

**IADC Mid-Year Meeting**  
**A Crash Course in Consumer Products Regulation**  
**Under the Jurisdiction of the U.S. Consumer Product Safety Commission<sup>1</sup>**

**Dana Baiocco and Dwight W. Stone**

**I. The Consumer Product Safety Commission in a Nutshell**

Do you manufacture, import, distribute, or sell any product that is used in the home, school, or office? Then CPSC regulations likely apply to you.

The CPSC is an *independent* regulatory agency charged with, *inter alia*, protecting the public against unreasonable risks of injury associated with consumer products, and developing uniform safety standards for consumer products, and investigating the causes and prevention of product-related deaths, illnesses, and injuries.

The CPSC is governed by a Commission, acting in an official capacity. The Commission has five members, including a Chair, appointed by the President, and confirmed by the Senate for 7-year staggered terms. There may not be more than two members from any one political party on the Commission. For example, if there is an open Commission seat, a President from one political party may appoint a commissioner from another political party as required by statute. Most often, Commissioners sit during different Administrations as the CPSC was originally designed to be independent from the Administration. That said, the President may remove any Commissioner at any time without cause and traditionally, the Chairperson is selected by and is of the same political party as the sitting President. The Senate Commerce Committee and the House Energy and Commerce Committee have oversight authority over the Commission.

The CPSC has jurisdiction over any consumer product, which means any article, or component part thereof, produced or distributed for the personal use of, or for sale to, a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

The CPSC may conduct research, studies, and investigations on product safety and on improving the safety of such products. It may also test consumer products and develop product safety test methods and devices.

The CPSC, by policy, must ensure that importers and foreign and domestic manufacturers, distributors, and retailers carry out their obligations and responsibilities under the

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<sup>1</sup> *These materials are intended as a general summary of the law and do not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.*

various Acts with which the Commission enforces. *See generally*, Consumer Product Safety Act, 15 U.S.C. §2053.

## **II. Acts, Rules, and Regulations**

### **A. Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2501, *et. seq.***

The CPSA is the agency's umbrella statute, which gives the CPSC its basic authority generally and specifically to develop safety standards and bans and to *pursue* recalls. It was enacted in 1972 and has been amended by certain specific amendments and enactments over time.<sup>2</sup>

### **B. Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016 (August 14, 2008)**

Congress amended the CPSA in 2008 to provide the agency with new and stronger regulatory and enforcement tools, including those related to lead paint, phthalates, toy safety, third-party testing & certification, importing, ATVs, civil & criminal penalties, and SaferProducts.gov. The CPSA and the CPSIA are read jointly.

#### **1. CPSIA, Amended, H.R. 2715, Public Law 112-28 (August 12, 2011).**

The CPSIA was also amended in 2011 to give the agency even greater authority and discretion in its enforcement activities.

### **C. Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1261, *et. seq.***

The FHSA requires certain hazardous household products to have warning labels. The FHSA also authorizes the agency to regulate or ban "hazardous" substances "under certain circumstances to protect the public," including toys, electrically operated toys, cribs, rattles, pacifiers, bicycles, bunk beds.

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<sup>2</sup> The current version of the CPSA incorporates amendments made, or relevant provision enacted, by, for example, the Consumer Product Safety Commission Improvements Act of 1976, Public Law 94-284, 90 Stat. 503 (May 11, 1976); the Emergency Interim Consumer Product Safety Standard Act of 1978, Public Law 95-319, 92 Stat. 386 (July 11, 1978); the Consumer Product Safety Act Authorization Act of 1978, Public Law 95-631, 92 Stat. 3742 (November 10, 1978); Public Law 96-373, 94 Stat. 1366 (October 3, 1980); the Consumer Product Safety Amendments of 1981, Public Law 97-35, Title 12, subtitle A, 95 Stat. 703 (August 13, 1981); the Orphan Drug Act, Public Law 97-414, 96 Stat. 2049 (January 4, 1983); the Lead Contamination Control Act of 1988, Public Law 100-572, 102 Stat. 2884 (October 31, 1988); the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181 (November 18, 1988), and others.

## **1. Labeling of Hazardous Art Materials Act (LHAMA)**

This amendment to the FHSA adopted the ASTM Standard Practice for Labeling Art Materials for Chronic Health Hazards as a regulation under the Act and requires a review of art materials for chronic hazard potential and a warning label, when applicable.

