



2013

THE REGULATED PRODUCT HANDBOOK



Office of Compliance and Field Operations
U.S. CPSC

3/26/2013

Contents

CHAPTER 1 –	1
INTRODUCTION	1
HOW CPSC ENFORCES ITS STATUTES	2
REGULATED PRODUCT REQUIREMENTS	3
CERTIFICATES OF COMPLIANCE	4
REQUIREMENTS FOR CERTIFICATES OF COMPLIANCE	4
CERTIFICATE ISSUANCE	4
GENERAL CONFORMITY CERTIFICATES (GCCs)	5
CHILDREN’S PRODUCT CERTIFICATES (CPCs).....	5
AVAILABILITY OF CERTIFICATES.....	5
ELECTRONIC FILING OF CERTIFICATES FOR IMPORTED PRODUCTS.....	5
CHAPTER 2 – SANCTIONS UNDER CPSC STATUTES.....	6
PENALTIES.....	6
PENALTIES AVAILABLE UNDER THE CPSA.....	6
PENALTIES AVAILABLE UNDER THE FHSA	7
PENALTIES AVAILABLE UNDER THE FFA	8
PENALTIES UNDER THE PPPA.....	9
PENALTIES UNDER THE RSA, VGBA, and CGBPA.....	9
INJUNCTIVE ACTIONS	9
INJUNCTIONS UNDER THE CPSA	10
INJUNCTIONS UNDER THE FHSA.....	10
INJUNCTIONS UNDER THE FFA.....	10
INJUNCTIONS UNDER THE PPPA.....	10
SEIZURE OF VIOLATIVE PRODUCTS	11
SEIZURE UNDER THE CPSA.....	11
SEIZURE UNDER THE FHSA	11
SEIZURE UNDER THE FFA.....	11
SEIZURE UNDER THE FD&CA.....	12
SEIZURE UPON REQUEST FOR REDELIVERY.....	12
CHAPTER 3 – PRESENTING EVIDENCE THAT A PRODUCT IS NOT VIOLATIVE .	12
RESPONDING TO THE CPSC LETTER OF ADVICE.....	12
CPSC RESPONSE TO FIRM RESPONSE.....	13
LETTER OF ADVICE ISSUED FOR PRODUCT STOPPED AT PORT OF ENTRY.....	13
CHAPTER 4 – REGULATED PRODUCTS AT PORT OF ENTRY	13
DETENTIONS.....	13
IMPORT AUTHORITY UNDER THE CONSUMER PRODUCT SAFETY ACT	14
EXPORTATION OF NONCOMPLYING GOODS AT PORT.....	15
IMPORT AUTHORITY UNDER THE FEDERAL HAZARDOUS SUBSTANCES ACT.....	15
IMPORT AUTHORITY UNDER THE FLAMMABLE FABRICS ACT	16
CHAPTER 5 – RECALLING A REGULATED PRODUCT	16
PREPARING FOR A PRODUCT RECALL.....	16
ELEMENTS OF A RECALL.....	18
COMMUNICATING RECALL INFORMATION	18

NEWS RELEASES.....	20
RECALL ALERTS	21
VIDEO NEWS RELEASES	21
POSTERS	22
SOCIAL MEDIA.....	23
OTHER FORMS OF NOTICE	23
TOLL-FREE NUMBERS/E-MAIL/URL SITES	24
WEBSITE INFORMATION	25
CHAPTER 6 – RECOMMENDED PROCEDURES FOR ESTABLISHING A RECALL	
PLAN WITHIN YOUR COMPANY	25
DESIGNATING A RECALL COORDINATOR.....	25
RESPONSIBILITIES OF A RECALL COORDINATOR	25
IDENTIFYING AFFECTED PRODUCTS	26
RECORDS MAINTENANCE.....	26
CONCLUSION	28
CHAPTER 7 – DESTRUCTION OF RECALLED PRODUCT	28
REVERSE DISTRIBUTING AND QUARANTINING PRODUCT	28
WITNESSING DESTRUCTION	28
USE OF THIRD PARTY DESTRUCTION CONTRACTORS	29
RECONDITIONING PRODUCT	29
PENALTIES FOR THE RESALE OF RECALLED PRODUCT	29
CHAPTER 8 – APPLICATIONS FOR AUTHORIZATION TO RECONDITION	
VIOLATIVE IMPORTS	29
PROCEDURES FOR OBTAINING AUTHORIZATION TO RECONDITION.....	29
COSTS CHARGEABLE IN CONNECTION WITH RECONDITIONING VIOLATIVE	
IMPORTS	31
CHAPTER 9 – REPORTING REQUIREMENTS.....	31
STATUTORY REQUIREMENTS.....	32
REPORTING UNDER SECTION 15 OF THE CPSA.....	32
REPORTING PRODUCTS INVOLVED IN LAWSUITS	32
REPORTING CERTAIN CHOKING INCIDENTS	33
WHY REPORTING IS REQUIRED	33
WHEN TO REPORT UNDER SECTION 15 OF THE CPSA.....	34
REPORTING PROCEDURES.....	35
PENALTIES FOR FAILURE TO REPORT	36
CHAPTER 10 – EXPORT REQUIREMENTS	36
POLICY STATEMENT REGARDING PROHIBITION OF EXPORTATION.....	36
PRODUCTS SUBJECT TO THE CPSA	37
PRODUCTS SUBJECT TO THE FHSA.....	37
PRODUCTS SUBJECT TO THE FFA.....	37
PROHIBITIONS ON EXPORTATION	37
EXPORT NOTIFICATION REQUIREMENTS	38
CPSA Violations	39
FHSA Violations	39
FFA Violations	39

CHAPTER 11 – CONFIDENTIAL TREATMENT OF INFORMATION	39
CONFIDENTIALITY OF INFORMATION UNDER SECTION 6 OF THE CPSA.....	39
CONFIDENTIALITY OF REPORTS UNDER SECTION 15(b) OF THE CPSA.....	40
CONFIDENTIALITY OF REPORTS UNDER SECTION 37 OF THE CPSA.....	41
USE OF INFORMATION BY THE COMMISSION	41
SHARING OF INFORMATION WITH FEDERAL, STATE, LOCAL AND FOREIGN GOVERNMENT AGENCIES	41

REGULATED PRODUCTS HANDBOOK

CHAPTER 1 –

INTRODUCTION

The U.S. Consumer Product Safety Commission (CPSC or Commission), established by Congress in 1972, is an independent federal regulatory agency charged with reducing unreasonable risks of injury and death associated with consumer products. The CPSC achieves that goal through education, safety standards activities, regulation, and enforcement of the statutes and implementing regulations. The CPSC has jurisdiction over thousands of types of consumer products used in the home, in schools, in recreation, or otherwise. To carry out its mission, CPSC administers seven statutes passed by Congress (the Acts). They are:

1. The Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2051-2089;
2. The Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1261-1278
3. The Flammable Fabrics Act (FFA), 15 U.S.C. §§ 1191-1204;
4. The Poison Prevention Packaging Act (PPPA), 15 U.S.C. §§ 1471-1477;
5. The Refrigerator Safety Act (RSA), 15 U.S.C. §§ 1211-1214;
6. The Virginia Graeme Baker Pool and Spa Safety Act (VGBA), 15 U.S.C. §§ 8001-8008; and
7. The Children's Gasoline Burn Prevention Act (CGBPA), 110 P.L. 278.

This *Handbook* has been developed to assist manufacturers, importers, retailers and others in the regulated community (firms) in understanding their responsibilities under the Acts and what steps they should take when either the CPSC staff informs them, or they become aware of, a violation of CPSC statutes and regulations. When CPSC staff determines that a product violates a specific statute or regulation, CPSC Compliance staff generally notifies the responsible firm (the product manufacturer, importer, distributor, or retailer) of the violation and requests a specific remediation of the problem.

