

Consumer Product Recalls on the Rise: Important Compliance Reminders for Consumer Products Manufacturers and Sellers

Insight

02.08.2023

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Data from U.S. Consumer Products Safety Commission (CPSC) shows that more consumer products are being recalled now than they have been in recent years.

The U.S. PIRG Education Fund published a [report](#) on February 2, 2023 discussing its analysis of 2022 CPSC recall data, in which it found that there were 33% more recall announcements in 2022 compared with 2021. The number of recalls announced by the CPSC in 2022 were the most since 2016. Many of the recalls involve products that have traditionally been highly regulated by the CPSC, such as children's products. Most recalls in 2022 were related to products that posed a risk of fire or flammability, choking hazards, excessive levels of lead, and other chemicals that may pose harm to human health. So far in 2023, there have been nearly 30 consumer product recalls reported by the CPSC, which shows an increase in recall trends compared to the same period of time last year.

WHAT DOES THIS MEAN FOR CONSUMER PRODUCT MANUFACTURERS AND SUPPLIERS?

To address that question, it is prudent to analyze the role of the CPSC in regulating consumer products. The CPSC is the U.S. federal agency tasked with reducing the unreasonable risk of injuries and deaths associated with consumer products. The CPSC will issue and enforce mandatory standards for consumer products, and will ban certain consumer products if no feasible standard would adequately protect the public.

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The CPSC is also tasked with obtaining, encouraging and monitoring recalls of products that pose an unreasonable risk of harm to consumers. If a hazard is reported about a company's product, the CPSC will work with the company to determine next steps for addressing the product safety concern and its effect on consumers. The reality is that if a company cooperates with the CPSC in this regard, the CPSC can be an ally for the company; if the company does not cooperate, the CPSC may force them to act.

More information can be found about the [CPSC on its website](#), and various product recalls promulgated by the CPSC can be searched on its [recall landing page](#).

WHAT SHOULD A COMPANY DO IF ONE OF ITS PRODUCTS POSES A POTENTIAL SAFETY HAZARD TO CONSUMERS?

If a company learns that any of its products contains a defect that could create a substantial risk of injury to the public, or presents an unreasonable risk of serious injury or death to a consumer, then the company has certain obligations to adhere to under the Consumer Products Safety Act (CPSA). Specifically, [15 U.S.C. § 2064\(b\)](#) requires manufacturers, distributors and retailers of a consumer product to report to the CPSC if and when they obtain information that reasonably supports the conclusion that the product:

1. Fails to comply with an applicable consumer product safety rule or standard
2. Contains a defect which could create a substantial product hazard
3. Creates an unreasonable risk of serious injury or death

This obligation to report is an immediate obligation. Typically, the CPSC expects that if a company learns that one of its products falls into one of the three categories above, the company should report it to the CPSC within 24 hours.

The report, often called a "section 15(b) report," can be made to the CPSC in a variety of ways, but will typically require a company to provide the CPSC with:

1. An identification and description of the product
2. Contact information for the manufacturer and importer
3. A description of the nature and extent of possible defect or risk associated with the product
4. A description of the nature and extent of injury or risk of injury to consumers

After a section 15(b) report is submitted, the CPSC will typically assign a CPSC claim handler to the matter, who may require more detailed reporting (sometimes called a section 15(d) or "full" report) or further information from the company.

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The ultimate findings of the CPSC related to the issues raised in the section 15(b) report may or may not result in a recall of the product. Section 15 reporting is merely an initial step for a product manufacturer or supplier to adhere to its obligations under the CPSA, cooperate with the CPSC on next steps, and get out in front of a potential issue before the CPSC forces a recall or imposes sanctions or other recourse that may affect the company.

HOW CAN A COMPANY LEARN IF ONE OF ITS PRODUCTS FALLS WITHIN ONE OF THE AFOREMENTIONED CATEGORIES NECESSITATING A SECTION 15(B) REPORT TO THE CPSC?

Companies should be diligent in checking consumer reports of their products — Is your customer service department receiving reports from customers that your product is failing during reasonable use and poses a risk of injury to the customer or others? Are online or retailer reviews of your products showing reports from consumers that the product is failing and posing a risk of injury? Have you received any reports from the CPSC about hazards associated with any of your products? All of these factors should be considered in determining whether a Section 15(b) report is warranted.

Section 6 of the CPSA, [15 U.S.C. § 2055](#), establishes procedures for, and restrictions on, the CPSC's public disclosure of information related to a company and its products. However, this section does allow the CPSC to collect reports of harm related to a product from the public, and allows the CPSC to potentially publish the information it receives in this regard on a publicly available database. Section 6(a) of the CPSA allows consumers to make reports directly to the CPSC about hazards related to a product, including injuries or risks of injuries posed by the product. The CPSC will typically then send notice to a product manufacturer or sellers of the product of a section 6(a) report, after which the manufacturer and/or seller should be allowed to investigate the report and provide comments to the report on the CPSC's publicly available database. Notice of a section 6 report should be considered by a product manufacturer, distributor or seller in the determination of whether a section 15(b) report to the CPSC is warranted.

CONCLUSION

There is an uptick in product recalls announced by the CPSC. Some of these recalls are mandatorily enforced by the CPSC, and some are initiated with the cooperation of product manufacturers and sellers. Manufacturers and sellers of consumer products in the U.S. need to be diligent in their analysis of whether any of their products on the market may pose an unreasonable risk of harm to consumers. If they have reason to believe that any of their products meet the criteria below, then they should report the issue to the CPSC under Section 15 of the CPSA.

1. Fails to comply with an applicable consumer product safety rule or standard

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2. Contains a defect which could create a substantial product hazard
3. Creates an unreasonable risk of serious injury or death

CONTACT

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