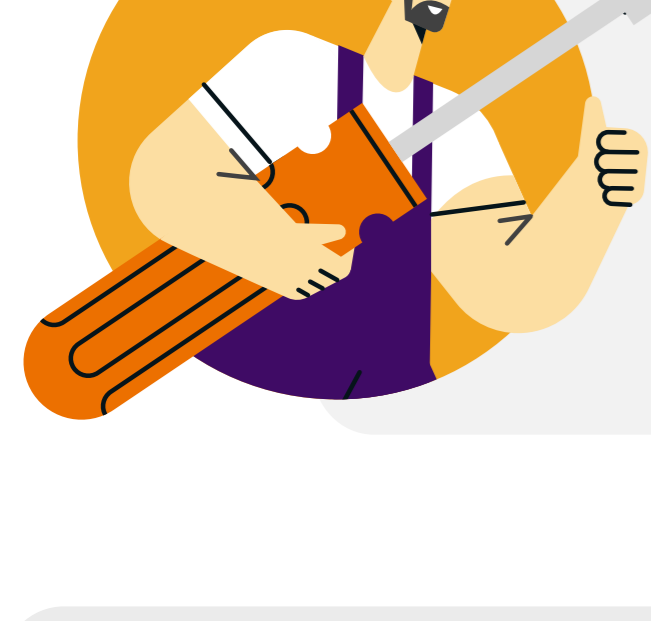


## Recall Campaigns in Brazil: A Legal & Regulatory Overview

Recall campaigns are the process of removing or correcting products and services that pose risks to consumer health and safety, ensuring consumers' fundamental rights are protected. The process stems from the risks inherent in mass production, which involves large batches of standardized parts. Any defect or failure identified in one unit may have been replicated in other units from the same batch.



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### Recall

A STEP-BY-STEP GUIDE



In Brazil, the Consumer Protection Code (Law No. 8,078/1990, or CDC) provides a legal basis for recalling products and services (Article 10, Paragraph 1), stipulating that companies must notify the authorities of any dangerous or harmful defects in products they have made available in local consumer markets. The Brazilian public must also be made aware of the defect through advertisements, which must be placed in the press, on radio and on television, at the supplier's own expense (Article 10, Paragraph 2).

Based on the constitutional power of Ministers of State to issue instructions regarding the enforcement of laws, Brazil's consumer affairs watchdog, Senacon (part of the Ministry of Justice and Public Security), issued Ordinance No. 618 in 2019 to regulate the procedures established in Article 10, Paragraphs 1 and 2 of the CDC.

#### In regulating recall campaigns, Ordinance No. 618/2019 establishes:

- (i) Rules and deadlines for notifying Senacon and for investigations into potential defects prior to recall;
- (ii) Information that must be shared when launching the campaign in regard to the defect, related risks, and the quantity of affected products when launching recall campaigns;
- (iii) Necessary details of recall-related media plans;
- (iv) Greater flexibility regarding the types of media that can be used to inform consumers of recall campaigns (Article 10, Paragraph 2 of the CDC), given the ways mass media consumption has changed since the CDC was enacted.

In addition to Ordinance No. 618/2019, other important instruments regulate recall procedures in Brazil. In particular, Senacon has issued a series of technical notes aimed at ensuring the regulation and consistent treatment of specific situations, thereby providing greater legal certainty and a more predictable environment.

#### Technical Note No. 4/2020 (CCSS/CGCTSA/DPDC/SENACON/MJ)

Technical Note No. 4/2020 regards Senacon's ability to determine which means of dissemination companies must use in recall campaigns concerning products released into the consumer market (i) in insignificant quantities; (ii) in a restricted market segment; and (iii) that are easily traceable.

In this regard, Senacon must analyze each case to determine the most efficient way to remove the relevant defective products or services from the market. It may also permit companies to run reduced recall campaigns or set alternative means of communication.

Senacon's assessment must be based on the parameters listed in Annex I of Technical Note No. 4/2020, including product traceability, adequate public notification, the quantity of products distributed, the company's track record, and recall timeliness. When analyzing a company's request to limit the scope of a recall campaign, Senacon will consider factors such as the company's use of the [Consumidor.gov.br](http://Consumidor.gov.br) web platform, its behavior, and whether it participates in specific training programs (e.g., *Projeto Capacitação*).

Once the company has submitted specific evidence and information, it is up to Senacon to officially decide whether a reduced recall campaign is justified.

#### Traceability Parameter

Annex I of Technical Note No. 4/2020 determines which means of communication are to be used, in line with the number of identifiable consumers:

- **At least 90% of consumers identified:** Requires a media plan with a public risk notice on the company website, as well as at least one of the types of media communication listed in Ordinance No. 618/2019.
- **At least 80% of consumers identified:** Requires a media plan with a public risk notice on the company website, as well as at least two of the types of media communication listed in Ordinance No. 618/2019.
- **Less than 80% of consumers identified:** Requires a media plan as per the terms of Ordinance No. 618/2019. Limiting any of the means provided for in the ordinance is not permitted.