Notification to the responsible firm is usually in the form of an official letter, referred to in this *Handbook* as the Letter of Advice or a Notice of Non-compliance (collectively referred to in this *Handbook* as LOA). Firms should review this *Handbook* in conjunction with the LOA sent by CPSC staff that identifies the applicable statutes and regulations violated. The LOA informs the firm of the specific product and violation that has occurred; requests that the firm take specific corrective actions (including stopping the sale and distribution of the product;

recalling the product from distributors, retailers, and/or consumers; quarantining and disposing of inventory of the product; and changing future production of the product); and informs the firm of the legal actions available to the Commission (including civil and criminal penalties and injunctive relief). In addition, the LOA informs the firm that if it disagrees with CPSC staff's determination that a violation has occurred or believes the product is not subject to the Commission's jurisdiction, it may question staff's findings and present evidence to support its position. See Chapter 3 of this *Handbook*.

After reviewing the information in the chapters that follow, please direct any questions to the appropriate CPSC Compliance Officer or the Office of Compliance and Field Operations at Sect15@cpsc.gov.

HOW CPSC ENFORCES ITS STATUTES

The goal of the Commission's Compliance Program is to ensure that firms comply with the statutes, rules, regulations, standards, and bans that protect consumers from hazardous products. To achieve this goal, the agency conducts three main types of compliance activities:

- Informing stakeholders or the regulated community of CPSC requirements for their products through education, workshops and seminars, and written informational letters, including guidelines and other publications, as appropriate;
- Maintaining surveillance over consumer products by monitoring consumer incidents, following up on reports by entering and inspecting any factory, warehouse or establishment where consumer products are manufactured or held, or any firewalled conformity assessment bodies, and sampling and testing such products that may not be in compliance with federal standards or that may be potentially hazardous products;
- Testing consumer products to the mandatory requirements, identifying noncompliance, and obtaining corrections of noncompliant products (primarily by working cooperatively with industry, but initiating litigation when necessary) through reconditioning and recalls of hazardous products from the marketplace or consumers.

Specific compliance activities regarding enforcement include the following:

- Monitoring compliance with statutes, rules, standards, regulations, bans and other requirements and enforcing existing regulations and laws by: (1) conducting both domestic surveillance through inspections of manufacturers, importers, distributors, and retailers of consumer products and import surveillance at ports of entry in conjunction with U.S. Customs and Border Protection (CBP or Customs); and (2) investigating injury reports, consumer complaints, trade complaints, or other allegations or indications that a firm is manufacturing or distributing consumer products not in compliance with a statute, rule, regulation, standard, or ban under our authority.

- Section 15 of the CPSA requires manufacturers, distributors, and retailers to report to the CPSC, among other things, products that fail to comply with an applicable consumer product safety rule under the CPSA or any other similar rule, regulation, standard or ban under the CPSA or any statute enforced by the CPSC.
- With the passage of the Consumer Product Safety Improvement Act (CPSIA) in August 2008, if a product violates a mandatory requirement under the FHSA, FFA, PPPA, RSA, VGBA, or CGBPA, the firm must report the violation to the CPSC.
- Section 37 of the CPSA requires manufacturers to report to the Commission products that are the subject of at least three civil actions within a 24-month period that result in a judgment or final settlement in favor of the plaintiff. The Commission has the authority to remove hazardous products from the marketplace under Sections 12, 15 and 22 of the CPSA; sections 6 and 15 of the FHSA; and Section 6 of the FFA.

REGULATED PRODUCT REQUIREMENTS

The CPSC does not have pre-market authority to “approve” a product prior to its importation and distribution in commerce. Manufacturers and importers are responsible for ensuring that their products meet any mandatory standards or regulations prior to those products being distributed in commerce, in most situations. Title 16 of the Code of Federal Regulations (CFR) contains implementing regulations of the above statutes. The regulations are organized by the statute of authority. Some of the requirements for consumer products are statutory requirements and are not represented by a corresponding mandatory standard or regulation. For example, the Children’s Gasoline Burn Prevention Act places specific requirements on manufacturers and importers of portable gas cans that are not delineated in the CFR. The specific requirements for portable gas cans are statutory, 110 P.L. 278; 122 Stat. 2602; 2008 [H.R. 814], July 17, 2008.

The Consumer Product Safety Improvement Act of 2008 added statutory requirements for specific children’s products. Section 101 – Lead requirements (regarding lead content); Section 103 – Tracking requirements; Section 105 – Advertising for catalogs and direct means of sale requirements; Section 106 – Toy Safety Standard; and Section 108 – Prohibition on certain Phthalates may not have corresponding regulations in the CFR. Information on the requirements are ascertained through review of the CPSIA. Many of the new rules mandated by Section 104 of the CPSIA incorporate the performance requirements of a voluntary consensus standard into a mandatory rule. However, due to copyright protection, the specifics of the standards are incorporated by reference. The full standard must be obtained from the consensus standard organization and is not

codified in the CFR. The specific version that was accepted by the Commission at the time of the rulemaking may be revised or updated periodically to a more current version that becomes accepted by the CPSC. A list of the accepted version and the acceptance dates is maintained on the CPSC homepage, <http://www.cpsc.gov/Business--Manufacturing/Lab-Accreditation/Rules-Requiring-Third-Party-Testing/>.

In addition to meeting the requirements of a specific regulation, some product categories must meet requirements of multiple regulations. For example, any product that is manufactured for children has requirements that apply to all children's products, in addition to performance requirements for that product. Thus, a full-size crib must meet the requirements of Part 1219 – Safety Standard for Full-Size Baby Cribs; the requirements for lead in surface coatings (Ban of Lead-Containing Paint and Certain Consumer Products bearing Lead Containing Paint, 16 CFR part 1303); lead content limits (Section 101 of the CPSIA); the phthalate limits (Section 108 of the CPSIA); tracking label requirements (Section 103); certification requirements (16 CFR part 1110); and Requirements for Consumer Registration of Durable Infant and Toddler Products, 16 CFR part 1130. The requirements for children's products span several rules. Below is a summary of the additional requirements.

CERTIFICATES OF COMPLIANCE

REQUIREMENTS FOR CERTIFICATES OF COMPLIANCE

CERTIFICATE ISSUANCE

Section 14 (a)(1) and (2) of the CPSA, 15 U.S.C. § 2063(a)(1) and (2), states that “every manufacturer” of a product, including a children's product, subject to a consumer product safety rule, ban, standard, or regulation, as well as the private labeler of such product, must issue the certificates described in section 14(a) of the CPSA. Section 3(a)(11) of the CPSA defines the term “manufacturer” as any person who manufactures *or imports* a consumer product. As such, any statutory obligation assigned to a manufacturer, by definition, applies to an importer.

Shortly after passage of the CPSIA in 2008, the Commission issued a regulation, at 16 CFR part 1110, to specify the persons required to issue certificates under section 14(a) of the CPSA. Section 1110.7 states that certificates for products manufactured outside the United States must be issued by the importer, and certificates for products manufactured within the United States must be issued by the manufacturer.

GENERAL CONFORMITY CERTIFICATES (GCCs)

Section 14(a)(1) of the CPSA requires every manufacturer and private labeler of a product subject to a consumer product safety rule under the CPSA or similar rule, ban, standard or regulation enforced by the Commission, to issue a certificate of compliance for any product that is imported for consumption or warehousing or distributed in commerce. The certificate must certify that the product complies with all applicable CPSA consumer product safety rules and similar rules, bans, standards, or regulations under any other statutes administered by the Commission. The certificate must specify each such rule, ban, standard, or regulation with which the product must comply. In general, the certification must be based on a test of each product or upon a reasonable testing program.

