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Guidelines: For comments..... 3 34471

GENERAL NOTICE

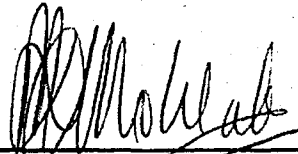
NOTICE 486 OF 2011

NATIONAL CONSUMER COMMISSION

I, Mamodupi Mohlala, Commissioner of the National Consumer Commission, hereby publish draft Consumer Product Safety Recall Guidelines in terms of the Consumer Protection Act, 2008 (Act No 68 of 2008).

Interested persons may submit their comments on the draft Consumer Product Safety Recall Guidelines in writing on or before **10 August 2011**; submissions must be forwarded to: The National Commissioner, National Consumer Commission c/o Mr. N Kuljeeth, P O Box 30251 Sunnyside, Pretoria, 0132 or per fax to (012) 394 2515 or email to nkuljeeth@thedti.gov.za

Kindly provide the name, address, telephone, fax number and or email address of the person or organization submitting the comments.



Ms. M MOHLALA
THE COMMISSIONER: NATIONAL CONSUMER COMMISSION

11/07/2011



NATIONAL CONSUMER COMMISSION

Consumer Product Safety Recall Guidelines

**What a supplier is required to do when conducting a
product safety recall**

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SECTION A

1. Introduction

- The product safety recall guidelines (the Guidelines) require a supplier to adopt a system that will ensure the efficient and effective recall of unsafe consumer products from consumers and from within the supply chain. Such systems of recall should be tailored to the type of product and the risk posed to consumers. A supplier may seek independent advice (including legal advice) regarding the system to be developed or put in place when conducting a consumer product recall.

1.1 What is the Purpose of these Guidelines?

- The purpose of the Guidelines is to provide guidance to suppliers on how to conduct a product safety recall.
- The Guidelines are created in terms of the provisions of section 60 of the Consumer Protection Act, No 68 of 2008 (CPA).
- The Guidelines have been developed by the National Consumer Commission (the Commission).

1.2 What is the Scope of these Guidelines?

The Guidelines have been developed to help suppliers plan for, and respond to, an incident where the recall of potentially unsafe consumer products is required. It does this by setting out:

- the legal requirements for suppliers in relation to a consumer product recall specified in the CPA
- the role and responsibilities of suppliers and government agencies when a recall is necessary.
- requirements for conducting a recall, including

- notification;
- recall strategy;
- retrieval of the product;
- reporting on the recall

2. Background.

- A consumer product safety recall may take place when a problem that may be identified as a health or safety hazard occurs.
- Voluntary product recalls may be initiated by suppliers when they become aware of safety issues. Product recalls may also be negotiated with suppliers by the Commission or other Regulators when they identify a safety issue or following enforcement or compliance action.
- As a last resort, the Commission may order a compulsory recall to protect the public from any unsafe goods in terms of section 60(2) of the CPA. When this happens, the Commission may issue a written notice stipulating the manner in which the recall is to occur. The Commission will monitor compliance with all such notices issued by it.

3. Why is the NCC Involved in Consumer Product Recalls?

- Suppliers have an obligation under the CPA to notify the Commission when they undertake a recall.
- The Commission's primary purpose with regards to product recalls is to ensure that any unsafe product is effectively removed from the marketplace and the hands of consumers.
- The Commission enforces and administers the CPA; that applies to all transactions occurring within the Republic that involve goods including transactions that are exempt from the application of the CPA.

- The range of goods covered under the CPA, and to which the product safety requirements apply, is broad and covers any goods as defined by the Act.¹

Section B

1. Legal Requirements and Responsibilities.

1.1. Legal Requirements.

Consumer Protection Act Recall Provisions:

- Section 60 (1) of the CPA provides that the Commission must promote, within the framework of section 82, the development, adoption and application of Industry-wide Code of Practice providing for effective and efficient systems to:
 - (a) Receive notice of-
 - (i) Consumer complaints or reports of product failures, defects or hazards;
 - (ii) The return of any goods because of a failure, defect or hazard;
 - (iii) Personal injury, illness or damage to the property caused wholly or partially as a result of a product failure, defect or hazard; and
 - (iv) Other indication of failure, defect or hazard,in any particular goods or in any component of them, or injury or damage resulting from the use of those goods.
 - (b) Monitor the sources of information contemplated in paragraph (a), and analyse the information received with the object of detecting or identifying any previously undetected or unrecognised potential risk to the public from the use of or exposure to those;

¹ See s. 1 of the CPA, where the definition of "goods" include: (a) anything marketed for human consumption; (b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded; (c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or coded on any medium, or a licence to use any such intangible product; (d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of 'services' in this section; and (e) gas, water and electricity.