#### Quantity Parameter

The extent of the company's efforts to publicize its recall campaign and reinforce its message must be proportional to the quantity of products or services available on the market, with the specific characteristics of each case taken into account. Although Senacon does not stipulate the exact number of products it considers to be 'many', it may decide to use the number of batches and the number of products per batch as parameters.

#### Recall Targets

Once Senacon has determined whether it will reduce the scope of the company's recall communications, it will set targets for the company to recall its goods and reduce the frequency at which periodic reports must be submitted to the authority:

- For **durable goods**, at least 80% of the goods must be recalled.
- For **non-durable goods**, at least 60% of the goods must be recalled.

Senacon's Department of Safe Consumption (*Coordenação de Consumo Seguro*) will establish a deadline of no more than three years for removing the goods in question from the consumer market. Intermediate goals for recalling goods must also be established, with deadlines of no less than six months.

Failure to meet **intermediate goals** may necessitate adjustments to the company's media plan, while failure to meet the final goal may require the preparation of a new media plan.

#### Track Record Parameter

Senacon must consider (at least) the last five recall campaigns the company has run, analyzing (i) the company's transparency in relation to consumers; (ii) how adequate its media plans were; (iii) the compliance of its campaigns.

If the company has not launched any campaigns since Ordinance No. 618/2019 was issued, Senacon will discard this parameter when determining the scope of the recall campaign.

#### Technical Note No. 6/2020 (CCSS/CGCTSA/DPDC/SENACON/MJ)

Technical Note No. 6/2020 concerns Senacon's interpretation of Article 2 of Ordinance No. 618/2019. According to the wording of Article 2, the supplier must notify Senacon of the commencement of investigations within 24 hours of becoming aware that a potentially defective product has been placed on the market. Senacon issued Technical Note No. 6/2020 as it considered Article 2 unclear about the exact moment the authority needs to be notified. The technical note therefore makes it clear that **specific small-scale failures do not require notification**. Rather, the supplier should carry out a preliminary investigation before deciding to notify Senacon:



In the **preliminary investigation**, the company must verify internally whether the production problem affects a smaller or larger number of units. Senacon does not need to be notified at this stage.

The **main investigation** is only required if a large-scale failure is identified during the preliminary investigation. This is the investigation referred to in Article 2 of Ordinance No. 618/2019, of which Senacon must be notified.

#### Technical Note No. 28/2020 (CCSS/CGCTSA/DPDC/SENACON/MJ)

Ordinance No. 618/2019 requires suppliers to submit periodic service reports to Senacon (Article 8, Item I), detailing both the quantity of products collected and repaired, as well as their distribution across Brazil's states.

The ordinance also provides for the possibility of requesting exemptions and extensions to the deadline for submitting such reports (Article 8, Paragraph 4) at the end of the fifth year of the recall campaign. However, the ordinance does not specify any particular parameters for granting these requests.

As such, Senacon issued Technical Note No. 28/2020, which outlines the parameters for granting exemption requests for service reports and consequently archiving the recall process. Different conditions were established for non-durable and durable goods:

- **Non-durable goods:** Requests may be granted one year after the expiration date of the goods subject to recall.
- **Durable goods:** Requests may be granted after the fifth year of the recall campaign, provided that:
  - In the case of **motor vehicles**, at least 80% of the goods subject to recall must have been withdrawn from the market (although the technical note refers to percentages of 70% and 80% at different times, a conservative approach is recommended).
  - In the case of **other durable goods**, at least 50% of the goods subject to recall must have been withdrawn from the market.

Note that if a supplier receives an exemption from submitting service reports, they remain liable to consumers in possession of their defective goods once the recall process has begun. The supplier remains responsible for repairing, replacing, and reimbursing affected consumers at any time, regardless of whether the recall campaign has started.

#### Technical Note No. 482/2019 (CCSS/CGCTSA/DPDC/SENACON/MJ)

Technical Note No. 482/2019 was issued to clarify Senacon's interpretation of questions linked to preparing recall campaign media platforms (Article 4, Ordinance No. 618/2019). Given recent developments in communication platforms and the Internet of Things (IoT), this technical note aims to modernize the methods for publishing risk notices in the context of recalls.