CHILDREN'S PRODUCT CERTIFICATES (CPCs)

Section 14(a)(2)(B) of the CPSA requires every manufacturer and private labeler of a children's product subject to a children's product safety rule to issue a certificate that certifies that such children's product complies with the children's product safety rule based on testing by accredited third party conformity assessment bodies that have been accepted by the Commission. The certificate must be issued before importing for consumption or warehousing or distributing into commerce any such product. See information on Children's Product Certificates at: <http://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Certification/Childrens-Product-Certificate-CPC/>. The Commission maintains on the website a listing of the accepted accredited third party conformity assessment bodies (laboratories).
<http://www.cpsc.gov/en/Business--Manufacturing/Lab-Accreditation>

AVAILABILITY OF CERTIFICATES

Section 14(g)(3) of the CPSA requires every certificate under section 14 of the CPSA to accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate to be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate must furnish a copy of the certificate to the Commission.

ELECTRONIC FILING OF CERTIFICATES FOR IMPORTED PRODUCTS

Section 14(g)(4) of the CPSA authorizes the Commission, in consultation with CBP, to provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate must furnish a copy to the Commission and to CBP.

CHAPTER 2 – SANCTIONS UNDER CPSC STATUTES

With the enactment of various statutes administered by the CPSC, Congress provided specific sanctions that may be imposed against firms or individuals that violate any provision of the statutes. These sanctions include both civil penalties, up to a maximum of \$15.15 million (76 *Federal Register* 71554, November 18, 2011); and criminal penalties, including a fine, imprisonment of the responsible individual(s) for not more than 5 years, and forfeiture of assets associated with the criminal violation(s). In addition, firms and individuals may be enjoined from continuing to violate CPSC statutes and regulations, and pursuant to court order, violative products may be seized to prevent distribution in commerce.

PENALTIES

CPSC Compliance staff issues a LOA to the responsible individual and firm when a product is found to violate a CPSC statute, safety standard, or banning regulation. The notice of noncompliance informs the firm of which statutes, rules, regulations, standards, or bans have been violated, and it specifies the prohibited acts that have occurred.

The prohibited acts are found in section 19 of the CPSA, 15 U.S.C. § 2068; section 4 of the FHSA, 15 U.S.C. § 1263; section 3 of the FFA, 15 U.S.C. § 1192; and sections 403, 502, and 602 of the Federal Food, Drug, and Cosmetic Act (FD&CA), 21 U.S.C. §§ 343, 352, and 362 for violations involving foods, drugs, and cosmetics subject to the special packaging standards under the Poison Prevention Packaging Act (PPPA). Violations of the RSA, VGBA, and CGBPA are prohibited acts under section 19 of the CPSA.

The LOA will provide the maximum sanctions to which the firm and/or individual may be subject. Generally, the LOA will not contain specific details regarding penalties, but it will refer to this *Handbook* for assistance in determining the applicable penalties available under the CPSA, FHSA, FFA, PPPA (enforced through the FHSA and FD&CA) and the RSA, VGBA, and CGBPA (enforced through the CPSA).

PENALTIES AVAILABLE UNDER THE CPSA

Civil Penalties under the CPSA – Under section 20 of the CPSA, any person who knowingly¹ violates section 19 of the CPSA shall be subject to a civil penalty not to exceed \$100,000 for each such violation.² With some exceptions, a violation of

¹ “Knowingly” is defined at Section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

² The maximum penalty amounts are adjusted for inflation every 5 years. The next adjustment will occur on January 1, 2017. See 15 U.S.C. § 2069 (a)(3)(A) [CPSA]; 15 U.S.C. § 1265(c)(5) [FHSA]; and 15 U.S.C. §1194(e)(5)(A) [FFA].

§19(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11), shall constitute a separate offense with respect to each individual consumer product involved, except that the maximum civil penalty shall not exceed \$15.15 million for any related series of violations. (76 *Federal Register* 71554-55, November 18, 2011)

Criminal Penalties under the CPSA – Under section 21 of the CPSA, 15 U.S.C. § 2070, violation of section 19 of the CPSA is punishable by:

1. imprisonment of not more than 5 years for a knowing and willful violation;
2. a fine determined under section 3571 of title 18, United States Code; or
3. both.

The Criminal Fine Improvements Act of 1987, Pub. Law 100-185, [18 U.S.C. § 3571] increased maximum criminal penalties under the CPSA to \$100,000 for individuals and \$200,000 for organizations, unless a death occurred, in which case the maximum fine is \$250,000 for individuals and \$500,000 for organizations.²

In addition to the criminal penalties described above, the penalty for a violation of the CPSA, or any other Act enforced by the Commission, may include the forfeiture of assets associated with the violation.

PENALTIES AVAILABLE UNDER THE FHSA³

Civil Penalties under the FHSA – Under Section 5(c)(1) of the FHSA, any person who knowingly violates section 4 of the FHSA shall be subject to a civil penalty not to exceed \$100,000 per violation.² In addition, under section 20 of the CPSA, any person who knowingly violates section 19 of the CPSA shall be subject to a civil penalty. The term “knowingly” is defined in section 5(c)(5) of the FHSA. 15 U.S.C. § 1264(c)(5). The Commission may seek a civil penalty of up to \$100,000 per noncompliant (violative) product, up to a maximum of \$15.15 million for any related series of violations. (76 *Federal Register* 71554, November 18, 2011).

Criminal Penalties under the FHSA – Under section 5(a) of the FHSA, 15 U.S.C. § 1264(a), any person who violates any provisions of section 4 of the FHSA shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to a fine not to exceed \$10,000 for organizations and not more than \$5,000 or imprisonment for not more than 90 days, or both, for individuals. [18 U.S.C. § 3571]

For offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment of not more than 5 years, a fine determined under 18 U.S.C. § 3571, or both. For organizations, the maximum

³ In addition to these FHSA penalties, CPSIA made most violative conduct that is punishable under the FHSA also punishable under the CPSA.

fine is \$200,000 if the offense does not result in death or a maximum fine of \$500,000 if the offense results in death. For individuals, the maximum fine is \$100,000 if the offense does not result in death and a maximum fine of \$250,000 if the offense results in death. [15 U.S.C. § 3571] Section 217(d) of the CPSIA increased the maximum criminal penalties provided for in section 5(a) of the FHSA.⁴

PENALTIES AVAILABLE UNDER THE FFA⁵

Civil Penalties under the FFA – Under section 5(e) of the FFA, any person who knowingly violates a standard or regulation issued under section 4 of the FFA, 15 U.S.C. § 1193, shall be subject to a civil penalty not to exceed \$100,000 for each such violation.² The term “knowingly” is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194. The Commission may seek a civil penalty of up to \$100,000 per violative product, up to a maximum penalty of \$15.15 million for any related series of violations. (76 *Federal Register* 71554-55, November 18, 2011)

Criminal Penalties under the FFA – Under section 7 of the FFA, 15 U.S.C. § 1196, violation of section 3 or 8(b) of the FFA or failure to comply with section 15(c) of the FFA is punishable by:

1. imprisonment of not more than 5 years for a knowing and willful violation;
2. a fine (as described below); or
3. both.⁶

The Criminal Fine Improvements Act of 1987, Pub. Law 100-185, [18 U.S.C. § 3571] increased maximum criminal penalties under the FFA to \$100,000 for individuals and \$200,000 for organizations; unless a death occurred, in which case the maximum fine is \$250,000 for individuals and \$500,000 for organizations.

⁴ Criminal penalties to include asset forfeiture: (1) In addition to the penalties provided by Section 5(a), the penalty for a criminal violation of this Act or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation. (2) In this subsection, the term “criminal violation” means a violation of this Act or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

⁵ In addition to these FFA penalties, the CPSIA made most violative conduct that is punishable under the FFA also punishable under the CPSA.

⁶ Criminal penalties to include asset forfeiture: (1) In addition to the penalties provided by Section 7, the penalty for a criminal violation of this Act or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation. (2) In this subsection, the term “criminal violation” means a violation of this Act or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

PENALTIES UNDER THE PPPA⁷

When enacting the PPPA, Congress chose to incorporate the penalties available through two existing statutes rather than provide separate penalties for prohibited acts involving products regulated under the PPPA. Depending upon the type of product and the specific prohibited act involved, penalties available through the FHSA or the FD&CA may be applicable.

