

Children's Product Safety and Recall Effectiveness Act

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New York State
DEPARTMENT OF STATE
Division of Licensing Services
www.dos.ny.gov

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Children’s Product Safety and Recall Effectiveness Act of 2008

Article 28-E, General Business Law

Section

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Children’s Product Safety and Recall Effectiveness

Title 21 NYCRR, Part 4607

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Children’s Product Safety and Recall Effectiveness Act

§490. Short title

This article shall be known and may be cited as the “children’s product safety and recall effectiveness act of 2008”.

§490-a. Definitions

For the purposes of this article, the following terms shall have the following meanings:

1. “Department” means the department of state.
2. “Children’s product” shall mean a toy or other article, other than clothing, primarily intended for use by a child under twelve years of age. The following shall be considered in determining if the toy or article is intended for a child under twelve years of age:
 - (a) A statement by a manufacturer about the intended use of such toy or article, including a label on such toy or article;
 - (b) The context and manner of the advertising, promotion, and marketing associated with the toy or article; and
 - (c) Whether the toy or article is commonly recognized by consumers as being intended for use by a child under twelve years of age.
3. “Commercial dealer” means any person who is in the business of manufacturing, remanufacturing, retrofitting, distributing, importing, or selling at wholesale children’s products in New York state. This definition shall not be construed to include retailers.
4. “Secretary” means the secretary of state.
5. “Initial consumer” means a person who purchases a children’s product or durable juvenile product for any purpose other than resale.
6. “Secondhand dealer” means a person who sells as a primary source of income reconditioned, remanufactured, refurbished, previously owned, or consignment items. Such term shall not include the initial consumer or someone who purchases a children’s product or durable juvenile product primarily for personal use but who subsequently sells the product.
7. “Durable juvenile product” means products intended for use, or that may be reasonably expected to be used, by children under the age of five years as defined in subsection (f) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 or other similar durable juvenile products designed for children under age five as shall be specified in regulations promulgated by the United States consumer product safety commission.
8. “Person” means a natural person and any entity, including but not limited to a sole proprietorship, partnership, firm, corporation, limited liability company, or association, and any employee or agent thereof.
9. “Product safety owner’s card” means a postage paid registration form that (a) requests the initial consumer to provide prescribed information to the manufacturer, and (b) requires the manufacturer provide certain prescribed information to the initial consumer. All such information shall be prescribed by the United States consumer product safety commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 and the United States consumer product safety commission rules promulgated in accordance with such act.
10. “Recall” means a request to return a product to the manufacturer due to a defect in the product.
11. “Retailer” means any person who as a business or for-profit venture sells or leases children’s products or durable juvenile products for-

profit in New York to initial consumers. Such term shall not include (a) someone who purchased or acquired a product primarily for personal use and who subsequently resells the product, or (b) any secondhand dealer, as defined in this section.

12. “Knowledge” means (a) the receipt of notice or having actual knowledge or (b) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

§490-b. Manufacturers’ requirements to include product safety owner’s cards

1. Manufacturers of durable juvenile products distributed, sold or made available in New York state shall include a product safety owner’s card with all sales to initial consumers of durable juvenile products. The manufacturer shall not use or disseminate to any other party the information collected by the manufacturer for any purpose other than notification to the consumer concerned in the event of a product recall or safety alert regarding the product concerned. Within the product safety owner’s card, such manufacturers shall request initial consumer information as prescribed by the United States consumer product safety commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 and the United States consumer product safety commission rules promulgated in accordance with such act, to effectuate the notification required by this article. The product safety owner’s card shall include a statement indicating that the information shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

2. Such manufacturer shall retain for a period of no less than six years any initial consumer contact information obtained. This information shall not be sold, posted, transferred or used for any other purpose other than to communicate information relating to a recall, warning or defect directly associated with the product.

3. Nothing in this section shall be deemed to compel a consumer to complete and return such product safety owner’s card.

§ 490-c. Labeling of children’s products and durable juvenile products

1. Every manufacturer or importer of a children’s product or a durable juvenile product sold or distributed in New York state shall label such product or its packaging with a label as prescribed by 15 USC 2063 and the United States consumer product safety commission rules promulgated in accordance with the United States Consumer Product Safety Improvement Act of 2008.

