

A Crash Course in Consumer Products Regulation under the US Consumer Product Safety Commission

VERIFICATION CODE

iadc

FOR CLE CREDIT:

1. Write down or take a photo of this Verification Code.

You **MUST** complete the evaluation to earn CLE Credit.

2. Either click the “Evaluation” button from the program on your **Meeting App** to enter the Verification Code and complete the Program Evaluation now.

OR

3. Save the code to take the evaluation later.

United States Consumer Product Safety Commission A CRASH COURSE



Dana Baiocco, Former CPSC Commissioner
Dwight W. Stone, Principal Miles & Stockbridge



Peter A. Feldman
Commissioner

Dana Baiocco
Commissioner

Alexander D. Hoehn-Saric
Chair

Richard L. Trumka Jr.
Commissioner

Mary T. Boyle
Commissioner

Sports, Fitness & Recreation

- ATVs, ROVs
- Bicycles
- E-mobility Products
 - e-bikes
 - e-scooters
 - hoverboards



Outdoors

- Fireworks
- Lawn and Garden Tools & Equipment
- Patio furniture
- Solar Panels
- Awnings



Home & Indoors

- Appliances
- Pools
- Window Coverings
- Poison Prevention
- Fuel Containers
- Carbon Monoxide*
- Drywall
- Safe Sleep Products
- Button Cell and Coin Batteries



Toys & Crafts

- Art materials
- Toys and Games
- Magnets and magnet sets



Distribution Chain

- Manufacturers
- Importers
- Distributors
- Retailers
- E-Commerce & On-Line Sales
- Resale/Thrift



CPSC Jurisdiction

THE CPSC DOES HAVE JURISDICTION OVER ALL CONSUMER GOODS.....AND MORE

The definition of Consumer Products, and the CPSC's jurisdiction thereof is expressly not intended to include:

- tobacco and tobacco products (FDA)
- motor vehicles or motor vehicle equipment (NHTSA)
- pesticides, insecticides, fungicides (EPA)
- firearms and ammunition (ATF)
- aircraft and its components (FAA)
- boats and equipment (U.S. Coast Guard)
- food, drugs, medical devices, or cosmetics (FDA).

CPSC Jurisdiction (continued)

CPSC has **overlapping** jurisdiction with some of these other federal agencies.
Examples:

1. FDA has jurisdiction over, *inter alia*, cosmetics, drugs, food and tobacco products, but CPSC has jurisdiction over the packaging of liquid nicotine, drug blister packs, and other child resistant packaging.
2. EPA is responsible for certain chemicals and emissions, but CPSC has been exercising jurisdiction over generator safety, particularly with regard to carbon monoxide emissions.
 - A. EPA also has chemicals, but chemicals also are subject to CPSC “hazard” determinations and certain packaging rules.
3. ATF oversees guns, but CPSC has exercised jurisdiction over gun safes and locks.
4. CPSC works closely with Customs and Border Protection to enforce its Acts at ports of entry.