### **D. Child Safety Protection Act (CSPA), Public Law 103-267, 108 Stat. 722 [H.R. 965] (June 16, 1994)**

An amendment to the FHSA that addresses choking hazards and warning labels on specific products, and mandates manufacturers, importers, distributors, and retailers to report certain choking incidents to the CPSC immediately upon learning of an incident.

### **E. Flammable Fabrics Act (FFA) 15 U.S.C. §§ 1191-1204**

The FFA regulates the manufacture of highly flammable clothing and interior finishes. The CPSC standards for clothing, textiles, vinyl plastic film used in clothes, carpets/rugs, children's sleepwear, mattresses/pads are just some of the products covered in this Act.

### **F. Poison Prevention Packaging Act (PPPA), 15 U.S.C. §§1471-1477**

The PPPA requires child-resistant packaging for certain household substances, including (1) anything "hazardous" under FHSA, food, drugs or cosmetics under Section 201 of Federal Food, Drug, and Cosmetic Act, dietary supplements, fuel when stored in portable containers used in heating, cooking, or refrigeration of a house.

## **1. Child Nicotine Poison Prevention Act of 2015 (CNPPA)**

The CNPPA requires "special packaging" (as defined in PPPA) for [liquid nicotine](#) sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the US. (16 C.F.R. 1700.15, .20)

### **G. Reese's Law [H.R. 5323] (January 3, 2022)**

This rather new law applies to button cell or coin batteries and consumer products containing them. Essentially, if there is a risk of injury from battery ingestion by children ages 6 and younger: (1) the battery containment compartments must be secured in a manner to eliminate or adequately reduce that risk of injury during reasonably foreseeable use or *misuse* conditions; (2) warning labels must be included on battery packaging or the product containing the battery; (3) info and warnings must be in a user manual or other format that accompanies a consumer product containing battery; (4) warnings must be placed directly on a consumer product visible to the consumer upon installation or replacement of the battery; or (5) for products where the battery is not intended to be replaced or installed by the consumer, a warning must be included directly on the product in a manner that is visible to the consumer upon access to the battery compartment. Warning labels shall: (a) clearly identify the hazard of ingestion; and (b) instruct consumers, as practicable, to keep new and used batteries out of the reach of children, to seek

immediate medical attention if a battery is ingested, and to follow any other medical advice. (Section 9).

**H. Children’s Gasoline Burn Prevention Act (CGBPA), Public Law 110-278 (July 17, 2008)**

This regulates portable gas containers manufactured for sale in U.S. after 2009 and requires that they conform to child resistant packaging requirements.

**I. Portable Fuel Container Act of 2020, 15 U.S.C. § 2056(d)**

This is a more recent rule designed to require flame mitigation devices in portable fuel containers to impede the propagation of flame into the container.

**J. Safe Sleep for Babies Act of 2021 (and CPSC Infant Sleep Rule)**

These rules prohibit the sale, offer for sale, manufacture, distribution, and/or importation into the U.S. of padded crib bumpers and inclined infant sleep products (with an incline of 10 degrees or more), plus non-inclined or flat, infant sleep products, such as baby boxes, in-bed sleepers, baby nests and pods, rigid-sided and rigid-framed compact bassinets without a stand or legs, various designs of travel bassinets with soft padded or mesh sides, and baby tents.

**K. The Sturdy Act (Stop Tip-Overs of Unstable, Risky Dresser on Youth Act) (contained in the Consolidated Appropriations Act, 2023)**

This law requires the CPSC to promulgate a safety rule for free-standing clothing storage units to protect children from tip-over related death or injury, and for other purposes.

**L. Refrigerator Safety Act (RSA), 15 U.S.C. §§ 1211-1214<sup>3</sup>**

This Act requires refrigerators to have a mechanism (usually a magnetic latch) that enables a refrigerator door to be opened from the inside in the event of accidental entrapment.

**M. Virginia Graeme Baker Pool & Spa Safety Act (VGB Act), Public Law 110-140 (with amendments)**

Public pools must be equipped with compliant anti-entrapment drain covers and, in certain instances, with additional devices or suction entrapment prevention systems.

**N. Dry Wall Safety Act of 2012 (DSA)**

The regulation that governs dry wall and requires labeling provisions in ASTM C1264-11, “Standard Specification for Sampling, Inspection, Rejection, Certification, Packaging, Marking, Shipping, Handling, and Storage of Gypsum Panel Products.” for dry wall manufactured or imported for use in U.S.; drywall manufactured or imported for use in the U.S.

