



FAIR COMPETITION COMMISSION

THE FAIR COMPETITION COMMISSION PRODUCT RECALL GUIDELINES

1.0 INTRODUCTION

1.1 Background

A product safety recall is initiated when a consumer good is identified as presenting a safety risk to consumers. Many recalls are initiated solely by suppliers when they become aware of safety issues presented by their products. The Fair Competition Commission (herein referred as “FCC” or “the Commission”) may recommend that the Minister of Industry and Trade herein referred as “the Minister” initiate a compulsory recall in order to protect the public from an unsafe good (section 53 of the Fair Competition Act 2003 (CAP 285) (hereinafter referred as “the FCA”). In this event, the FCC will direct the manner in which the recall is to occur and will enforce compliance.

1.2 The purpose

The purpose of the product safety recall guidelines (the Guidelines) is to assist suppliers in effectively conducting a product safety recall in accordance with the FCA. (The Guidelines are provided for guidance only, however, and are in no way legally binding.)

The product safety recall system a supplier has in place should be tailored to the specific products supplied and the degree of risk those products may pose to consumers. Suppliers may seek their own independent advice (including legal advice) regarding the systems they develop for conducting a consumer product recall.

1.3 Scope of the guidelines

The Guidelines have been developed to help suppliers plan for, and respond to, a safety incident necessitating the recall of a consumer good. It does this by setting out:

- (a) the legal requirements for suppliers in relation to a consumer product recall as specified in Part IX of the FCA;

- (b) the role and responsibilities of suppliers and government agencies/Ministry when a recall is necessary; and
- (c) the essential elements of a successful recall, including:
 - (i) notification;
 - (ii) recall strategy;
 - (iii) retrieval of the product; and
 - (iv) reporting on the progress of a recall.

1.4 Why is the Fair Competition Commission (FCC) involved in consumer product recalls?

- (a) Suppliers have an obligation under the FCA to notify the FCC when they initiate a recall.
- (b) The FCC receives the notification and oversees the recall to ensure that suppliers effectively remove unsafe products from the marketplace and retrieve them from consumers.
- (c) The FCC enforces and administers the FCA, which applies to all persons and other entities engaged in trade and commerce.
- (d) The range of goods covered under the FCA (and to which the product safety requirements apply) is broad and covers but not limited to¹-
 - (i) ships, aircraft and vehicles;
 - (ii) animals, including fish;
 - (iii) minerals, trees and crops, whether on, under, or attached to land or not; and
 - (iv) gas and electricity.

2.0 – LEGAL REQUIREMENTS, ROLES AND RESPONSIBILITIES

2.1 Legal Requirements

- (a) Section 56(1) of the FCA requires suppliers “**voluntarily**” recalling products for safety-related reasons to notify in writing the FCC within two days after initiating the recall.
- (b) The notice must state that the goods are subject to a recall and set out the nature of the defect in, or dangerous characteristic of, the goods.
- (c) A supplier who fails to notify the FCC may be found guilty of an offence under section 56(2) of the FCA.

¹ See s. 2 of the FCA, which defines “goods” as including ships, aircraft and other vehicles; animals, including fish; minerals, trees and crops, whether on, under or attached to the land or not; and gas and electricity.

- (d) A voluntary recall occurs when the supplier of a consumer product initiates the recall and voluntarily takes action to remove the goods from distribution, sale, and/or consumption. A voluntary recall may also be negotiated with a supplier following enforcement or compliance action by the FCC. The word 'voluntary' is not intended to infer that a supplier may choose not to remove the product from sale. When a recall occurs, all of the goods subject to the recall must be removed from the market place.
- (e) Section 53(1)(c) read together with subsection (1)(b) of the FCA empowers the Minister to order a supplier to recall goods that may cause injury to any person if it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods from causing injury.
- (f) The Minister's recall order will stipulate the manner and timing of the recall. These are known as "**compulsory**" recalls – section 53(3) FCA.
- (g) Sections 53(7) & (8) of the FCA require a supplier who undertakes a voluntary or compulsory recall to give, as soon as is practicable, written notice to any person outside Tanzania Mainland to whom they have supplied the goods.
- (h) A copy of the written notice in sub-paragraph (g) above shall be sent to the Minister within ten days after giving the notice.

2.2 Roles and responsibilities of the Supplier

2.2.1 Roles and responsibilities of the supplier for the supply of safe products

- (a) A supplier is the entity that has primary responsibility for the supply of safe consumer products in Tanzania. "Suppliers" include manufacturers, importers, distributors and retailers. There will often be more than one supplier responsible for a particular product.
- (b) Each entity in the supply chain is responsible for assessing and (if necessary) rectifying potential safety hazards presented by the consumer products that they supply. All suppliers in the supply chain should also be able to *demonstrate* due diligence in the procurement and supply of those consumer goods.
- (c) The responsibility to ensure consumer goods are safe and fit for purpose may not be discharged to other parties in the supply chain, whether they be domestic or overseas manufacturers, suppliers or distributors.