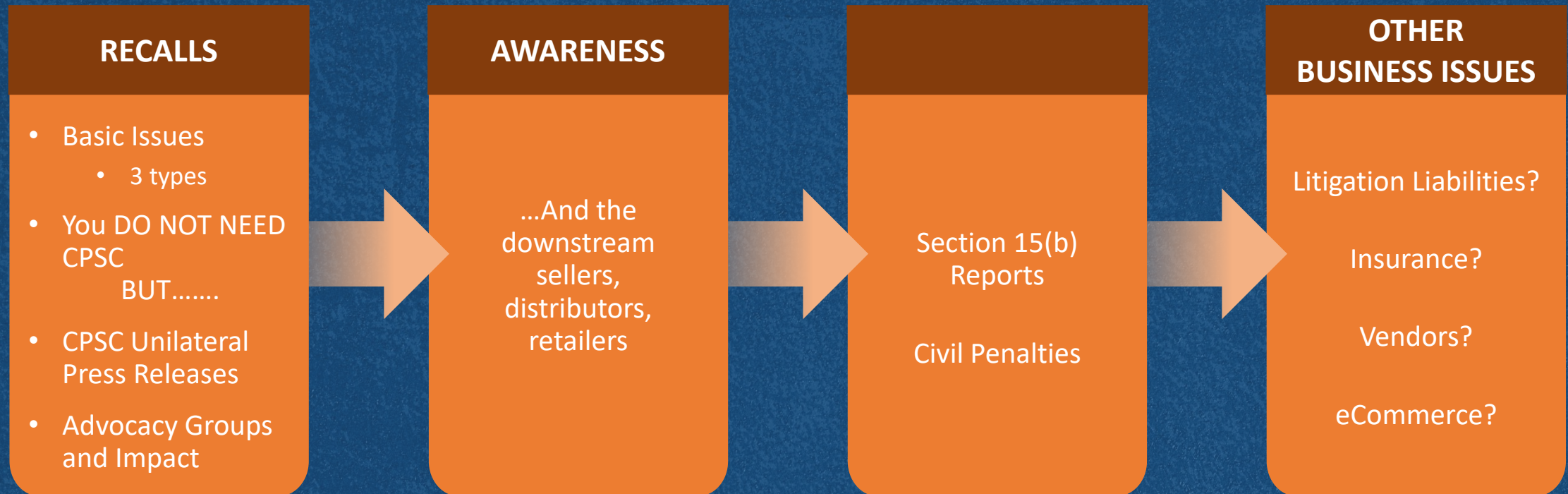
Key Acts, Rules, Regs

- **Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2501, *et. seq.***
- **Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016 (August 14, 2008)**
- **CPSIA, Amended, H.R. 2715, Public Law 112-28 (August 12, 2011).**

Key Acts, Rules and Regs

- **Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1261, et. seq.**
- **Labeling of Hazardous Art Materials Act (LHAMA)**
- **Child Safety Protection Act (CSPA), Public Law 103-267, 108 Stat. 722 [H.R. 965] (June 16, 1994)**
- **Flammable Fabrics Act (FFA) 15 U.S.C. §§ 1191-1204**
- **Poison Prevention Packaging Act (PPPA), 15 U.S.C. §§1471-1477**
- **Child Nicotine Poison Prevention Act of 2015 (CNPPA)**
- **Reese's Law [H.R. 5323] (January 3, 2022)**
- **Refrigerator Safety Act (RSA), 15 U.S.C. §§ 1211-1214**
- **Children's Gasoline Burn Prevention Act (CGBPA), Public Law 110-278 (July 17, 2008)**
- **Portable Fuel Container Act of 2020, 15 U.S.C. § 2056(d)**
- **Virginia Graeme Baker Pool & Spa Safety Act (VGB Act), Public Law 110-140 (with amendments)**
- **Dry Wall Safety Act of 2012 (DSA)**
- **Safe Sleep for Babies Act of 2021 (and CPSC Infant Sleep Rule)**
- **The Sturdy Act (Stop Tip-Overs of Unstable, Risky Dresser on Youth Act) (contained in the Consolidated Appropriations Act, 2023)**

Overview of the CPSC Basics



Common Pitfalls for Clients

- Reporting Obligations (Section 15b)
- Recalls

Reporting Obligations Stand Alone

Most Civil Penalties Originate in Reporting Failures

Report or Not Report?

Section 15(b) Reports, 15 U.S.C. § 2064(b) reporting requirements for manufacturers, importers, distributors, and retailers of consumer products, distributed in commerce, and over which the agency has jurisdiction.

Goals – to encourage widespread reporting of timely, accurate, and complete information that is necessary to protect public health and safety and help the CPSC uncover substantial product hazards

Standard

- must **immediately** report after receiving information about a product that reasonably supports the conclusion that a product: (1) **fails to comply with any requirement enforced by CPSC**; (2) contains a defect that could pose a substantial product hazard; or (3) creates an unreasonable risk of injury or death.
- Examples:
 - a defective product that could create a substantial risk of injury to consumers or a product that is otherwise unreasonably hazardous or dangerous for consumers.
 - a product that fails to comply with an applicable consumer product safety rule or with any other rule, regulation, standard, or ban under the CPSA or any other statute enforced by the CPSC.
 - a product that a child (regardless of age) chokes on, such as a marble, small ball, balloon, or small part and that, as a result, the child dies, suffers serious injury, ceases breathing for any length of time, or is treated by a medical professional
 - a product that has been listed as a substantial product hazard by Commission action (such as a hairdryer without the appropriate immersion protection).
- Guidelines for determining whether a product defect exists, whether a product creates an unreasonable risk of serious injury or death, and whether a report is necessary or appropriate, are provided in 16 C.F.R. Part 1115.4-15.