- (c) Conduct investigations into the nature, causes, extent and degree of the risk to the public;
 - (d) Notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods; and
 - (e) If the goods are unsafe, recall those goods for repairs, replacement or refund.
- Section 60(2) provides that, If the Commission has reasonable grounds to believe that any goods may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the producer or importer of those goods has not taken any steps required by an applicable code contemplated in subsection (1), the Commission, by written notice, may require that producer to-
 - (a) conduct an investigation contemplated in subsection (1); or
 - (b) carry out a recall programme on any terms required by the Commission.
 - Section 60(3) provides that, A producer or importer affected by a notice issued in terms of subsection (2) may apply to the Tribunal to set aside the notice in whole or in part.
 - The guidelines will form part of any Industry Code developed in terms of section 82 of the CPA where goods are a subject matter.
 - Section 60 (1) of the CPA provides that the Commission must within the framework of Industry-wide Code of Practice promote voluntary recalls of products for safety-related reasons.
 - A voluntary recall occurs when the supplier initiates the recall and voluntarily takes action to remove the relevant goods from distribution, sale, and/or consumption. A voluntary recall may also be negotiated with a supplier by the Commission following enforcement or compliance action. The use of the word 'voluntary' does not correspond to whether or not the distribution network/chains can choose to remove the product from sale. When a recall occurs, all of the particular consumer products subject to the recall must be removed from the market place.

- The Commission requires be notification in writing within two days of the supplier initiating the recall.
- The notice must state that the goods are subject to a recall and set out the nature of the defect, or the dangerous characteristic of, the goods.
- A supplier who fails to notify the Commission may be found guilty of an offence under s.110 (2) of the CPA.
- Section 60(2) empowers the Commission to order a supplier to recall any goods which on reasonable grounds the Commission believes that those goods will or may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the producer or importer of those goods has not taken any steps required by an applicable code. The Commission, by written notice, may require that the producer to carry out a recall programme on any terms required by the Commission. These are known as 'compulsory' recalls.

1.2. Supplier Responsibilities.

1.2.1. Responsibility for the Supply of Safe Products.

- A supplier is the entity who has the primary responsibility for the supply of safe consumer products in South Africa. 'Suppliers' include manufacturers, importers, distributors and retailers. There will often be more than one supplier responsible for a particular product.
- Individual suppliers are responsible for the investigation and rectification of safety related hazards in products that they supply.
- A safety hazard may be identified by many means, including:
 - detection by the supplier undertaking the recall or another supplier within the supply chain;
 - complaint by a consumer;
 - detection by an industry body or consumer organisation; and

- detection by the Commission, another Regulator or a State entity.
- An unsafe product may result from a manufacturing or production error, that is, where the manufacturer of the product departed from its design or material specifications during production.
- An unsafe product may also result from a design defect, that is, a product may be unsafe even if the product is manufactured exactly in accordance with its design and specifications. A defect in design may also be the cause of risk or injury as a result of the operation or use of the product, the reasonably foreseeable use of the product, or the failure of the product to operate as intended.
- Where the Commission detects or becomes aware of a safety related hazard it will attempt to identify the supplier at the highest level in the supply chain in order to assist the supplier to ensure all relevant suppliers from within the supply chain, including international recipients, are identified and advised of the safety related hazard relating to the product.

1.2.2. Supplier Recall Responsibilities.

- A supplier has the following general responsibilities in relation to a recall:
 - conduct a comprehensive risk analysis of the safety hazard;
 - stop distribution of a product that has been identified for recall;
 - cease production or modify the manufacturing process for a product that has been identified for recall;
 - remove the unsafe product from the marketplace;
 - notify the relevant regulator/s;
 - notify the public;
 - notify international product recipients;
 - notify others in the domestic supply chain;
 - facilitate the return of recalled products from consumers;

- store and dispose of recalled products safely;
 - have a written recall strategy/plan;
 - maintain records and establish procedures that will facilitate a recall (records should be in a form that can be quickly retrieved); and
 - provide progress reports on the conduct of the recall to the Commission and relevant regulators.
- Where the risk analysis determined that it is not necessary to retrieve products from consumers, however to mitigate the safety risk some other action by the supplier is required. These other actions may include a trade level recall or issuing a safety alert.
 - Where a supplier initiates a trade level recall, the same general responsibilities would apply except that the supplier would not be required to notify the public. Likewise when issuing a safety alert, a supplier would have the same general responsibilities, however, it would not be required that the unsafe product be removed from the marketplace.