2. No commercial dealer or retailer shall obscure, in part or in full, any label required under this section.

§ 490-d. Product recall or warning requirements

1. When a commercial dealer of children’s products or durable juvenile products has made available or placed for sale in this state a children’s product or durable juvenile product for which a recall or warning has been issued, the commercial dealer must discontinue distribution of any recalled product and initiate the following process within twenty-four hours of issuing or receiving the recall or warning from the consumer product safety commission:

- (a) Contact in writing any persons to whom it sold or otherwise made available that particular children’s product or durable juvenile product in this state and inform them of the recall or warning. The recall notice shall direct all such persons to stop the sale or

distribution of the recalled product and provide directions on the disposition of such product;

- (b) If the commercial dealer maintains a website, such dealer must place on the home page (or the first entry point) of its website a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question;
 - (c) Give notice of the recall or warning directly to the initial consumer, if contact information for such consumer is known; and
 - (d) Provide notification to the department of such recall or warning. All notices under this subdivision must include in a clear and conspicuous fashion a description of the product, the reason for the recall or warning, a picture of the product if available, and instructions on how to return or exchange the recalled product. Such notice shall include only the product recall or warning information and may not include sales or marketing information on that product or any other product, excluding return and exchange policies.
2. (a) When a commercial dealer of children's products or durable juvenile products has sold or otherwise made available in this state a children's product or durable juvenile product for which a recall has been issued, and such commercial dealer receives such products back from purchaser, the commercial dealer shall take actions, consistent with commonly accepted industry practices and with state and federal environmental standards, to ensure that no person shall use the recalled product unless and until the defect or other basis for the recall has been corrected on such recalled product.
- (b) The commercial dealer shall provide to the department certification of disposition for such recalled products within ninety days after the issuance of the recall, unless upon written application by such dealer the department determines an extension of time is warranted.

§ 490-e. Retailer responsibilities

1. A retailer shall not sell, lease or otherwise make available a children's product or durable juvenile product that does not contain an appropriate label as provided under section four hundred ninety-c of this article.

2. When a retailer has knowledge of a commercial dealer or a federal or state agency's notice of a recall or warning regarding a children's product or durable juvenile product, and if the retailer currently offers for sale or otherwise makes available or had offered for sale or otherwise made available such product, the retailer shall do the following:

- (a) Within one business day of knowledge of a recall notice, initiate a corrective undertaking that includes
 - (i) removing the children's product or durable juvenile product from the store shelves and
 - (ii) taking steps to ensure that such product is not sold or made available, including, but not limited to implementing a mechanism or procedure which will prevent a recalled product or products from being purchased at a point of sale.
- (b) Within one business day of knowledge of either a notice of a recall or a warning:
 - (i) post recall and warning notices conspicuously at the retailer's locations for a period of at least sixty days; and
 - (ii) if the retailer maintains a website, post on the home page (or the first entry point) for a period of sixty days a link to recall or warning information that contains the specific recall or warning notice that was issued for the product. The information may include only a photograph or detailed rendering of the product

and the product recall or warning information and may not include sales or marketing information.

(c) Upon knowledge of a recall or warning notice, when contact information was provided at the time of purchase and remains available at the time of receipt of the recall or warning notice the retailer shall contact the initial consumer of a durable juvenile product to provide the recall or warning information. The recall or warning information must include a description of the product, the reason for the recall or warning, and instructions on how to exchange, return for a refund or otherwise respond to the children's product involved in the recall or warning. Such notice shall include only the product recall or warning information and may not include sales or marketing information on that product or any other product, other than the pertinent return and exchange policies.

§ 490-f. Non-retail sales responsibilities.

1. Any person that acts as an operator or manager of a website that serves as a platform to facilitate by a competitive bidding process or solely between third parties the resale, sale or distribution of children's products or durable juvenile products shall conspicuously post on its homepage advisory language which notifies buyers or sellers of children's products or durable juvenile products of the importance of checking recall lists before engaging in such transactions that incorporates a direct link to the recall information available at the United States consumer product safety commission website.

2. Secondhand dealers who sell children's products and/or durable children's products shall post a notice instructing consumers on how to obtain recall information and advisory language notifying buyers and sellers of children's products or durable juvenile products of the importance of checking recall lists before engaging in such transactions. Such notice shall be prominently posted at the point of sale or at the entrance to the premises where the product is offered for sale.

§ 490-g. Enforcement

1. Where it is determined after a hearing that any person has violated one or more provisions of this article, the secretary may assess a civil penalty no greater than five thousand dollars for each violation. Any proceeding conducted pursuant to this section shall be subject to the state administrative procedure act. Upon the occasion of a second violation or subsequent violations of this article, a civil penalty no greater than fifty thousand dollars may be assessed.

2. The department shall provide the attorney general any information on recalled or unsafe products, complaints regarding recalled or unsafe products and violations of this section that are necessary for the purposes of enforcement by the attorney general pursuant to section sixty-three of the executive law.