- (d) A safety-related hazard may be identified by a number of different means, including-
 - (i) detection by the supplier undertaking the recall or by another supplier within the supply chain
 - (ii) a complaint from a consumer
 - (iii) detection by an industry body or consumer organisation or
 - (iv) detection by the FCC or another specialist institution.
- (e) An unsafe product may result from a manufacturing or production error - that is, where the manufacture of the product deviated from its design or material specifications during production.
- (f) 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 specifications. A design defect may also be implicated if the risk of injury results from the operation of the product, the reasonably foreseeable misuse of the product, or the failure of the product to operate as intended.
- (g) 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 in ensuring that all relevant stakeholders, including overseas entities, are identified and advised of the safety hazard relating to the product.

2.2.2 Recall responsibilities of the Supplier

A supplier has the following general responsibilities in relation to ensuring that a recall's main objectives are achieved:

- (a) conduct a comprehensive risk analysis of the safety-related hazard;
- (b) stop distribution of a product that has been identified for recall;
- (c) cease production or modify the manufacturing process;
- (d) remove the unsafe product from the marketplace;
- (e) notify the relevant institutions;
- (f) notify the public;
- (g) notify international product recipients;
- (h) notify others in the domestic supply chain;
- (i) facilitate the return of recalled products from consumers;
- (j) store and dispose of recalled products safely;
- (k) draw up a written recall strategy/plan;

- (l) maintain records and establish procedures that will facilitate a recall (records should be in a form that can be quickly retrieved);
- (m) provide progress reports on the conduct of the recall to the FCC.

3.0 IDENTIFICATION AND MITIGATING A PRODUCT SAFETY RISK

3.1 Identifying a consumer product safety hazard (risk)

- (a) Where suppliers become aware of a possible safety hazard associated with a consumer product that may cause injury to a person, they should immediately conduct the following assessment-
 - (i) gather and assess the reliability of all available information relating to the potential hazard;
 - (ii) identify how the problem occurred and exactly which component was faulty and why;
 - (iii) conduct a comprehensive risk analysis;
 - (iv) investigate possible ways of correcting the fault (where appropriate) and decide whether the product can be repaired or modified.
- (b) The supplier should contact the FCC when performing such an assessment. This will enable the FCC to assist the supplier in determining what action (if any) is required to mitigate a safety hazard.

3.2 Determining an appropriate course of action (mitigating)

- (a) Depending on the outcome of the risk analysis, there are various possible actions a supplier may choose to take in order to mitigate a safety hazard. These include:
 - (i) calling back or withdrawing products from the market or distribution chain;
 - (ii) requesting consumers or other suppliers to-
 - repair or modify a product – may send a service agent to a person’s home or place of business to repair the product;
 - return products for refund, replacement or modification;
 - contact the supplier to arrange for a replacement product or part to be sent to the consumer.
- (b) The most appropriate recall action will depend on a number of factors, including the nature of the risk, the distribution of the product, and also

its expected lifecycle. When in doubt, the supplier should consult with the FCC for assistance in determining the most appropriate strategy.

4.0 CONDUCTING A RECALL

4.1 The objectives

The objectives of a recall are to:

- (a) stop the distribution and sale of the affected product as soon as possible
- (b) inform the relevant authorities of the problem
- (c) inform the public of the problem
- (d) efficiently remove from the market place any product that is potentially unsafe
- (e) prevent the further distribution of unsafe products

4.2 Conducting a successful recall

- (a) The supplier has prime responsibility for implementing a recall. A recall should be implemented in accordance with the supplier's pre-planned recall policy and after consultation with the FCC.
- (b) In order for the FCC to be assured that the recall will meet its objectives, suppliers should undertake the following actions:
 - (i) notify the institutions of the recall, which includes providing details of other entities within the supply chain that have been notified;
 - (ii) prepare a recall strategy for submission to the FCC;
 - (iii) retrieve the affected product from consumers and from within the supply chain;
 - (iv) submit regular progress reports to the FCC.

5.0 NOTIFICATION

5.1 Notification of Government authorities

- (a) A supplier undertaking a safety-related recall is required under section 56 of the FCA to notify the FCC in writing within two days of commencing a recall action.
- (b) The FCC requires suppliers to notify the FCC when they decide to take any one of the following actions in order to mitigate a product safety hazard-

- (i) calling back or withdrawing products from the market or distribution chain;
 - (ii) requesting consumers or other suppliers to-
 - return products for refund, replacement or modification, or
 - contact the supplier to arrange for a replacement product or part to be sent to the consumer;
 - (iii) sending a service agent to a person's home or place of business to repair or modify a product;
 - (iv) making arrangements for a service agent to repair or modify a product when it is next presented for servicing.
- (c) A supplier may fulfill the notification requirement by submitting a notice in writing to the Commission.