Section C

1. Mitigating a Product Safety Risk.

1.1. Identifying a Consumer Product Safety Hazard.

- Where a supplier becomes aware of a possible safety hazard in a consumer product that may cause injury to a person, the supplier should immediately conduct the following assessment:
 - gather and assess the reliability of all available information about the potential hazard;
 - identify how the problem occurred;
 - conduct a comprehensive risk analysis; and
 - look at all possible ways to address the safety related hazard and decide whether the product can be repaired or modified.

- The Commission requires a supplier to contact it when commencing such an assessment. This will enable the Commission to work with the supplier to determine what action (if any) is required to mitigate a safety related hazard with the product.

1.2. Determining an Appropriate Course of Action.

- Depending on the outcome of the risk analysis there are a number of possible actions a supplier may choose to take to mitigate a safety related hazard. These include:
 - Calling back or withdrawing of products from the market or distribution chain;
 - requesting consumers or other suppliers:
 - (i) to return products for refund, replacement or modification; or
 - (ii) to contact the supplier to arrange for a replacement product or part to be sent to the consumer; or
 - sending a service agent to a person's home or place of business to repair or modify a product; or
 - requesting a service agent repair or modify a product when it is next presented for servicing.
- The decision about the most appropriate action in order to reduce the risk to consumers will depend on a number of factors, including the nature of the risk and distribution and lifecycle of the product. The supplier should consult with the Commission about the most appropriate strategy.

2. Conducting a Recall.

2.1. What are the Objectives of a Recall?

- The objectives of a recall are to:
 - stop the distribution and sale of the affected product as soon as possible;
 - inform the relevant authorities of the problem;
 - inform the public of the problem;
 - effectively and efficiently remove from the market place any product which is potentially unsafe; and
 - prevent the further distribution of unsafe products.

2.2. Requirements for Conducting a Recall.

- The supplier has the prime responsibility for implementing a recall. A recall should be implemented in accordance with its recall policy and after consultation with the Commission.
- In order for the Commission to be assured that a product safety risk will be effectively mitigated, it requires that the supplier undertake the following actions:
 - notify the regulator/s of the recall, which includes providing details of other entities within the supply chain that have been notified of the recall;
 - prepare and submit a recall strategy to the regulator/s;
 - retrieve the affected product from consumers and from within the supply chain; and
 - report on the recall to the regulator/s.

3. Notification.

3.1. Notification of the Commission.

- A supplier undertaking a safety-related recall is required by the CPA (section 60(1)) to notify the Commission in writing preferably before commencing recall action. However, the supplier must notify the Commission within two days of commencing a recall action.
- As a matter of administration, the Commission recommends that a supplier notify the Commission when the supplier decides to take any one of the following actions to mitigate a product safety related hazard:
 - call back or withdraw products from the market or distribution chain;
 - requesting consumers or other suppliers:
 - (i) to return products for refund, replacement or modification; or
 - (ii) to contact the supplier to arrange for a replacement product or part to be sent to the consumer; or
 - send a service agent to a person's home or place of business to repair or modify a product; or
 - make arrangements for a service agent to repair or modify a product when it is next presented for servicing.
- A supplier will fulfil the notification requirement by completing and submitting a recall Notice to the Commission's offices on the prescribed form.
 - Recall Notification Form (Section 60 Notification)
- A Recall Notification Form can be obtained from the Commission by calling 0860 266 786 OR email: NMnguni@thence.co.za.
- A completed form can be submitted to the Commission's office situated at the DTI Campus, 3th Floor, E block (Uuzaji Building), 77 Meintjies Street, Sunnyside, Pretoria 0002; OR email: NMnguni@thence.co.za.

3.2. Notification of International Product Recipients.

- A supplier undertaking a voluntary or compulsory safety-related recall is also responsible for goods supplied outside South Africa. It is therefore, required that the supplier notify in writing any person outside South Africa, to whom they have supplied goods, that the goods are subject to a recall.
- The notification must state that goods are subject to a recall and, if the goods contain a defect, have a dangerous characteristic or do not comply with a prescribed consumer product safety standard, set out the nature of the problem or non-compliance.
- Where a supplier has complied with the notification requirements under section 60(1), the supplier should provide to the Commission, within 10 days of providing the notice, a copy of the notice. This requirement can be fulfilled by sending a copy to the Commission via email, fax or by hand delivery to the Commission.

3.3. Other Entities in the Domestic Supply Chain.

- Recall effectiveness is contingent upon the effective notification and cooperation between all entities in the supply chain.
- The Commission therefore requires a supplier who undertakes a safety-related recall of consumer goods to notify any entity from within the domestic supply chain in writing that a recall has been initiated.
- Where a supplier has complied with this requirement to notify entities from within the domestic supply chain that a recall has been initiated, the supplier should advise the Commission.