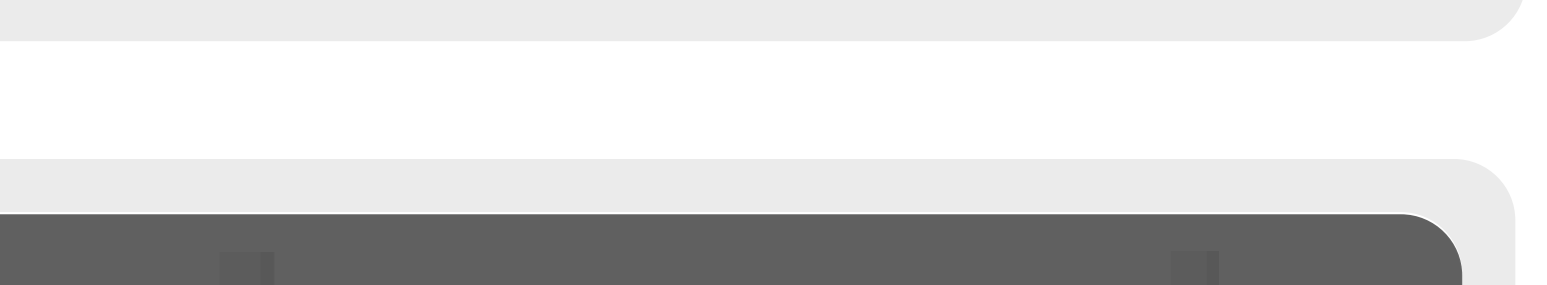
When combined with intelligent data use, algorithms are one of the most effective ways to ensure access to quickly information in the digital era. As such, they are also among the most effective ways to quickly mitigate risks in consumer markets, thereby protecting both consumers and the broader community.

With Technical Note No. 482/2019, Senacon permits suppliers to disclose recall risk notices via means including its own internet apps, and pop-ups on devices and objects connected to the IoT, provided the authority believes the adopted means will be more effective.

Despite this, when disclosing recall risk notices, suppliers must still comply with three of the means specified in Article 4 of Ordinance No. 618/2019 – transmission in writing, transmission of sounds, and transmission of sound and images.

#### Ministry of Infrastructure and Ministry of Justice & Public Security Joint Ordinance No. 3/2019

Joint Ordinance No. 3/2019 regulates recall campaign procedures for **replacing or repairing harmful or dangerous automotive vehicles**.



A summary of some of the key obligations that manufacturers, assemblers, importers, coachbuilders or transformers of automotive, electric, trailer and semi-trailer vehicles must comply with is provided below:

- In addition to notifying Senacon (as per Article 2, Ordinance No. 618/2019), Brazil's National Traffic Secretariat (Senatran – formerly Denatran) must be notified by electronic means of any defect or hazard identified.
- Records, consultations, notifications to vehicle owners and recall write-offs (Article 2, Paragraph 2) must be included on a system integrated with the National Motor Vehicle Registration System (RENAVAM).
- Depending on the form of disclosure, suppliers must either physically or digitally store individual vehicle recall notification receipts until the campaign's withdrawal target has been met. Senacon or Senatran may request these receipts at any time (Article 3, Paragraphs 6 and 7).
- The supplier must submit updated information (at a minimum of every 15 days) on the defective vehicles it has attended to, in accordance with the terms of RENAVAM's manual for recall registration (Article 5).
- Information related to the recall must be included in the vehicle's Registration and Licensing Certificate (CRLV) in the event the vehicle owner has not returned the vehicle within one year of the recall campaign's launch (Article 6).
- Suppliers are responsible for the accuracy of the recall information on Senatran's databases and are also liable for any harm to citizens or society resulting from this information (Article 7).

In addition to the risk notice, vehicle owners must be notified on an individual basis via an online system made available by Senatran. However, if the vehicle owner is not registered on the system, the supplier must notify the owner via post at its own expense (Article 3, Head Paragraph and Paragraphs 1 to 3).

The supplier must issue and subsequently send consumers a certificate indicating its response to the recall, which must identify the recall itself, the time, date, place, and duration of the response, and the measures adopted and guarantees for the services. Suppliers must make this certificate possible to print via their website at any time, and may also send the document (in PDF format) via Senatran's online system and/or to the current vehicle owner's e-mail address, if the owner requests this at the time of the supplier's response (Article 4).

Within 15 days of carrying out the necessary service on a relevant vehicle, the supplier must include information on fulfilling the recall on RENAVAM (Article 6, Paragraph 1).

Failure to comply with Joint Ordinance No. 3/2019 may result in penalties as provided for in the CDC and Decree No. 2,181/1997, as well as the cancellation of the Vehicle-Type Approval Certificate (CAT) for the vehicle model by Senatran.

PLEASE NOTE THAT THIS PUBLICATION ONLY ENCOMPASSES SENACON RULES AND REGULATIONS. DEPENDING ON THE TYPES OF PRODUCTS OR SERVICES OFFERED, COMPANIES MAY ALSO NEED TO COMPLY WITH SPECIFIC RECALL-RELATED RULES FROM OTHER REGULATORY BODIES IN BRAZIL, SUCH AS ANVISA, SENATRAN, INMETRO, MAPA, ETC.