5.2 Notification of international recipients

- (a) In the case of Notification of International recipients, a supplier undertaking a voluntary or compulsory safety-related recall is required under the section 53 (7) of the FCA to forward a recall notification to any person outside Tanzania Mainland to whom they have supplied the affected goods.
- (b) The notification must state that the 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, setting out the nature of the defect or non-compliance.
- (c) Where a supplier has complied with the notification requirements under 53(7) of the FCA, the supplier is required under section 53 (8) FCA to forward to the Minister within 10 days of providing the notice to the overseas person(s), a copy of the notice.

5.3 Notification of other entities in the domestic supply chain

- (a) Recall effectiveness is largely dependent on the notification of and cooperation between all entities in the supply chain. The FCC therefore requires a supplier undertaking a safety-related recall of consumer goods to notify in writing any other entity within the domestic supply chain that a recall has been initiated.
- (b) Where a supplier has complied with the requirement to notify entities within the domestic supply chain that a recall has been initiated, the supplier should advise the FCC that it has done so.

6.0 RECALL STRATEGY

6.1 Submission of recall strategy to FCC

- (a) In order for a recall to meet its objectives efficiently, a supplier should submit a recall strategy to the FCC upon initiating a recall.
- (b) A supplier should also consult regarding the content of the recall strategy with the FCC prior to submission.
- (c) Submitting the recall strategy for consideration is the first stage of the recall process and will assist the FCC in assessing whether the product safety risks associated with the product have been adequately addressed.
- (d) Some details of the recall strategy should be supplied to the FCC at the time of initiating the recall. However, other details will not become evident until the recall has progressed, and these are to be provided at agreed intervals.

6.2 Elements of a recall strategy

A supplier's recall strategy should include-

- (a) an explanation of the problem, including the hazard associated with the product and the supplier's assessment of the level of risk presented to the user;
- (b) the supplier's assessment of how the defect occurred, including detailed identification of the component or materials at fault and at which stage of supply the fault occurred (whether during the design, testing, manufacturing, packing, inspection or shipping stages);
- (c) the number of units supplied to consumers and other entities within the supply chain;
- (d) details of any known injuries or incidents associated with the product
- (e) information about the life cycle of the product;
- (f) a summary of the proposed communication with consumers, including the method of communication, how frequently it will be repeated and details of the message.
- (g) information about the way in which the supplier will manage contact from consumers about the recalled product, including any complaint-handling procedures
- (h) information about the manner in which the recalled product will be collected, destroyed or rectified
- (i) contact details of the manufacturer and/or importer of the product

- (j) contact details of other entities in the domestic supply chain to whom the product has been supplied
- (k) contact details of overseas recipients of the product (such as distributors or retailers)
- (l) a summary of actions 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 the analysis will occur.

6.2.1 Communication plan

- (a) The purpose of communicating with consumers about a recall is to ensure that product-related injuries are prevented by either removing or rectifying unsafe products. The goal in communicating a product recall is to ensure consumers comply with the recall notification.
- (b) The Communication medium shall be among others - at least three (one English and two *Kiswahili*) widely circulating newspapers and on supplier's website. Examples of widely circulating newspapers are The Guardian; Daily News, *Mwananchi*, *Tanzania Daima*, *Mtanzania*, *Uhuru*, and *Nipashe*.
- (c) Although there are various means by which a supplier can convey a recall notification to consumers, there are some minimum requirements for written communication.

6.2.2 Contents of a written recall notice

A written recall notice should include:

- (a) **Product description**—a clear description of the product, including the name, make and model and any distinguishing numbers, such as batch or serial numbers. Dates the product was available for sale should also be included.
- (b) **Picture of the product**—a photograph or drawing of the product will provide the consumer with a convenient and effective means of identification.
- (c) **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 what the problem is. Suppliers should refrain from using overly technical terminology wherever possible.

- (d) **A statement of the hazard**—a description of the maximum potential hazard and associated risk. Where available, an appropriate hazard symbol should be included.
- (e) A section titled **“What to do”**, which explains the immediate action the consumer, should take. For example, “Cease use immediately and return the 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. Suppliers should ensure they minimise the inconvenience to consumers in order to encourage consumer compliance with the recall notice.
- (f) A section titled, **“Contact details”**, which explains who consumers should contact in order to receive a refund or have the product repaired or replaced. Business and after-hours telephone numbers should also be included (preferably toll free), as well as suitable email and website addresses.