Civil Penalties under the PPPA – The failure to comply with a standard under the PPPA results in the product being classified as a “misbranded hazardous substance” under the FHSA or a “misbranded food, drug, or cosmetic” under the FD&CA. If the product involved is classified as a misbranded hazardous substance, see Civil Penalties under the FHSA, above. If the product involved is a misbranded food, drug, or cosmetic, see Civil Penalties under the CPSA, above.

Criminal Penalties under the PPPA – If the product involved is a misbranded hazardous substance, see Criminal Penalties under the FHSA, above. If the product involved is a misbranded food, drug, or cosmetic, criminal penalties for violations of the PPPA are spelled out in section 303(a)(1) of the FD&CA, 21 U.S.C. § 333. Under that section, any person who violates a provision of section 301 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined (as described below) or imprisoned for not more than 1 year (or for subsequent offenses and offenses committed with the intent to defraud or mislead, 3 years). The Criminal Fines Improvements Act of 1987, Pub. Law 100-185, increased maximum criminal penalties under the FD&CA for first violations to \$100,000 for individuals and \$200,000 for organizations. For second and subsequent offenses, and for offenses committed with intent to defraud or mislead, the maximum criminal penalty under the FD&CA increased to \$250,000 for individuals and \$500,000 for organizations.

See also Criminal Penalties under the CPSA, above.

PENALTIES UNDER THE RSA, VGBA, and CGBPA

Civil Penalties – Rules under the VGBA and the CGBPA are considered consumer product safety rules under the CPSA. Therefore, violations of these rules are punishable under the civil and criminal penalty provisions of the CPSA. Standards under the RSA are considered “similar rules, regulations, or standards” that can be enforced under the CPSA.

INJUNCTIVE ACTIONS

The Commission has authority to enjoin firms from violations of statutes, rules, regulations, standards, and bans enforced by the CPSC.

⁷ In addition to these PPPA penalties, the CPSIA made some violations of the PPPA also punishable under the CPSA.

INJUNCTIONS UNDER THE CPSA⁸

Section 22(a) of the CPSA, 15 U.S.C. § 2071, states: “The United States district courts shall have jurisdiction to take the following action:

1. Restrain any violation of section 19;
2. Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d); and
3. Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.”

INJUNCTIONS UNDER THE FHSA⁹

Section 8(a) of the FHSA, 15 U.S.C. § 1267, states: “The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act.”

INJUNCTIONS UNDER THE FFA¹⁰

Section 6(a) of the FFA, 15 U.S.C. § 1195, states: “Whenever the Commission has reason to believe that any person is violating or is about to violate section 3, or a rule or regulation prescribed under section 5(c), of this Act, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act is issued and dismissed by the Commission or until an order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States, for the district in which such person resides or transacts business . . . to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.”

INJUNCTIONS UNDER THE PPPA

For violations of the PPPA that result in a product being classified as a misbranded hazardous substance, see: “*Injunctions Under the FHSA*,” above. For PPPA violations that result in the product being classified as a misbranded food, drug, or cosmetic, the injunctive provision of the FD&CA and CPSA apply.⁸

Section 302(a) of the FD&CA, 21 U.S.C. § 332, states: “The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown, to restrain violations of section 331 of this title, except paragraphs (h), (i), and (j).”

⁸ Injunction authority for the RSA, VGBA, and CGBPA would follow section 22(a) of the CPSA, 15 U.S.C. § 2071.

⁹ For banned hazardous substances, see also injunction authority under section 22(a) of the CPSA.

¹⁰ See also injunction authority under section 22(a) of the CPSA.

SEIZURE OF VIOLATIVE PRODUCTS

Products that are in violation of an applicable statute, rule, regulation, standard, or ban enforced by the CPSC are subject to seizure and condemnation proceedings under the various statutes.

SEIZURE UNDER THE CPSA¹¹

Section 22(b) of the CPSA, 15 U.S.C. § 2071(b), states:

“Any consumer product –

1. which fails to conform with an applicable consumer product safety rule, or
2. the manufacture for sale, offering for sale, distribution in commerce or the importation into the United States of which has been prohibited by an order in effect under section 15(d), [15 U.S.C. § 2064(d)],

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found . . .”

SEIZURE UNDER THE FHSA

Section 6(a) of the FHSA, 15 U.S.C. § 1265(a), states: “Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 4(f), be introduced into interstate commerce, or which has been manufactured in violation of section 4(g), shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, that this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.”

SEIZURE UNDER THE FFA

Section 6(b) of the FFA, 15 U.S.C. § 1195(b), states: “Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced into commerce in violation of section 3 of this Act of this title [15 U.S.C. § 1192], it may institute proceedings by process of libel for the seizure and confiscation of such product,

¹¹ Refrigerators subject to the RSA, pool and spa drain covers subject to the VGBA, and portable gasoline containers subject to the CGBPA can be seized under Section 22(b) of the CPSA.

fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found . . .”

SEIZURE UNDER THE FD&CA

(for certain products regulated under the PPPA) Section 304(a) of the FD&CA, 21 U.S.C. § 334, states: “Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 331(*ll*), 344, or 355 of this title, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found . . .”

SEIZURE UPON REQUEST FOR REDELIVERY

For nonconforming imported products which are detained, conditionally released, for which redelivery has been requested, or are otherwise in Customs status, the CPSC reserves the right to request that U.S. Customs and Border Protection (CBP) seize the merchandise under its authority for importations contrary to law. In such cases, the importers/owner’s rights to redress will convey to CBP for adjudication.

CHAPTER 3 – PRESENTING EVIDENCE THAT A PRODUCT IS NOT VIOLATIVE

This Chapter contains the procedures to be followed if a firm disagrees with Commission staff’s determination that a product is in violation of a statute, rule, regulation, standard, or ban administered by the CPSC.

RESPONDING TO THE CPSC LETTER OF ADVICE

When the CPSC staff notifies you in a LOA that a product that you manufacture, import, distribute, sell, or offer for sale fails to comply with a CPSC statute, rule, regulation, standard, or ban, if you disagree with staff’s determination, you may present evidence supporting your view.

The LOA will state that the firm may present evidence that a violation does not exist or that a product is not covered by the applicable statute or regulation. The letter will indicate to whom the response should be addressed and will give you a timeframe for the expected response. You may submit, to the indicated recipient, all evidence and arguments that support why you believe the product is not violative; not subject to a specific statute, rule, regulation, standard, or ban; or, should not be refused admission in the United States (if the violation involves an import detained at the port) or seized by CBP.

A firm may respond to a notice of noncompliance orally or in writing, and the firm may request an informal hearing to meet personally with Office of Compliance or Import Surveillance Division staff to present orally views and evidence. Such evidence may consist of:

- results from testing that supports certificates of compliance;
- results of tests indicating the product complies with the applicable regulation;
- marketing data indicating the product is not intended for the population group protected by the regulation or standard; or
- any other relevant data to support the claim of compliance.

CPSC RESPONSE TO FIRM RESPONSE

Any additional evidence or arguments that a firm presents are reviewed by the appropriate CPSC Compliance or Import Surveillance Division staff, including appropriate technical and legal staff. If the information you present, in the staff's opinion, does not refute staff's claim that the product is violative or covered by a specific statute, rule, regulation, standard, or ban, Commission staff generally will notify you in writing before staff pursues any enforcement action against the products or your firm.

If a firm continues to disagree with staff and declines to take corrective action, staff may request the Commission approve appropriate legal proceedings, including the issuance of an administrative complaint, injunctive action, seizure action, or such other action as may be appropriate.

LETTER OF ADVICE ISSUED FOR PRODUCT STOPPED AT PORT OF ENTRY

The LOA for a product screened or sampled at a U.S. Customs and Border Protection port of entry and determined to be noncompliant would be issued separate from the notice of detention. The LOA informs the importer, owner, or consignee of the noncompliance, provides CPSC findings, and provides information on the procedures for reconsideration and the right to introduce testimony with regard to the importation of the product described in the notice. See the Chapter on regulated products at port of entry below for more information.