3. The secretary or his or her designee may administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers and duties under this article. The secretary or his or her designee may subpoena and require the attendance of witnesses and the production of books, papers, contracts and any other documents pertaining to any investigation or hearing conducted pursuant to this article.

4. If any person refuses to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

5. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or at common law.

§ 490-h. Promulgation of rules and regulations

The department shall promulgate rules and regulations to administer this article.

RULES AND REGULATIONS

21 NYCRR PART 4607

Children's Product Safety and Recall Effectiveness

§4607.1 Purpose and Scope.

Oversight and enforcement. It is the responsibility of the New York State Department of State (Department) to:

(a) enforce the provisions of Article 28-E of the General Business Law, the Children's Product Safety and Recall Effectiveness Act of 2008, to enhance the safety of the marketplace for children under the age of twelve;

(b) set requirements for children's and durable juvenile products, which shall include (1) labeling standards; (2) product recall and warning notification requirements; (3) removal and disposal of recalled products from the marketplace; and (4) record keeping and reporting requirements; and

(c) distinguish which requirements apply to the various affected entities within the children's and durable juvenile products marketplace. The affected and defined entities include retailers, operators of websites that act as a platform to facilitate competitive bidding between third parties for the sale or resale of such products, secondhand dealers, and commercial dealers, which includes manufacturers, remanufacturers, retrofitters, distributors, importers or wholesalers.

§4607.2 Definitions.

For the purposes of this Part, the following terms shall have the following meanings:

(a) "Children's product" means a toy or other article, other than clothing, primarily intended for use by a child under twelve years of age. The following shall be considered in determining if the toy or article is intended for a child under twelve years of age:

(1) A statement by a manufacturer about the intended use of such toy or article, including a label on such toy or article;

(2) The context and manner of the advertising, promotion, and marketing associated with the toy or article; and

(3) Whether the toy or article is commonly recognized by consumers as being intended for use by a child under twelve years of age.

(b) "Commercial dealer" means any person who is in the business of manufacturing, remanufacturing, retrofitting, distributing, importing, or selling at wholesale children's products in New York State. This definition shall not be construed to include retailers.

(c) "Defect" or "Defective" means a hazard or imperfection that restricts the product from functioning according to design, patent or advertised intended function. Such term shall not include packaging or labeling imperfections.

(d) "Department" means the New York State Department of State.

(e) "Durable juvenile product" means products intended for use, or that may be reasonably expected to be used, by children under the age of five years as defined in subsection (f) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 or other similar durable juvenile products designed for children under age five as shall be specified in regulations promulgated by the United States consumer product safety commission.

(f) "Initial consumer" means a person who purchases a children's product or durable juvenile product for any purpose other than resale.

(g) "Knowledge" means (1) the receipt of notice or having actual knowledge or (2) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

(h) "Person" means a natural person and any entity, including but not limited to a sole proprietorship, partnership, firm, corporation, limited liability company, or association, and any employee or agent thereof.

(i) "Product safety owner's card" means a postage paid registration form that (1) requests the initial consumer to provide prescribed information to the manufacturer, and (2) requires the manufacturer provide certain prescribed information to the initial consumer. All such information shall be prescribed by the United States consumer product safety commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 and the United States consumer product safety commission rules promulgated in accordance with such act.

(j) "Recall" means a request to return a product to the manufacturer due to a defect in the product.

(k) "Retailer" means any person who as a business or for-profit venture sells or leases children's products or durable juvenile products for-profit in New York to initial consumers. Such term shall not include (1) someone who purchased or acquired a product primarily for personal use and who subsequently resells the product, or (2) any secondhand dealer, as defined in this section.

(l) "Secondhand dealer" means a person who sells as a primary source of income reconditioned, remanufactured, refurbished, previously owned, or consignment items. Such term shall not include the initial consumer or someone who purchases a children's product or durable juvenile product primarily for personal use but who subsequently sells the product.

§4607.3 Durable Juvenile Product Manufacturers; Responsibilities

(a) Owner safety card. No manufacturer of durable juvenile products shall introduce for sale or distribution a juvenile product without a product owner safety card, as prescribed by the United States Consumer Product Safety Commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Public Law No. 110-314 and the rules promulgated therein. Manufacturers of durable juvenile products responsible for the product owner safety card shall also include a statement of confidentiality that ensures that the contact information on the returned card will not be used for any other purpose and shall be stored in a manner suitable to preserving the remitting consumer's confidentiality. No manufacture of durable juvenile products shall require the return of the product owner safety card.