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<sup>3</sup> Section 30 of the Consumer Product Safety Act transferred the functions of the Secretary of Commerce and the Federal Trade Commission under the Refrigerator Safety Act to the CPSC.

after July 22, 2015, must also comply with sulfur limitations in ASTM C1396-14a, “Standard Specification for Gypsum Board.”

### **III. The CPSC Has No Jurisdiction Over the Following.....Or Does It?**

The definition of Consumer Products, and the CPSC’s jurisdiction thereof is statutorily 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). However, the CPSC often has overlapping jurisdiction with other federal agencies and has, in the past, proclaimed or adopted jurisdiction of products, which arguably belong under another federal agency umbrella.

To demonstrate, while the FDA has jurisdiction over, *inter alia*, cosmetics, drugs, food and tobacco products, the CPSC has jurisdiction over the packaging of liquid nicotine, drug blister packs, and other child resistant packaging. Similarly, while the EPA is responsible for certain chemicals and emissions, the CPSC is exercising jurisdiction over generator safety, particularly with regard to carbon monoxide emissions. Chemicals also are subject to CPSC “hazard” determinations and certain packaging rules. And, while guns belong to ATF, the CPSC has exercised jurisdiction over gun safes and locks.

The CPSC also works closely with Customs and Border Protection to enforce its Acts at our nation’s ports of entry.

### **IV. The Evidence Shows What the CPSC Sees as Its Domain**

Below are some examples of studies and reports issued by the CPSC, which demonstrate the scope of the CPSC’s exercise of authority. So, if you think that the CPSC does not apply to you or your business, or you do not see your business or product listed here, please check again. Chances are that there are some applicable regulations.

#### **A. Injury Statistics and Technical Reports by Product Category:**

1. Sports & Recreation
2. Chemicals
3. Fuel, Lighters & Fireworks
4. Kitchen & Dining
5. Toys & Children Products
6. Furniture & Decor
7. Home Maintenance & Construction

8. Older Adults
9. Public Facilities & Products

**B. Injury Statistics and Technical Reports by Hazard Category**

1. Carbon Monoxide
2. Electrocutions
3. Fire
4. Pediatric Poisonings
5. Non-Pool Submersions

**C. Specific CPSC Staff Technical Reports**

**1. Technology, AI, IOT**

- a. Potential Hazards Associated with Emerging and Future Technologies
- b. Guidance Document for use of Human Biomonitoring Data for Exposure Assessment
- c. Applied Artificial Intelligence and Machine Learning Test and Evaluation Program for Consumer Products
- d. Safety Concerns Associated with Wearable Technology Products
- e. Status Report to the Commission on the Internet of Things and Consumer Product Safety

**2. 3D Printers**

- a. Safety Concerns Associated with 3D Printing and 3D Printed Consumer Products
- b. Presentation: 3D Printing: Potential Hazards and Risk Review

**3. Micro-mobility (E-bikes, Scooters, etc.)**

- a. Safety Concerns Associated with Micro-mobility Products

- 4. Tools, Construction, Fuel, Energy, Equipment**
  - a. Market Research Report on Table Saw Industry and Products – March 2016 and Staff statement.
  - b. Study of Fuel Leaks Associated with Outdoor Ground-Supported Gasoline-Powered Equipment.
  
- 5. Batteries and Energy, Storage (lithium-ion, button cell, solar panels)**
  - a. Report on PPPA Protocol Testing of Button Battery Packaging - June 2019
  - b. Consumer Product Safety Commission (CPSC) Staff’s Statement on Naval Surface Warfare Center, Carderok Division’s (NSWCCD) Report on “Evaluation of Cell-to-Cell Propagation in Lithium-Ion Batteries Containing 18650 Sized Cells”
  - c. CPSC Staff’s Statement on Naval Surface Warfare Center, Carderok Division’s (NSWCCD) Report on “Emerging Energy Storage Technologies”
  
- 6. Resale, E-Commerce**
  - a. CPSC Study of Hazardous Products in Thrift Stores
  - b. The Placement and Design of Warning Labels on E-commerce Sites
  
- 7. Warnings and Labels and Human Factors**
  - a. Toy and Product Warning Label Survey Findings
  - b. Qualtrics Final Report on Consumer Attitudes and Behaviors Regarding Product Safety
  - c. CPSC Warning Label Safety Symbol Research - Final Report with CPSC Staff Statement
  - d. Guidance on the Application of Human Factors to Consumer Products
  - e. Consumer Product Safety Commission- Caregiver Perceptions and Reactions to Safety Messaging Final Report
  - f. Field Testing of a Simple Adult Child Differentiation System