CHAPTER 4 – REGULATED PRODUCTS AT PORT OF ENTRY

DETENTIONS

Under 15 U.S.C. § 2066(b) and 15 U.S.C. § 1273(a), the CPSC shall refuse admission of products after examination of a sample at port if it appears from examination of such samples or otherwise that a product must be refused admission under subsection (a) of Section 17. Statutory provisions in subsection (c) of Section 17 also allow for the conditional release of a product for the purpose of reconditioning. Inherent in these provisions is the ability to detain products for purposes of

examination to determine whether they are admissible or can be reconditioned to render them admissible.¹²

IMPORT AUTHORITY UNDER THE CONSUMER PRODUCT SAFETY ACT

Section 17 of the CPSA, 15 U.S.C. § 2066, authorizes the Commission to refuse admission of any product offered for importation that: fails to comply with an applicable consumer product safety rule, is not accompanied by a certificate required by the CPSA or any other Act enforced by the Commission, or is accompanied by a false certificate, if the manufacturer, in the exercise of due care, has reason to know that the certificate is false or misleading in any material respect, or is not accompanied by any label or certificate (including tracking labels) required under section 14 of the CPSA or any rule or regulation under such section; is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 12 of the CPSA (15 U.S.C. § 2061); has a product defect which constitutes a substantial product hazard within the meaning of section 15(a)(2) of the CPSA (15 U.S.C. § 2064(a)(2)); or is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of section 17(g) of the CPSA (15 U.S.C. § 2066(g)). Section 17(g) of the CPSA requires manufacturers of imported products to be in compliance with all inspection and recordkeeping requirements under section 16 of the CPSA (15 U.S.C. § 2065).

Under section 17(b) of the CPSA, 15 U.S.C. § 2066(b), we can ask the Secretary of the Treasury to obtain, without charge, samples of products imported or offered for import. If it appears from the examination of such samples, or otherwise, that a product must be refused admission under section 17(a) of the CPSA, we must refuse admission of the product, unless we permit modification of the product under section 17(c) of the CPSA.

Under section 17(c) of the CPSA, 15 U.S.C. § 2066(c), if it appears that any consumer product which may be refused admission can be modified so that the product need not be refused admission, the Commission may defer final determination as to the product's admission, and in accordance with such regulations as the Commission and the Secretary of the Treasury must jointly agree to, permit such product to be delivered from CBP custody under bond for the purpose of permitting the owner or consignee an opportunity to modify the product.

All actions taken by an owner or consignee to modify a product are subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury, pursuant to the provisions of section 17(d) of the CPSA, 15 U.S.C. § 2066(d). If it appears to the Commission that the product cannot be modified, or

¹² Once the product has been detained, and the CPSC determines that it violates an applicable statute, rule, regulation, standard, or ban, in lieu of refusal of admission by CPSC, CPSC may recommend that CBP seize the products or take other appropriate actions.

that the owner or consignee is not proceeding satisfactorily to modify the product, we shall refuse admission, and the Commission may direct the Secretary to demand redelivery of the product into CBP custody, and to seize the product in accordance with Section 22(b) of the CPSA.

EXPORTATION OF NONCOMPLYING GOODS AT PORT

Under section 17(e) of the CPSA, 15 U.S.C. § 2066(e), products refused admission must be destroyed, unless, upon application by the owner, consignee, or importer of record, the Secretary of the Treasury permits the export of the product in lieu of destruction. If the owner, consignee, or importer of record does not export the product within 90 days of approval to export, the product must be destroyed. Pursuant to section 17(f) of the CPSA, 15 U.S.C. § 2066(f), all expenses in connection with the destruction, including storage, cartage, or labor with respect to any consumer product refused admission shall be paid by the owner or consignee and, in default of such payment, must constitute a lien against any future importations made by such owner or consignee.

IMPORT AUTHORITY UNDER THE FEDERAL HAZARDOUS SUBSTANCES ACT

Under section 14 of the FHSA, 15 U.S.C. § 1273, if it appears from our examination of samples imported or offered for import that a product is a misbranded hazardous substance or banned hazardous substance, such hazardous substance must be refused admission, except as provided below. The Secretary of the Treasury must cause the destruction of any such hazardous substance refused admission, unless it is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of such refusal, or within such additional time as may be permitted pursuant to such a regulation.

Pursuant to section 14(b) of the FHSA, 15 U.S.C. § 1273(b), pending a decision regarding the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of the hazardous substance to the owner or consignee upon the execution of a bond. If it appears to the Commission that the hazardous substance can be brought into compliance, we may defer the final determination of its admission, and the owner or consignee, after application to, and authorization by, the CPSC, may be permitted to perform relabeling or other action to bring the substance into compliance. All such relabeling or other action pursuant to such authorization, in accordance with regulations, must be under the supervision of an officer or employee of the Commission, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury, unless otherwise authorized.

Section 14(c) of the FHSA, 15 U.S.C. § 1273(c), states that all expenses in connection with any destruction of refused substances and the supervision of the relabeling or other action authorized under section 14(b) of the FHSA (the amount of such expenses to be determined in accordance with regulations), and all expenses in connection with the storage, cartage, or labor with respect to any hazardous

substance refused admission must be paid by the owner or consignee and, in default of such payment, must constitute a lien against any future importations made by such owner or consignee.

IMPORT AUTHORITY UNDER THE FLAMMABLE FABRICS ACT

Under section 9 of the FFA, 15 U.S.C. § 1198, imported products, fabrics, or related materials delivered from customs custody under bond must conform to applicable flammability standards in effect on the date of entry. Absent such conformance, the Secretary of the Treasury shall demand redelivery. Redelivery is the return of previously released merchandise to Custom's custody. Failure to redeliver will result in the assertion of a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver.

For information about reconditioning violative imported products, see Chapter 8 below.

CHAPTER 5 – RECALLING A REGULATED PRODUCT

This Chapter provides information on initiating a product recall when CPSC staff or a regulated entity determines that: (a) a product fails to comply with a statute, rule, regulation, standard, or ban, and (b) the hazard associated with a product warrants recall of the product from the distribution chain or from consumers. The objective of the recall is to:

1. locate all noncomplying product as quickly as possible;
2. remove noncomplying product from the distribution chain and from the possession of consumers, if applicable;
3. accurately communicate information to the public in a timely manner about a noncomplying product, the hazard it presents, and the action needed to correct the problem. Companies should design all informational materials to motivate retailers and the media to get the word out and to get consumers to act on the recall.

PREPARING FOR A PRODUCT RECALL

CPSC staff routinely monitors commerce for products that may not meet the requirements of the various mandatory standards, regulations and bans under our authority by inspecting manufacturers, importers and distributors of consumer products. When CPSC staff determines that a product is in violation of a Commission statute, rule, regulation, standard, or ban, staff will notify the manufacturer, importer, repackager, or distributor of the violation in the letter of advice. The LOA generally will include specific corrective actions that CPSC staff believes are appropriate to address the violation. Where appropriate, based on the nature of the violation, the hazard presented from the noncompliance, and the likelihood of injury associated with the noncomplying product, compliance staff will request that the firm stop sale and distribution, and initiate a recall of the product

from the marketplace, including product already purchased by or in consumers' hands. This corrective action plan, after being reviewed by CPSC staff for adequacy, forms the basis for any action the firm takes to resolve the problem.

Because the CPSC and firms have a common interest in consumer safety, CPSC staff and firms often work closely to agree on, implement and communicate appropriate corrective actions. The degree of a firm's cooperation is a factor taken into account in evaluating potential additional enforcement actions or penalties.

It is unlikely that any two recall programs will ever be identical. Therefore, companies should be prepared to address issues that invariably will arise.