(b) Disclosure Form. (1) The Department shall prescribe a form requiring manufacturers of durable juvenile products that are distributed, sold or made available in the State to report at a minimum the following:

(i) Current contact information for the durable juvenile products manufacturer;

(ii) Information identifying the types and variety of durable juvenile products sold or offered in the State; and

(iii) Any other information deemed relevant by the Department in order to satisfy the disclosure requirement in Section 490-b of the General Business Law.

Such form shall be made available in an electronic format and in any other format as prescribed by the Department.

c. Reporting and Record Keeping.

(1) Manufacturers of durable juvenile products shall complete and file the disclosure form with the Department biennially, unless any of the information provided in the biennial disclosure has changed. If any information provided during the biennial period changes, the disclosure form shall be amended and filed with the Department within 30 days of the occurrence of such change.

(2) All filings shall be transmitted via mail to the Department of State, PO Box 22001; Albany, NY 12201-2001.

(3) Manufacturers of durable juvenile products responsible for receiving any returned product safety owner cards shall maintain the contact information received from a returned consumer product safety owner card for a period of six years.

§4607.4 Commercial Dealers; Responsibilities.

(a) Labeling of products. Products for sale or distribution in New York must be labeled in accordance with label requirements as prescribed by 15 USC 2063 and the United States Consumer Product Safety Commission rules promulgated in accordance with the United States Consumer Product Safety Improvement Act of 2008. No commercial dealer or agent shall introduce for sale or distribution in New York a durable juvenile product or children’s product without such label. No commercial dealer or agent shall obscure or allow such label to be obscured.

(b) Defective Children’s or Durable Juvenile Products Recalls and Warnings; Requirements. Upon notice of, or reason to believe that, a product previously introduced into the market is defective and a recall or warning has been issued due to such defect then a commercial dealer shall, within twenty-four hours of issuing or receiving a recall or warning notification from the Consumer Product Safety Commission:

(1) Contact in writing all known retailers, and any other distributing entity within the commercial dealer’s distribution pool, to which it sold or otherwise made available such defective product. The writing shall direct all such entities to stop the sale or distribution of the recalled product and provide directions on the disposition of such product.

(2) If a dealer maintains a website, the dealer shall place on its website home page or first point of entry a link to the recall or warning information. This link shall contain specific recall and warning notification information.

(3) Contact all consumers who returned the product owner’s safety card or otherwise provided the dealer with their contact information, and provide the consumers with specific recall and warning information.

(4) File an incident form, prescribed by the Department, and a copy of the recall notice or warning issued or distributed; and send such filings to the Department of State via:

(i) Email to product.safety@dos.ny.gov ; or

(ii) Mail to the Department of State, PO Box 22001, Albany, New York 12201-2001

(c) Disposition of Defective Children’s or Durable Juvenile Products; Requirements. When a commercial dealer has sold or otherwise introduced into the market a recalled children’s or durable juvenile product, and the dealer receives the recalled product back from the consumer, the dealer shall:

(1) Dispose of the recalled product in a manner that is compliant with state and federal environmental standards, and precludes the defective product from being re-entered into the marketplace, unless the defect prompting the recall has been remediated.

(2) File a certificate of disposition form, prescribed by the Department, of recalled products within 90 days.

(3) Request extensions for filing certificate of disposition, in writing to the Department, at least 10 days prior to 90-day deadline.

(4) Send filings and requests for extension to the New York State Department of State via email to product.safety@dos.ny.gov; or mail to PO Box 22001, Albany, NY 12201-2001.

§4607.5 Retailers; Responsibilities. Retailers’ responsibilities are included in this section. This section does not apply to persons who purchase a product for personal use but later sell it.

(a) A retailer shall not take delivery of, nor introduce for sale, any children’s product or durable juvenile product that does not have an appropriate label in accordance with this Part.

(b) No retailer shall obscure, in part or in full, any label required under this Part.

(c) Upon knowledge of a commercial dealer, or a State or federal agency’s issuance of a recall or warning regarding a children’s product or a durable juvenile product, a retailer who has sold or is offering such product for sale shall:

(1) Within one business day of knowledge of the recall notice initiate a corrective undertaking which includes:

(i) Removing the defective children’s product or durable juvenile product from the store shelves; and

(ii) Taking steps to ensure that such defective product is not sold or otherwise made available, including but not limited to implementing a mechanism or procedure to prevent a recalled product from being purchased at the point of sale.