- g. Manufacturer's Guide to Developing Consumer Product Instructions
- h. Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior

**8. Infant Sleep – Other Durable Nursing Products**

- a. Pillows Product Characterization and Testing
- b. Durable Nursery Products Exposure Survey (DNPES): Final Summary Report

**9. Economics, Adverse Impact and Socioeconomics, Disabilities**

- a. Investigation on Racial and Socioeconomic Differences: Race, Ethnicity, and Socioeconomic Data in Consumer Product Safety
- b. Consumers with Intellectual and Developmental Disabilities: Review Investigating Safety Behaviors, Perspectives and Attitudes
- c. The Consumer Product Safety Commission's Revised Injury Cost Model 2018
- d. Valuing Reductions in Fatal Risks to Children
- e. Discrimination of Children from Adults in Safety Systems
- f. Estimating the Cost to Society of Consumer Product injuries: The Revised Injury Cost Model

**V. Third-Party Testing Rules**

- A. Federal law requires that every Children's Product be tested by a [third party, CPSC-accepted laboratory](#) for compliance with the applicable federal safety rules and requirements. Section 14 (a)(3)(E), 15 U.S.C. §2063
  - 1. The type of third-party testing required varies by product or product class, the intended age audience, consumer use patterns, and the product's material composition, and/or production choices.
    - a. A single product may be subject to multiple third-party tests to ensure compliance with many different regulatory requirements.

2. Records regarding the applicable mandatory standards, testing requirements, and compliance documentation are essential.
  - a. Consider this aspect in setting up an internal compliance program.

## VI. Importing and Certificates

- A. Product Certificates are required for *any regulated product(s)* manufactured, imported, distributed, and/or sold in the U.S. The purpose of the certificates is to demonstrate and confirm that the Consumer Product was manufactured according to the applicable federal safety rules and standards and tested for conformance before it is brought into the U.S., distributed in commerce, and sold.
- B. Two Types of Product Certificates
  1. Certificate of General Conformity (“CGC”) is required for those regulated products intended for general use and not for children.
  2. Children’s Product Certificate (“CPC”) is required for all Children’s Products, *e.g.*, those designed and primarily intended for <12 yrs.
- C. Manufacturers and *Importers* of regulated children’s products must certify compliance with applicable federal safety requirements in the CPC, which must accompany product shipments, and be *furnished to each distributor or retailer*.
  1. **Importers** must certify products manufactured outside U.S.
  2. **Domestic manufacturers** must certify those made inside U.S.
    - a. Certificates are required for regulated Children’s Products *imported for consumption or warehousing*.
- D. Certificates are **not** submitted to CPSC; no CPSC approval is required.
  1. The CPC must "accompany" the product shipment and be "furnished" to distributors and retailers.
  2. Upon request, the CPC must be furnished to the CPSC and to the Commissioner of Customs.

- a. Advance filing with CPSC or CBP is not yet required.<sup>4</sup>
- b. CPSC requests a certificate from an importer AFTER a shipment has been identified or stopped for examination.

## VII. Reporting Rules

### A. Section 15(b) Reports, 15 U.S.C. § 2064(b)

1. Section 15(b) establishes reporting requirements for manufacturers, importers, distributors, and retailers of consumer products, distributed in commerce, and over which the agency has jurisdiction.

### B. Purpose

1. In enacting Section 15(b), Congress intended to encourage widespread reporting of timely, accurate, and complete information that is necessary to protect public health and safety.
2. In addition to assisting the CPSC to uncover substantial product hazards, reporting incidents involving injury or death helps the agency identify risks that could be addressed through voluntary or mandatory standards.
3. Although the CPSC uses sources other than Section 15(b) reports to identify potentially hazardous products, reporting by companies under Section 15 can provide the most timely and effective source of information about such products.

### C. Standard Generally

1. Everyone<sup>5</sup> must immediately report to the CPSC when they receive 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.

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<sup>4</sup> A CPSC study found that certificate violations are strong predictors of substantive violations. Specific data on certificates are associated with noncompliance. But the absence of a certificate cannot be used to target noncompliant and hazardous consumer products at import.

<sup>5</sup> 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.