Following are questions to consider before initiating the recall:

1. How did the product fail to comply with mandatory federal requirements?
2. Has the firm reviewed its product line and identified any similar products that may fail to meet the requirements?
3. Where are the unsafe products located? How many were produced/imported/inventoried/sold?
4. Has the firm identified the foreign manufacturer, and can the firm supply their address?
5. Has the firm discontinued production (importation) and shipment of these products to distributors and retailers?
6. Has the firm notified distributors and retailers to stop selling the product and asked them to help identify consumers who own the product?
7. Does the firm have a customer list?
8. Has the firm started to review existing databases to identify potential product owners, *e.g.*, product registration and customer service records?
9. Has the firm drafted a press release announcing the recall? What other forms of public notice are needed?
10. Has the firm set-up a toll-free telephone service that will be able to handle the number of calls expected after the recall is announced?
11. Is the firm prepared to deploy people and/or fund an effort to provide replacement parts for the violative products or to exchange them for new products that do not have the problem?
12. Can the product be reconditioned to fix the violation?
13. Has the firm developed a plan to ship replacement parts or new units to distributors and/or retailers involved in the product recall, or otherwise repair the units in their inventory?
14. Is the firm prepared to monitor the product recall and provide timely reports to the Commission on the progress of the recall?
15. Has the firm developed a plan to quarantine and safely dispose of inventoried and returned recalled product so that it does not reenter the stream of commerce?
16. How is the firm upgrading its quality control or risk analysis procedures to obviate the need for a similar product recall in the future?

This list addresses some administrative and operational functions of a firm involved in a product recall. Even if a product recall is only being contemplated, a firm should be prepared to respond to the staff on the questions listed above.

ELEMENTS OF A RECALL

A firm undertaking a recall should develop a comprehensive plan that reaches throughout the entire distribution chain and to consumers who have the product. The firm must design communication strategies to motivate people to respond to the recall announcement and take the action requested by the firm.

Once CPSC Compliance staff and a firm agree on a remedy to address a violative product, Compliance staff works with the firm to develop an effective plan for public notification and implementation of the recall. The Commission will publicize the terms of the plan to inform the public of the nature of the noncomplying product hazard and the actions being undertaken to correct that hazard.

As stated earlier, the objectives of a recall are:

1. To locate all noncomplying products as quickly as possible;
2. To remove noncomplying products from the distribution chain and from the possession of consumers, if warranted; and
3. To communicate, accurately and in a timely manner, information to the public about the noncomplying product, the hazard, and the corrective action. Companies should design all informational materials to motivate retailers and the media to get the word out and to get consumers to act on the recall.

In determining what forms of notice to use, companies should consider where and how the product was marketed, its user population, the estimated useful life of the product, and how the product is most likely to be maintained and repaired.

A firm conducting a recall must take particular care to coordinate the notice portion of the recall so that all participating parties, including licensors and retailers, have sufficient advance notice so that they can carry out the actions agreed upon. Notice also needs to be balanced—the purpose of some elements, such as news releases, press conferences, and video news releases—is to get the media to publicize information widely about the recall. Other elements, such as advertisements and posters, ensure that the information is available to the public throughout the course of the recall and they are designed to reach consumers who did not hear the original announcement.

COMMUNICATING RECALL INFORMATION

The Commission encourages companies to be creative in developing ways to reach owners of recalled products and to motivate them to respond. The following are examples of types of notice that may be appropriate. This list is meant as a guide

only, and is by no means all-inclusive. As new or innovative methods of notice and means of communication become available, such as innovative use of the Internet and forms of social media, staff encourages their use.

- A joint news release from CPSC and the company;
- Targeted distribution of the news release;
- A dedicated toll-free number, e-mail site, and/or fax number for consumers to call to respond to the recall notice.
- Information posted on the recalling company's external website(s) and the ability to register for the recall remedy online;
- A video news release to complement the written news release;
- Television or radio announcements;
- Use of the company's social media presence to notify consumers of the recall, including Facebook, Google+, YouTube, Twitter, Flickr, Pinterest, Tumblr, company blogger networks, and blog announcements to notify consumers;
- Direct notice to consumers known to have the product—identified through registration cards, credit card purchase, sales records, catalog orders, or other means;
- Purchase of mailing lists of populations likely to use the product;
- Use of mobile scanners so consumers can obtain information on recalls from mobile devices;
- Paid notices via television and/or radio;
- Paid notices in national newspapers and/or magazines to reach targeted users of the product;
- Paid notices through local or regional media;
- Point-of-purchase posters;
- Posters for display at locations where users are likely to visit, such as stores, medical clinics, pediatricians' offices, child care centers, repair shops, and equipment rental locations;
- Notice to distributors, dealers, sales representatives, retailers, service personnel, installers, and other persons who may have handled or been involved in distribution of the product;
- Notices in product catalogs, newsletters, and other marketing materials;
- Notices to repair/parts shops and placements in service bulletins;
- Notices to trade groups, utilities, and home/fire inspectors, as applicable;
- Notices included with product replacement parts/accessories;
- Notices to secondhand stores and/or online retailers; and,
- Incentives, such as money, gifts, premiums, or coupons to encourage consumers to return the product.

CPSC Communications staff must review and agree upon press releases and social media-based communications that a company intends to use in a product recall before publication or dissemination. Compliance staff must also review and agree upon each form of notice that a firm intends to use in a product recall before publication or dissemination of the notice. Therefore, it is imperative that

companies give Compliance staff advance drafts of all notices or other communications that are to be disseminated to media, customers, and consumers.

CPSC uses traditional, social, and online media to communicate recalls to the public in plain language using information from agreed-upon joint press releases. Traditional media includes print, radio and broadcast outlets. Social media can include CPSC's blog, Twitter handle, YouTube channel, Flickr page, and Storify. The agency also posts recalls on CPSC.gov, Recalls.gov, our Recalls phone app, and to members of our recalls listserv. In media platforms that capture two-way communications, CPSC only manages the messages posted by the agency.

Following are some specific suggestions for communicating recall information:

NEWS RELEASES

Unless a company can identify nearly all purchasers of a product being recalled and notify them directly, the Commission traditionally issues a news release jointly with the company. Compliance and Communications staff develop the wording of the release with the recalling company. The agreed-upon language for the news release provides the foundation for preparing other notice documents. The Commission discourages unilateral releases issued by companies, because they create confusion among the media and the public. This is particularly true if CPSC is also issuing a recall release on the same product.

CPSC's Office of Communications sends the news releases to national wire services, major metropolitan daily newspapers, television and radio networks, and periodicals on the agency's news contact mailing list, in addition to consumers and stakeholders who have signed up to receive direct notification of product recall news. News releases from the agency receive wide media and social media attention and generate a good response rate from consumers.

Each recall news release must use the word "recall" in the heading and should begin: "In cooperation with the U.S. Consumer Product Safety Commission (CPSC) . . ."

It is suggested by staff that Recall news releases include the following:

- the firm's legal and commonly known trade name and the city and state of its headquarters;
- whether the recalling firm is the manufacturer (or importer), distributor, or retailer of the product;
- if the firm is not the manufacturer, the manufacturer, including importers, of the product and the country of manufacture;
- if the product is manufactured outside the United States, the identity of the foreign manufacturer or U.S. importer including the city and country of its headquarters;

- all significant retailers, by commonly known trade name, of the product. “Significant” is defined by 16 C.F.R. § 1115.27(i), and it is in the sole discretion of CPSC staff;
- number of product units covered by the recall, including numbers manufactured, imported and/or distributed;
- a description of the product, including product name, the intended consumer population (*i.e.* infants, children or adults), product’s colors and sizes, model numbers, date codes, SKUs and tracking labels, and their exact location on the product;
- hi-resolution electronic or digital color photographs that clearly show identifying features of the product;
- clear and concise description of the product’s actual or potential hazards that give rise to the recall, including product violation and/or defect and the type of hazard or risk (*e.g.*, laceration, entrapment, burn. . .);
- for each make and model—month and year both manufacture and retail sales of product began and ended;
- approximate retail price or price range;
- concise summary of all incidents associated with circumstances giving rise to the recall, including number of incidents, property damage due to incidents, injuries and deaths, including age of persons injured and killed;
- complete instructions for how to participate in the recall—described in a manner that will motivate the consumer to take advantage of the remedy.