(2) Within one business day of knowledge of a either a recall or warning notice:

(i) Post the recall or warning notice conspicuously for at least 60 days at all of the retailer’s locations where such item had been or was being sold. Recall and warning notices shall include in a clear and conspicuous fashion a description of the product, the reason for the recall or warning, a picture of the product if available, and instructions on how to return or exchange the recalled product. Conspicuous recall and warning posting shall include notices that are:

(a) Placed by the retailer onto a sign that is:

(1) Affixed to each cash register or point of sale;

(2) Posted at each store entrance used by the public;

(3) Prominently posted at the customer service area; or

(4) Affixed on the retail shelf planogram where the product was or would be sold.

(b) Offered in electronic format in a retail store, if the retailer:

(1) Posts an electronic recall and warning availability sign at each store entrance utilized by the public, and prominently at the customer service area. The sign shall disclose where the electronic recall and warning notices may be found in the retail store and where the consumer can access assistance to obtain electronic recall and warning notices;

(2) Utilizes an electronic device that is accessible to persons with physical disabilities;

(3) Provides direct customer assistance for consumers whom need assistance operating such electronic device; and

(4) Provides for an alternative for consumers to access such information in the event such electronic device is inoperable.

(ii) Post a link to the specific recall or warning information on the home page or first point of entry to the retailer's website for at least 60 days, if a website is maintained. Such recall or warning information may only include a photograph or detailed rendering of the product and the product recall or warning information.

(3) When contact information was provided by the consumer to the retailer at the time of purchase and remains available at the time of the receipt of the recall or warning notice, the retailer shall contact the initial consumer to provide the recall or warning information. The recall or warning information shall include:

- (i) A description of the product;
- (ii) The reason for the recall or warning; and
- (iii) Instructions on how to exchange, return for a refund or otherwise respond to the children's product involved in the recall or warning.

The notice shall include only the product recall or warning information and any pertinent return exchange policies. The notice may not include any sales or marketing information for any product or service.

§4607. 6 Non-Retail Sales; Responsibilities. Non-retail sales includes sales conducted by secondhand dealers and any person that acts as an operator or manager of a website that serves as a platform to facilitate by a competitive bidding process, or solely between third parties, the resale, sale or distribution of children's products or durable juvenile products.

(a) Conspicuous Internet Resale Notice. A person that operates or manages a website that serves as a platform to facilitate by a competitive bidding process, or solely between third parties, the resale, sale or distribution of children's products or durable juvenile products shall:

(1) Post clear and obvious advisory language in a distinct type style on

- (i) The website's first webpage and point of entry, or
- (ii) The first webpage or point of entry for a seller, a bidder or a purchaser of children's products or durable juvenile products.

(2) The first webpage or point of entry for a seller, bidder or purchaser shall include an operational hyperlink to the list of recalls maintained by the United States Consumer Product Safety Commission. The operational hyperlink shall be:

- (i) Made available in a color that is a high degree of contrast from the color of the background of the webpage, and
- (ii) Provided in advance of any sale, bid or purchase information being transmitted by the seller, bidder or purchaser.

(b) Prominent Secondhand Dealer Notice. A secondhand dealer who sells children's products or durable juvenile products shall prominently post a notice instructing consumers on how to obtain recall information, and the importance of checking recall information before purchasing secondhand children's products or durable juvenile products.

(1) The Department shall prescribe the notice required to be posted by a secondhand dealer.

(2) The Department shall make such notice available in an electronic format, or any other format prescribed by the Department.

(3) For purposes of this subsection, "prominently post" shall mean:

(i) Affixed at the register or point of sale;

(ii) At a location that is in plain and unobstructed view of the register or point of sale; or

(iii) At the entrance or entrances of the premises used by the public.

§4607.7 Violations; penalties; enforcement.

(a) Violations.

(1) Failure to comply with any provision of this Part;

(2) Allow a violation through omission of any provision of this Part;

(3) Refuse to allow Department investigators to inspect premises;

(4) Fail to respond to a request or a subpoena from the Department.

(b) Penalties. For each violation, the Department shall impose a penalty of no greater than \$5,000. Upon the occasion of a second violation or subsequent violations of this Part, the Department shall impose a penalty of no greater than \$50,000.

(c) Enforcement

(1) Administrative Hearing. The administrative hearing shall be conducted in accordance with Article 3 of the State Administrative Procedure Act ("SAPA") and 19 NYCRR Part 400. The Department shall, before imposing any fine pursuant to this Part and/or Article 28-E of the General Business Law, and at least 10 days prior to the date set for the hearing, notify in writing the person or entity alleged to be in violation with a statement of charges made and shall afford such person or entity an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally, or by mailing same by certified mail to the last known business address of such person or entity or by any method authorized by the Civil Practice Law and Rules. The hearing on such charges shall be at such time and place as the Department shall prescribe.