the results were unsatisfactory.

Art. 10. The supplier cannot waive the free repair or replacement of the product or service covered by the call campaign, even with the waiver of the presentation of service report by the National Consumer Secretariat.

Art. 11. The communication of the consumer risk notice system may result in measures by the

regulatory bodies or competent regulators for the registration, control, and monitoring of the quality and safety of products and services placed on the consumer market.

Art. 12. The National Consumer Secretariat shall inform about the opening of call campaigns to state and municipal Consumer Protection and Defense Offices (Procons in Portuguese) located in capitals of the states of the federation, by physical or electronic media.

Art. 13. The supplier of products or services that becomes aware of accidents related to the defect of the product or service, after the communication of the call campaign, must provide the same information required in article 3, paragraph 1, item VIII, of this Ordinance. Art. 14. Failure to comply with the determinations of this Ordinance shall subject the supplier to the sanctions provided for in Law nº 8,078 of 1990 and in Decree nº 2,181 of March 20th, 1997.

Art. 15. Ordinance nº 487 of March 15th, 2012, of the Ministry of Justice is repealed.

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

SERGIO MORO