Note: Recalls that involve a fatality are drafted in a narrative format.

CPSC posts recall news releases on its website (www.cpsc.gov) and www.recalls.gov and requests companies to provide color photographs of recalled products for the website.

RECALL ALERTS

When a recalling firm has the ability to reach more than 95% of all owners of a recalled product through direct notification (*e.g.*, by registration cards, membership or loyalty cards, catalog sales, Internet sales, credit card purchases, extended warranty sales), staff will use the recall alert style press release. It will be posted on CPSC’s website (www.cpsc.gov) and www.recalls.gov, so consumers can confirm and verify that the Commission is involved in the recall. Brief summaries of recall alerts are also provided to national press release distribution services.

VIDEO NEWS RELEASES

A video news release (VNR) is a video version of the written news release that describes the recall in audio-visual terms. Distributed via satellite to television stations nationwide, it is an effective method of enhancing a recall announcement. A VNR increases the chances that television news media will air information about a

recall, because it effectively provides news of the recall to television news producers in a form that they can easily broadcast.

CPSC staff works with firms to produce VNRs announcing recalls. Like news releases, VNRs need to communicate basic information clearly and concisely. VNRs should incorporate the same information as the news release, as well as video images of the product. They often also include brief statements by firm officials and a spokesperson for the agency. When writing a VNR script, remember that, if this information is to reach consumers, television networks or local stations must pick it up—which means that the script must be written for television producers. The VNR should be produced as sound bites and a cover package, and it **should not** be a fully narrated video. At times, CPSC will produce and distribute its own VNR announcing the recall. Appropriate legal notifications and review will be provided to the recalling firm.

A brief guide describing how to produce a VNR is available from the Office of Compliance, upon request, or it can be downloaded at:

<http://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Industry-Guide/Video-News-Release-Guide>.

POSTERS

Posters are an effective means of providing continuing notice of recalls to consumers at points of purchase or other locations that consumers visit. Guidelines for posters and counter cards are as follow:

- Keep them BRIEF and eye-catching; in general, a poster requires fewer words than a news release;
- Describe the hazard and tell consumers what to do;
- Use color to make the poster stand out;
- Use a print font, size, and color that provides a strong contrast to the background color of the poster so that the message stands out;
- Include the terms “safety” and “recall” in the heading;
- Use a good quality line drawing or photograph of the product with “call outs” identifying product information, such as model numbers and date codes.
- The firm’s name, toll-free telephone number, and website should be in large-size type at the bottom of the poster;
- The poster should include “Post until [a date at least 120 days from the recall announcement]”;
- Consider tear-off sheets for each poster with information for consumers to take home.

When a company produces a point-of-purchase poster announcing a recall, it must notify its retailers or other entities that the company wants to display the posters

prior to the recall being announced. The company must explain the reason for the recall and the contribution to public safety that the posters provide.

The company must also:

- Advise retailers or other firms to place the posters in several conspicuous locations in their stores or offices where customers will see them, *e.g.*, the area where the product was originally displayed for sale, store entrances, waiting rooms in pediatric clinics, or service counters at repair shops.
- Provide sufficient numbers of posters for retailers or others to display them in more than one place in each store or location, and provide a contact for ordering additional posters.

CPSC recommends that posters be 11 x 17 inches, but in no case should they be smaller than 8.5 x 11 inches. These two sizes are easiest to mail in bulk quantities. Larger sizes may be appropriate for repair and service shops. Also, many retailers, particularly large chains, have specific requirements for posters, including size and product identification information. To avoid delays and having to reprint, a firm producing a recall poster must contact retailers in advance to see if they have any such requirements.

SOCIAL MEDIA

Firms should notify its customers using all available social media and mobile platforms, including the firm's blog, Facebook page, Google+ page, Twitter account, YouTube channel, Pinterest, Tumblr site, and Flickr page to get out as broad a notice as possible. CPSC Guidelines for use of this type of notification are as follows:

- The notice should be on the firm's website's first entry point, such as the home page;
- Should include the words "recall" and "safety";
- Should contain as much information from the news release as possible, based upon the type of social media platform being used;
- Should permit people to request a remedy directly from the website;
- Facebook, Twitter, Flickr, Pinterest, or other social media notifications should link to the website location that includes recall information available in the news release.

OTHER FORMS OF NOTICE

As with news releases and posters, letters, advertisements, bulletins, newsletters, and other communications about a recall must provide sufficient information to identify the product and to motivate the reader or listener to take the requested action. Communications should be written in language targeted to the intended audience.

- Letters or other communications should be specific and concise.

- The words "Important Recall Notice" or "Safety Recall" must appear at the top of each notice and cover letter or in the subject line of an e-mail notification and must also be on the lower left corner of any mailing envelope.
- Notices to retailers and distributors must explain the reason for the recall, including the violation and/or hazard, and include all the instructions needed to tell them how to handle their product inventory, as well as instructions for displaying posters or notices, providing information to consumers, and disposing of returned products.
- All letters and other notices to consumers must explain clearly the reason for the recall, including injury or potential injury information, and provide complete instructions on how to obtain the remedy.

TOLL-FREE NUMBERS/E-MAIL/URL SITES

A firm conducting a recall must provide a toll-free (*i.e.*, 800/888/877/866) telephone number and e-mail or URL address for consumers to respond to the recall announcement. Generally, this number and e-mail address should be dedicated to the recall only. Historically, Commission staff has found that most firms' systems for handling consumer relations or for ordering products, repairs, or accessories are unable to respond effectively to callers about recall announcements, particularly during the first few weeks after the initial announcement.

When establishing a telephone system to handle a recall, be over-generous in estimating consumer response, especially during the first several days/weeks. It is easier to cut back than it is to add more capacity once a recall is announced, and consumers who are unable to get through may become frustrated.

Whether you use an automated system or live operators to answer the calls, prepare scripts and instructions for responding to questions. Operators or taped messages should begin by identifying the firm and product and explaining the reason for the recall. Most consumers who hear about a recall by radio, television, or word-of-mouth will not remember all the information they initially heard. Again, at its beginning, the message should reinforce the need for listeners to act, particularly if the message is lengthy.

CPSC Compliance staff must review all scripts before the recall is announced. All automated systems should provide a number for consumers to contact the firm for special problems, *e.g.*, problems completing repairs or installing parts.

WEBSITE INFORMATION

Firms should post and make available a notice of the recall in a conspicuous location on their website's first point of entry (homepage). The recall information should be segregated from other company information with a distinct icon or heading designating this safety information. Firms should provide historical recall information because not all products are returned during the designated recall period. Firms should provide an opportunity for owners of recalled products to register online for the recall remedy.

CHAPTER 6 – RECOMMENDED PROCEDURES FOR ESTABLISHING A RECALL PLAN WITHIN YOUR COMPANY

Companies whose products come under the jurisdiction of the CPSC should develop an organizational policy and plan of action to identify violative products during production and before a product recall or similar action becomes necessary. This policy and any related plans should focus on the early detection of product safety problems and execution of a prompt response.

DESIGNATING A RECALL COORDINATOR

Designating a company official or employee to serve as a "recall coordinator" is a significant step that a firm can take to meet its product safety and reporting responsibilities. Ideally, the coordinator has full authority to take the steps necessary (including reporting to the Commission) to initiate and implement all recalls, with the approval and support of the firm's chief executive officer (CEO).

RESPONSIBILITIES OF A RECALL COORDINATOR

We suggest that the recall coordinator have the following qualifications and duties:

- Knowledge of the statutory authority and recall procedures of the CPSC;
- Ability and authority to function as the central coordinator within the firm for receiving and processing all information regarding the safety of the firm's products. Such information includes, *e.g.*, quality control records, engineering analyses, test results, consumer complaints, warranty returns or claims, lawsuits, and insurance claims;
- Responsibility for keeping the firm's CEO informed about reporting requirements and all safety problems or potential problems that could lead to product recalls;
- Responsibility for making decisions about initiating product recalls;
- Authority to involve appropriate departments and offices of the firm in implementing a product recall; and

- Responsibility for serving as the firm's primary liaison with CPSC.