4. Recall Strategy.

- A supplier is required to submit a recall strategy to the Commission on initiating a recall thereby assuring the Commission that the product safety risk will be effectively mitigated.

- A supplier should negotiate the content of the recall strategy with the Commission prior to submitting it.
- The recall strategy is the first stage of reporting in relation to a recall and will assist the Commission to assess whether the product safety risks associated with the unsafe product will be adequately addressed.
- Some elements of the recall strategy should be supplied to the Commission at the time of initiating the recall however other elements will not become evident until the recall has progressed and are to be provided at agreed intervals.

4.1 Elements of a Recall Strategy.

- A supplier's recall strategy must include:
 - an explanation of the problem, including the hazard associated with the product and the supplier's assessment of the risk posed by the product;
 - the number of units supplied to consumers and others in the supply chain;
 - information about any known injuries or incidents associated with the product
 - information about the life cycle of the product;
 - information about the proposed communication with consumers, including the method of communication, frequency with which the communication will be repeated and details of the message. This should be negotiated with the Commission.
 - information about the way in which the supplier will manage contact from consumers about the recalled product, including any complaint handling procedures;
 - information about the manner in which the recalled product will be collected, destroyed or rectified;
 - contact details of the manufacturer and/or importer of the product;
 - contact details of other entities in the supply chain to whom the recalling supplier has supplied the product;

- contact details of international product recipients; and
- action taken by the supplier to identify and correct the cause of the hazard, including the outcome of any root cause analysis or the time period in which such analysis will occur.

5. Communication Plan.

- The purpose of communicating with consumers about a recall is to ensure that product related injuries are prevented through the removal or rectification of unsafe products. The goal in communicating a product recall is to ensure consumers comply with the recall notification.
- Matching the communication medium to the consumer is important to achieve the objective of compliance with a recall notice. Communications regarding the recall should therefore be directed towards the particular consumer demographic for the recalled product, using an appropriate communication method.
- Although there are a range of communication methods through which a supplier can communicate with consumers about a recall, there are some minimum requirements for written communication.
- A written recall notice must include:
 - **Product description**—a clear description of the product, including the name, make and model and any distinguishing features, batch or serial numbers. Including dates the product was available for sale;
 - **Picture of the product**—a photograph or drawing of the product will provide the consumer a visual representation of the product;
 - **Description of the defect**—a clear description of what the defect is. The defect should be described in simple terms so that the average consumer can understand. Refrain from using technical specifications wherever possible;

- **A statement of the hazard**—describes the maximum potential hazard and associated risk. Where available a appropriate hazard symbol should be included;
- A section titled '**What to do**', which explains the immediate action the consumer is to take, for example, cease use immediately and return product to the place of purchase for a full refund. It should be clear that the consumer should return the product and not dispose of it. The supplier must ensure it minimises the inconvenience to consumers to encourage consumer compliance with the recall notice;
- A section titled '**Contact details**', what explains who consumers should contact to receive a refund or have the product repaired or replaced. Include business and after hours telephone numbers, preferably toll free and email and website addresses.
- The recall notice must **not** include the words 'voluntary recall'.
- A supplier should place information relating to a product recall prominently on its website.
- There are a number of factors that influence the effectiveness of a recall communication, including the following:
 - characteristics of consumers who originally purchased the affected product;
 - geographic distribution of the affected product;
 - nature of the hazard/risk posed by the affected product; and
 - access to direct contact with consumers who have been supplied the affected product.

6. Retrieval of the Affected Product.

- The ultimate goal of a recall is to retrieve as many unsafe products from the hands of consumers as possible and prevent any further distribution of the affected product in the market place.

- Products that are the subject of a recall may be recovered from different entities in the supply chain or directly from consumers.
- A supplier is required to make arrangements for the retrieval of the product. These arrangements should include:
 - establishing collection points across the distribution network;
 - notifying the relevant parties, including other entities in the supply chain and consumers of the method of retrieval of the recalled product; and
 - arrangements for disposing of the returned product—this may involve arranging for the returned product to be held and kept separate until it can be rectified or safely destroyed.
- Low value products pose particular challenges for suppliers when it comes to a recall. Low value does not mean low risk and suppliers should still seek to achieve effective recalls of such products.