[A reporting obligation may arise even you cannot yet identify a defect and/or root cause. If the information reasonably supports the conclusion that a product could create an unreasonable risk of serious injury or death, a company must report]

- Failure to fully and immediately report this information may lead to substantial civil or criminal penalties.
- The CPSC evaluates whether a company complied with its statutory obligation to report a defect, unreasonable risk, or violation to the Commission. The CPSC can assess civil penalties against a firm for its knowing failure to file a timely report (a “timeliness case”) or notify the commission of other prohibited acts set out in Section 19 of the CPSA and other Acts administered by the Commission. If a violation is not only knowing, but also willful, criminal penalties can result.
- Note that these obligations fall to manufacturers, distributors, importers, and retailers, **jointly**. There are often competing interests regarding who has notice, on timing, and on what to report.

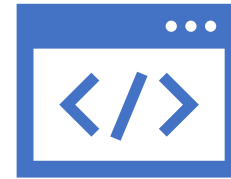
Making the Initial Report



Phone call



Email



Portal

A Word About Safer Products.gov



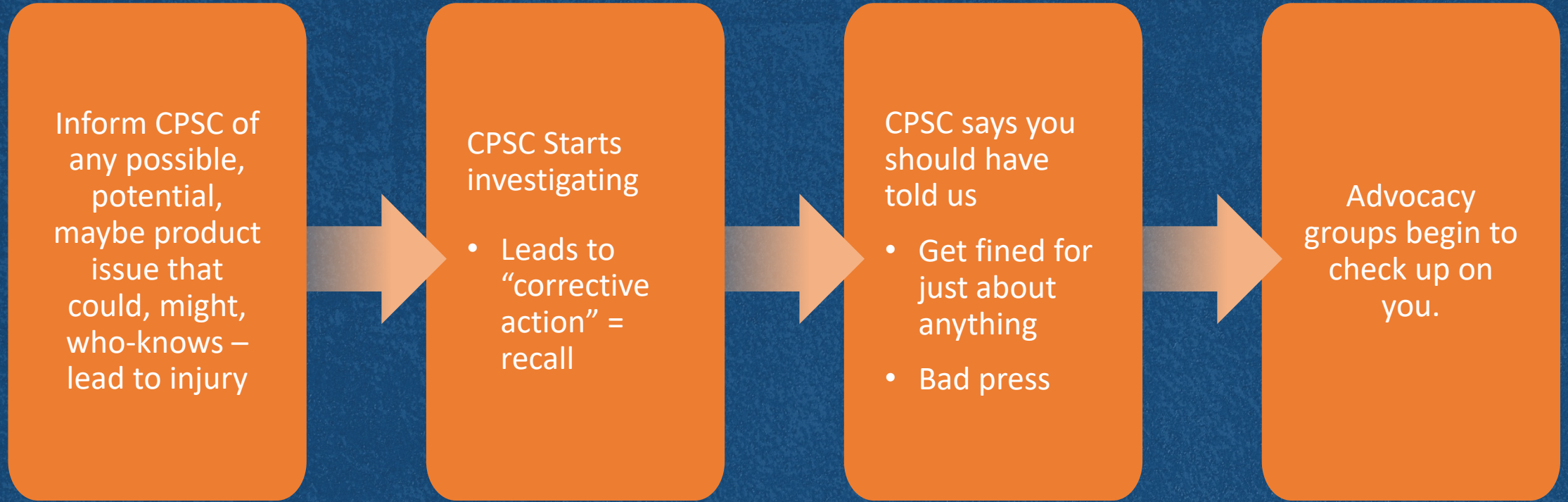
Consumers Complain!



SaferProducts.gov



If the CPSC gets a report from a consumer before you make an initial report, you will likely suffer the consequences