2. This includes the duty to “immediately” report the following type of information to the CPSC:
  - a. 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.
  - b. 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.
  - c. 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.
  - d. a product that has been listed as a substantial product hazard by Commission action (such as a hairdryer without the appropriate immersion protection).
3. It is important to recognize that a reporting obligation may arise even if a firm cannot 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.
4. 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.
5. Failure to fully and immediately report this information may lead to substantial civil or criminal penalties.
  - a. 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.

## **D. Who Has Reporting Responsibility?**

1. Reporting responsibility should be given to someone with product knowledge. The designated individual should have the authority to report to the CPSC or raise the issue quickly with an authorized firm representative. *See* CPSA Section 20-21 (15 U.S.C. § 2069-2070), Federal Hazardous Substances Act Section 5 (15 U.S.C. § 1264), Flammable Fabrics Act, Section 7 (15 U.S.C. § 1196), and 16 C.F.R. Part 1115.22.
  - a. The CPSC says that it is *expected* that the information will reach the *CEO or the official responsible* for 15(b) compliance within *5 days* (16 C.F.R. Part 1115.14(b)).
  - b. CPSC “expects” that you will review your firm’s organization structure, roles, and responsibilities. Members could include Safety or Quality staff, Customer Service Personnel, Risk Management staff, engineers, general counsel, and others.

## **E. What To Include in the Initial Report**

1. *Retailers and Distributors* must include all information required by a Section 15 report “insofar as it is known...” 16 C.F.R. Part 1115.13(b).
2. The following should be transmitted in an initial report, (16 C.F.R. Part 1115.13(c)):
  - a. Identification and description of the product.
  - b. Name and address of the manufacturer and/or importer of the product, if known. If not known, the names and addresses of all known distributors and retailers of the product.
  - c. Nature and extent of the possible defect, the compliance failure(s), and/or the related risk(s).
  - d. Name and address of the person informing the Commission.
  - e. If reasonably available, other information in 16 C.F.R. Part 1115.13(d).
  - f. A timetable for providing information not immediately available.

## **F. Where to File the Report**

1. A company may file its Section 15(b) report with the CPSC’s Office of Compliance and Field Operations.

2. The report may also be filed electronically through the agency’s website ([SaferProducts.gov](http://SaferProducts.gov)).
3. Alternatively, a company can file its report electronically by email ([Section15@cpsc.gov](mailto:Section15@cpsc.gov)) and include “Section 15” in the subject line.
4. ***Retailers and Distributors*** can satisfy their initial reporting obligations by reporting the information described above to:
  - a. the Office of Compliance through the Section 15 mailbox.
  - b. alternatively, a ***retailer or distributor*** can send a written communication to the manufacturer or importer of a product, describing the failure to comply with an applicable regulation, the potential defect or the risk of injury associated with the product; but they must also provide a copy of that communication to the Office of Compliance.
5. ***Retailers and Distributors*** may also satisfy a reporting obligation by forwarding reportable information received from another company to the Office of Compliance and Field Operations. Section 15(b) requires that a manufacturer, retailer, or distributor must immediately inform the CPSC of a failure to comply, a defect, or such a risk, unless it has actual knowledge that the CPSC has been adequately informed of such failure to comply, defect, or risk because, for example, the manufacturer provided the retailer or distributor a copy of the Full Report filed with staff.
6. The Commission is “adequately informed” if staff has received the information requested under 16 C.F.R. Part 1115.12 and/or 1115.13, or if the staff has informed the company that staff is adequately informed.
7. In addition to the standard report elements in 16 C.F.R. Part 1115.13(d), staff may request additional information including, but not limited to:
  - a. Underlying documentation on related reported incidents, complaints, and warranty claims.
  - b. Countries, other than the U.S., where the products were distributed.
  - c. Premarket and post-market test reports.
  - d. Marketing, advertising, and promotional documents.
  - e. Technical documentation on product design and manufacture, including change orders.

- f. UPC codes for all models involved.
- g. Incident and exemplar samples of the product.
- h. Documentation regarding any deaths associated with the product, regardless of defect or hazard.
- i. Information on a foreign or component part manufacturer.