NB: The recall notice should **not** include the words ‘**voluntary recall**’.

Figure 1 - sample of recall notice



Product Safety Recall



XYZ Multi-Purpose Folding Ladder 3.5m Aluminium
SN: "xxxxxxx"
Sold at XYZ Group Limited Jan 2013 –March 2014

Defect: In some circumstances the joints on the steps may fall.

Hazard: If the defect occurs whilst in use the ladder can collapse causing serious injury or death to the user

What to do: Consumers should immediately stop using the ladder and contact their nearest "XYZ Group Limited" store to receive a replacement ladder or a full refund of the purchase price.

Contact details: You can contact your nearest XYZ Group Limited store by phoning (insert Telephone Number, time and email address or website)

See: www.competition.or.tz/recall

6.2.3 Design of recall notice

- (a) The design of a newspaper recall notice shall
 - (i) be a minimum size of 12cm x 3 columns.
 - (ii) use a red hatched border with a red safety triangle in the upper left hand corner – this is an internationally recognized symbol.
 - (iii) Include a headline “Product Safety Recall” in red characters and 16 point font size.
- (b) Suppliers should place information relating to a product recall prominently on their websites. The best practice for this form of advertising is to display an image of the product and the words “Product Safety Recall” (or similar) in a clearly visible position on the homepage. The image or words should be hyperlinked to a page that displays the recall notice. Other online forms of communication such as SMS, web forums, blogs and social networking sites may prove effective and should also be considered.

7.0 RETRIEVAL OF THE AFFECTED PRODUCT

- (a) The ultimate goal of a recall is to retrieve as many unsafe products from consumers as possible and prevent any further distribution of the affected product in the market place.
- (b) Products that are the subject of a recall may be recovered from different entities in the supply chain or directly from consumers.
- (c) A supplier is required to make arrangements for the retrieval of the product. These arrangements should include-
 - (i) establishing collection points across the distribution network
 - (ii) notifying the relevant parties, including other entities within the supply chain and consumers, of the intended method of retrieval of the recalled product
 - (iii) arrangements for disposing of the returned product—this may involve arranging for the returned product to be quarantined until it can be rectified or safely destroyed.
- (d) Low value products pose particular challenges for suppliers when recalling them. “Low value” does not of course mean “low risk” and suppliers should seek to achieve effective recalls of such products just as they would any other. A supplier of a low value recalled product should consider offering extra incentives such as a free gift or a discount to consumers who return the recalled product as directed.

8.0 REPORTING ON PRODUCT RECALL

8.1 Progress reports

- (a) In order for the FCC to be able to monitor the progress of a recall and assess its effectiveness, a supplier should provide progress reports at regular intervals.
- (b) The FCC will develop a reporting schedule with a supplier at the beginning of a recall that appropriately reflects the product risk being addressed. The information that the FCC requires will depend on the specifics of the recall and will therefore be negotiated on a case-by-case basis. Examples of the types of information that may be required include-
 - (i) the number of products returned from within the supply chain and from consumers
 - (ii) the number of complaints and inquiries that have been received regarding the affected product and the nature of these complaints
 - (iii) the number of inquiries that have been received from consumers regarding the recall and the nature of these inquiries
 - (iv) whether the supplier deviated from the original plan as described in the agreed communication strategy and if so, the reasons why.

8.2 Final report

- (a) 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 statutory rights of consumers and the public may continue to access information about the recall through the FCC website. However, when a recall is closed, the supplier no longer needs to actively promote the recall and the FCC's regulatory oversight ceases.
- (b) The supplier should submit a final report before a recall can be closed. A supplier's final report should include-
 - (i) confirmation of the total number of items supplied and the final number of units recovered from consumers and from within the supply chain
 - (ii) evidence to demonstrate that all entities from within the domestic supply chain were notified of the recall
 - (iii) information about the communication strategy, including copies of any data relating to its effectiveness (for example, the number of "visitors" accessing the relevant webpage)

- (iv) action taken by the supplier to identify and correct the cause of the safety hazard presented by the product, including the outcome of any root cause analysis, whether the defect was caused by a design, testing, manufacturing, packaging, shipping, or other fault, and the steps the supplier has taken to remedy the defect
- (v) information about any known injuries or incidents associated with the product
- (vi) the final number of complaints or inquiries that have been received regarding the recall and/or the product
- (vii) information about the means by which the recalled product has been destroyed or rectified, including evidence of the destruction or rectification of the unsafe product.

NB: The FCC may provide information of recall to appropriate institutions i.e., Tanzania Bureau of Standards (TBS) and Tanzania Food and Drugs Agency (TFDA).

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