RECALLS



Fast Track



Voluntary



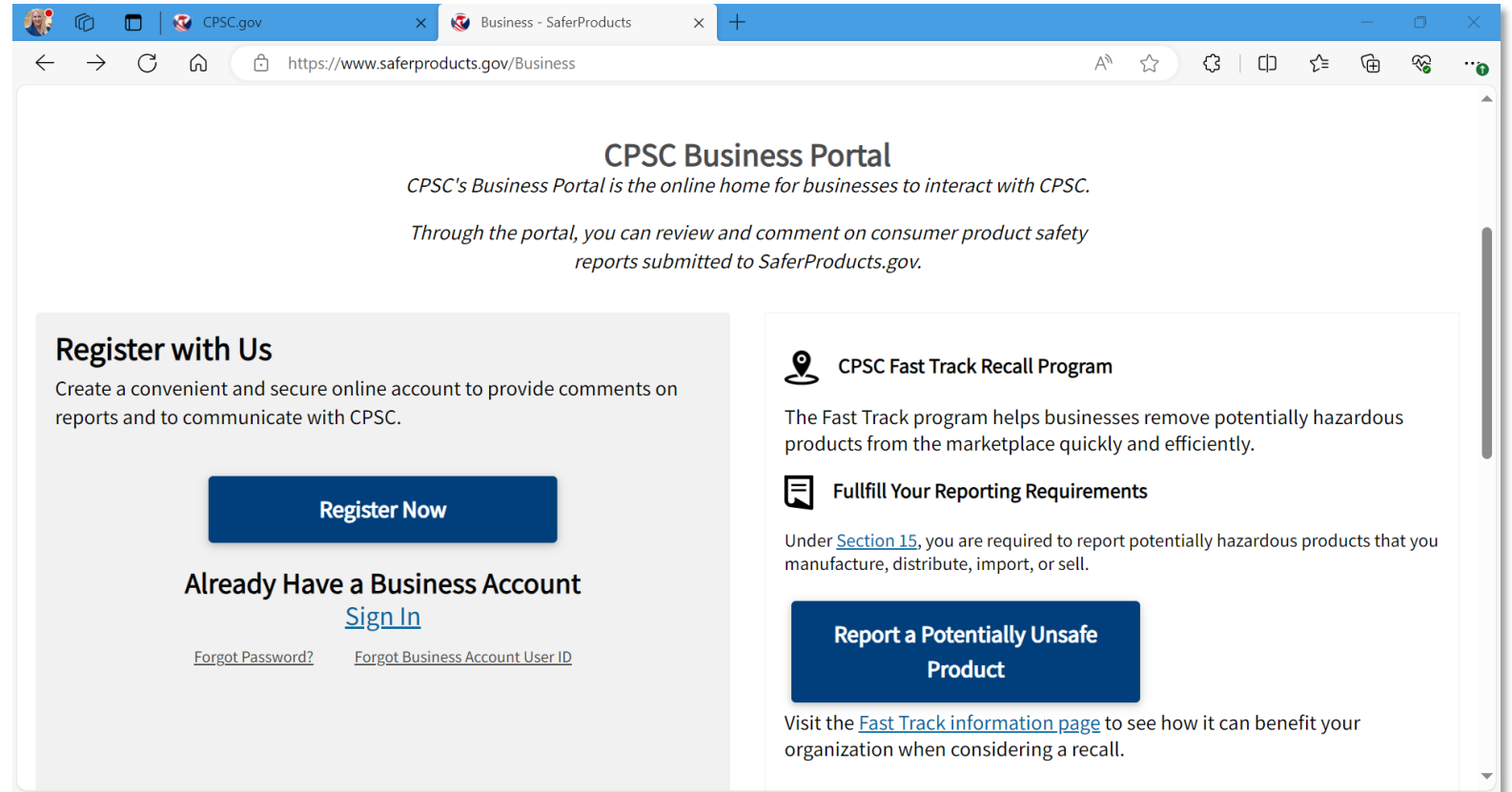
Involuntary

Fast Track Recall

If you can – do it!

Fast Track Recalls

- Initial and Full Report are submitted through a dedicated portal



Initial Report

0/6 Steps Complete

- Product Description ●
- Manufacturer / Importer / Retailer ●
- Hazard Information ●
- Nature / Extent of Injury ●
- Individual Filing Report ●
- Acknowledgement ●

Product Description

Product Description * ?

Brand Name *

Model Name/Number

+ Add Brand/Model Name or Number

NEXT

CPSC Demands from Recalling Firms

- Step Up ASAP
- Work with Agency As Best You Can
- Provide remedies and notice to consumers
- Agency will/may negotiate
- Develop innovative new ways to provide direct notice

- **The Truth: CPSC will tell consumers anyway.**

A Few Final Points:

Expect More Coordinated Information Sharing with Global Counterparts

CPSC (and *Product Safety Letter*) Publishes Non-U.S. Recalls

UK Product Safety Database

EU Safety Gate (RAPEX)

Advocacy Groups *Troll* these lists/sites

A Crash Course in Consumer Products Regulation under the US Consumer Product Safety Commission

VERIFICATION CODE

iadc

FOR CLE CREDIT:

1. Write down or take a photo of this Verification Code.

You **MUST** complete the evaluation to earn CLE Credit.

2. Either click the “Evaluation” button from the program on your **Meeting App** to enter the Verification Code and complete the Program Evaluation now.

OR

3. Save the code to take the evaluation later.