7. Reporting on the Recall.

7.1. Progress Reports.

- In order to monitor the progress and enable ongoing assessment of the effectiveness of the recall the Commission requires a supplier to provide progress reports.
- The Commission will develop a reporting schedule with a supplier at the beginning of a recall that appropriately reflects the product risk being addressed. The information the Commission will require as part of any progress reports will be dependent on the circumstances of the recall and therefore will be negotiated on a case by case basis. Examples of the types of information the Commission may require in a progress report include:
 - the number of products returned from within the supply chain and from consumers;
 - the number of complaints and inquiries that have been received regarding the product and the nature of these complaints;

- the number of inquiries that have been received from consumers regarding the recall and the nature of these inquiries; and
- whether the supplier deviated from the original plan at all in relation to the communication strategy or any other strategies and the reasons why.

7.2. Final Report.

- When a supplier has taken all reasonable steps to effectively mitigate the risk posed by the unsafe product, the recall can be closed. Closure of a recall does not affect the rights of consumers in relation to the product and the public can continue to access information about the recall through the supplier's recalls website or any form designed by the Commission. However, when a recall is closed the supplier no longer needs to actively promote the recall and the regulatory oversight ceases.
- The Commission requires a supplier to submit a final report before the recall can be closed.
- A supplier's final report must include:
 - confirmation of the total number of product supplied and the final number of units recovered from consumers and from within the supply chain;
 - evidence to demonstrate that all entities from within the domestic supply chain were notified of the recall;
 - information about the communication strategy, including copies of any data about its effectiveness (for example, number of unique visitors to the relevant webpage);
 - action taken by the supplier to identify and correct the cause of the safety related hazard in the product, including the outcome of any root cause analysis, whether the defect was a manufacturing or design or some other defect and the steps the supplier has taken to remedy such defect;
 - information about any known injuries or incidents associated with the product;
 - the final number of complaints or inquiries that have been received regarding the recall and/or the product; and

- information about the manner in which the recalled product has been destroyed or rectified, including evidence of the destruction or rectification of the unsafe product.



NATIONAL CONSUMER COMMISSION

Recall Notification Form

Completion of this form constitutes notification to the Commission under Section 60 of the Consumer Protection Act 68 of 2008.

Public information:

Name of supplier	
Website	

Product Details:

Product name	
Product description	
Identifying numbers	

e.g. VIN no., batch no., model no., serial no., approval no. Etc

Where the product was sold	National	Limpopo	Gauteng	N. Cape	W. Cape
	E. Cape	Free State	N. West	Mpumalanga	KZN

Traders who sold the product	
Dates available for sale	

Product Defect Details:

What are the product defects?	
What are the hazards	
What should the consumer do?	

Private Information:

Quality Affected				
Who initiated the recall?	The Commission		Other Regulator	
	Supplier		Gov. Department	

Product Details:

Recommended retail price (R)																
Life span of product (years)																
Age group/s that purchased your product	0-17		18-30		31-45		46-65		65+							
	National Newspaper/s		TV		Online		Radio		In-Store							
Marketing medium used to sell the product	Direct Contact		Catalogues		Other											
	Product is supplied with a warranty registration card or an online registration option <table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>Unknown</td> <td></td> </tr> </table>											Yes		No		Unknown
Yes		No		Unknown												

Supply Chain:

Your position(s) in the supply chain	<table border="1"> <tr> <td>Manufacturer</td> <td>Retailer</td> <td>Importer</td> <td>Distributor</td> <td>wholesaler</td> </tr> </table>	Manufacturer	Retailer	Importer	Distributor	wholesaler	
Manufacturer	Retailer	Importer	Distributor	wholesaler			
Manufacturer's name							
Manufacturer's contact details							
Product's country of origin							
Countries where product was exported (if any)							
Processes/mechanisms are in place to track the product through the supply chain	<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>Unknown</td> <td></td> </tr> </table>	Yes		No		Unknown	
Yes		No		Unknown			

Injuries:

Known injuries or damage related to this product	
--	--

Recall Advertising:

Provide details of any action you are taking to publicise this recall	
---	--

Consumers are offered incentives to return the product (eg. cash, gift card, discount)	<table border="1"> <tr> <td>Yes</td> <td><input type="checkbox"/></td> <td>No</td> <td><input type="checkbox"/></td> <td>Unknown</td> <td><input type="checkbox"/></td> </tr> </table>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>		

Supplier's details:

Contact name	
Contact position	
Phone 1	
Phone 2	
Fax	
Email	
Street address 1	
Street address 2	
Suburb	
Province	
Post code	
Country	

Nominated representative (if different from above)

Contact name	
Contact position	
Phone 1	
Phone 2	
Fax	
Email	
Street address 1	
Street address 2	
Suburb	
Province	
Post code	
Country	

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