## **G. When to Report**

1. Section 15 requires companies to report "immediately," which CPSC interprets to be within 24 hours of obtaining the requisite information described above.
2. The CPSC encourages companies to report potential substantial product hazards, even while their own investigations are continuing. However, if a company is uncertain about whether information is reportable, the company can take a reasonable time to investigate the matter. That investigation should not exceed 10 working days, unless the company can demonstrate that a longer time is reasonable under the circumstances. Absent such circumstances, the CPSC will presume that, at the end of 10 working days, the company has received and considered all information that would have been available to it, had a reasonable, expeditious, and diligent investigation been undertaken.
3. An evaluation of a timeliness case will be based, in part, on what the company actually knew about the hazard posed by the product, or what a reasonable person, acting under the circumstances, should have known about the hazard while exercising due care, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Thus, a company is deemed to know what it would have known had it exercised due care in analyzing reports of injury or consumer complaints, or in evaluating warranty returns, reports of experts, in-house engineering analyses, or any other information.
4. The CPSC considers a company to have obtained knowledge of product safety-related information when that information is received by an employee or official of the company, who may reasonably be expected to appreciate the significance of that information. Once that occurs, under ordinary circumstances, 5 working days is the maximum reasonable time for that information to reach the chief executive officer, or the official assigned responsibility for complying with the reporting requirements. If a firm has information that noncompliance or a defect in a consumer product caused, may have caused, contributed to, or could contribute to, a

death or grievous bodily injury, the firm must report, unless it has investigated and determined that the information is not reportable. 16 C.F.R. Part 1115.12(d).

5. CPSC staff's position on reporting is: "When in doubt, report."

**CPSC Published Guidance:** If you receive information that reasonably suggests that a product could create a safety or health hazard but no reports have been received alleging that actual harm or injury has been suffered, you must still immediately report. The law does not require that injury or harm occurred.

#### **H. Reporting Lawsuits under Section 37, 15 U.S.C. § 2084**

1. Section 37 of the CPSA requires manufacturers and importers *only* of consumer products to report information about settled or adjudicated lawsuits (subject to the time periods detailed in Section 37).
  2. Under Section 6(e) of the CPSA, the Commission and its employees may not publicly disclose information reported under Section 37 of the CPSA, except that such information may be furnished to the reporting manufacturer or Congress, under certain circumstances.
  3. Reporting under Section 37 is not an admission of the existence of an unreasonable risk of injury, a defect, a substantial product hazard, an imminent hazard, or any other liability under any statute or common law. Information provided voluntarily that is in addition to information required to be reported under Section 37, is governed by the confidentiality provisions of Section 15 reports.
- I. SaferProducts.gov – the CPSC website that allows you to report to the CPSC or for an impacted consumer to report product safety issues.

#### **VIII. Other Violations and Potential for Penalties**

##### **A. Other Prohibited Acts. 15 U.S.C. §2068 (Section 19)**

1. import, sell, distribute, or manufacture any product that violates a CPSC rule, regulation, standard, or ban or other product or substance subject to Section 12 or Section 15.
2. fail to allow inspection or provide reports required under CPSA or rule
3. failure to furnish certificate or issues false certificate
4. failure to comply with Section 14 re: product certification or labeling;

5. failure to comply with rules re: anti-stockpiling, technical data, etc.
6. import/sell/distribution of unauthorized safety mark
7. misrepresentation to CPSC office or employee;
8. undue influence on a 3<sup>rd</sup> party lab;
9. Evade children's product requirements by subdivision of production;
10. export in violation of Section 12 or Section 15 order, or ban under FHSA, or voluntary recall;
11. failure to comply with 104 Rule.

**B. Civil Penalty Actions**

1. Any person who knowingly violates Section 19 shall be subject to a civil penalty for any violation that occurs.
  - a. There is a \$120,000 max for each violation or a \$17,500,000 max for any related series of violations.
2. Process
  - a. Commission vote for referral to DOJ if cannot be compromised at Commission level;
  - b. If settlement is reached, Commission(ers) must approve the settlement, which includes agreement with background on settlement.
3. Procedure:
  - a. Requires Notice of violation to firm per 16 C.F.R. Part 1119.5
  - b. Briefing package to the Commission(ers) discussing civil penalty factors set forth in 20(b) in commencing an action
  - c. The civil penalty factors are interpreted at 16 C.F.R. Part 1119
4. There is a 5-year statute of limitations under which to file a civil penalty action. 28 U.S.C. §2462.

## **IX. A Few Other Issues to Consider**

### **A. Safety Audit and Internal Compliance Programs Recommended to Avoid Pitfalls**

1. Make sure they are up to date.

### **B. Recalls and Correction Action Plans**

1. Communicating with Customers
2. Webpage Link
3. From around the world – what it means for Section 15(b)

### **C. Reporting and Safety**

1. Consumer Calls and Complaints
    - a. How are they recorded?
    - b. What is done with them?
    - c. Any training or policies on how to handle consistently.
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