IDENTIFYING AFFECTED PRODUCTS

At the outset, the recall coordinator should review fully the firm's product line to verify regulatory conformance of each product. The firm should institute a product identification system if one is not now in use. Model designations and date-of-manufacture codes should be used on all products, whether they carry the firm's name or are privately labeled for other firms. All children's products are required to bear tracking information as required under Section 14(a)(5) of the CPSA (Section 102 of the CPSIA). If a product recall is necessary, this practice allows the firm to identify easily all affected products without undertaking a costly recall of the entire production. Similarly, once a specific product has been recalled and corrected, a new model number or other means of identification used on new, corrected products allows distributors, retailers, and consumers to distinguish products subject to recall from the new items. Until a production change can be made to incorporate a new model number or date code, some companies have used sticker labels to differentiate products that have been checked and corrected from recalled products.

RECORDS MAINTENANCE

The goal of any product recall is to retrieve, repair, or replace those products already in consumers' hands, as well as those in the distribution chain that do not comply with a statutory requirement, mandatory standard, regulation, or ban. Maintaining accurate records about the design, production, distribution, and marketing of each product for the duration of its expected life, and maintaining any records required by a regulation or standard is essential for a firm to conduct an effective, economical product recall. Generally, the following records are important both to identifying noncomplying products and conducting and monitoring recalls:

- 1 **Records of complaints, warranty returns, insurance claims, and lawsuits.** This type of information often highlights or provides early notice of safety problems that may become more widespread in the future.
- 2 **Production records.** Accurate data should be kept on all production runs—the lot numbers and product codes associated with each run, the volume of units manufactured, component parts or substitutes used, and other pertinent information that will help the firm identify noncompliant products or components quickly.
- 3 **Distribution records.** Data should be maintained noting the location of each product by product line, production run, quantity shipped or sold, dates of delivery, and destinations.

- 4 **Quality control records.** Documentation of the results of quality control testing and evaluation associated with each production run often helps companies identify possible flaws in the design or production of the product. It also aids the firm in charting and sometimes limiting the scope of a corrective action plan.
- 5 **Product registration cards.** Product registration cards that are completed by the consumer and returned to the manufacturer can help identify owners of recalled products. The easier it is for consumers to fill out and return these cards, the greater the likelihood the cards will be returned to the manufacturer. For example, some firms provide pre-addressed, postage-paid registration cards that already have product identification information, *e.g.*, model number, style number, special features, printed on the card (Postage-paid registration cards are required for durable infant or toddler products [16 C.F.R. part 1130]). Providing an incentive to complete the cards can also increase the return rate. Incentives can be coupons towards the purchase of other products sold by the firm, free accessory products, or entry into a periodic drawing for a product give away. The information from the cards must be maintained in a readily retrievable database for use if recall becomes necessary. The information will be used only in the case of a recall.
- 6 **Membership/Bonus/Loyalty cards.** Many stores offer bonus or loyalty cards, while others require customers to purchase a membership in order to shop. These programs may be useful in identifying purchasers of recalled products. Availability and storage of these customer records should be considered in the event of a recall.
- 7 **Credit card purchases.** An increasing number of firms use records from credit card purchases of recalled products as a way of identifying and notifying owners of recalled products. Through the cooperation of issuing banks, or through the firm's own branded credit cards, many owners of recalled products can be notified directly of the recall, often avoiding other more traditional means of generic notification.
- 8 **Internet purchase records.** Records of consumers who purchase via the Internet can be helpful in identifying and notifying owners of recalled products. Many owners of recalled products can be notified directly of the recall, often avoiding other more traditional means of generic notification.

CONCLUSION

Consumers expect firms to stand behind the products they produce and sell. The consumers' perception of a product recall is influenced by how the recall is managed and communicated. How well a firm conducts a timely, reasonable recall of a product it produced can have a strong influence on the consumer's attitude about the firm. Successful product recalls in the past have often rewarded companies with continuing consumer support and demand for the firm's products.

For additional information about product recalls and reporting, call (301) 504-7586, fax (301) 504-0359, or e-mail at section15@cpsc.gov or visit the Commission's website at www.cpsc.gov (click on the Business TAB).

CHAPTER 7 – DESTRUCTION OF RECALLED PRODUCT

REVERSE DISTRIBUTING AND QUARANTINING PRODUCT

Once your firm is notified of a violation of a statute, rule, regulation, standard or ban via a LOA, the item that is the subject of the letter should be placed on stop sale and held from distribution in commerce; request for retail-level or consumer-level stop sale will be noted in the LOA. The items subject to the LOA should be separated from other consumer products and held from distribution until further notice (quarantine). Depending upon the corrective action requested, the firm may need to reverse distribute the items that are subject to the corrective action. The firm's reverse distribution plan must include how the firm intends to:

- remove the product from store shelves;
- quarantine the product;
- facilitate return of the product; and
- repair, replace or dispose of the product.

The firm's reverse distribution plan must be provided to CPSC staff with the firm's Corrective Action Plan.

WITNESSING DESTRUCTION

All such product destruction or other action shall be completed in accordance with the state and local regulations and conducted under the supervision of an officer or employee of the Commission or an officer or employee of CBP. Before you destroy, dispose, or recycle recalled products, notify CPSC staff via e-mail: recallproductdisposal@cpsc.gov. CPSC staff may elect to witness the destruction in person or require an affidavit to verify the process, including photographic proof of such disposal.

USE OF THIRD PARTY DESTRUCTION CONTRACTORS

Recalling firms need to take appropriate steps to ensure that recalled products are quarantined and segregated from other products throughout the distribution chain. Any third party hired to destroy or dispose of recalled products needs to be monitored by the recalling firm to ensure that the third party understands the importance of keeping recalled products separate from other returned products and that they take appropriate steps to ensure proper disposal of recalled products. Before any recalled products are destroyed, disposed of, or recycled, notify CPSC staff via e-mail: recallproductdisposal@cpsc.gov. CPSC staff may elect to witness the disposal in person or require an affidavit to verify the process, including photographic proof of such disposal.

RECONDITIONING PRODUCT

If it appears to the Commission that the hazardous substance or product, by relabeling or other action, can be brought into compliance, final determination of the admission of such substance or product may be deferred. All such relabeling or other action shall be, in accordance with the regulations, under the supervision of an officer or employee of the Commission or an officer or employee of CBP.

PENALTIES FOR THE RESALE OF RECALLED PRODUCT

Section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B), makes it unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action. Section 20 [15 U.S.C. § 2069] of the CPSA states that any person who knowingly violates section 19 [15 U.S.C. § 2068] of the CPSA shall be subject to a civil penalty not to exceed \$100,000 per violation. The maximum civil penalty shall not exceed \$15,150,000 for any related series of violations.

CHAPTER 8 – APPLICATIONS FOR AUTHORIZATION TO RECONDITION VIOLATIVE IMPORTS

This Chapter provides information on the procedures to be followed by firms whose products have been sampled at a port of entry and found to be violative and that are requesting authorization to recondition the products for sale. This Chapter also includes information on costs chargeable to firms for CPSC monitoring of the reconditioning process.

PROCEDURES FOR OBTAINING AUTHORIZATION TO RECONDITION

When CPSC notifies a firm in a LOA that a shipment of goods imported by the firm fails to comply with CPSC requirements, and the firm does not have evidence to the contrary, the firm may request to be given an opportunity to recondition the

goods to bring them into compliance with the applicable requirements. Before undertaking such reconditioning, the firm must request and obtain authorization from the CPSC to do so prior to the goods being conditionally released by CBP for reconditioning.

The CPSC regulation at 16 C.F.R. § 1500.269, covering imported products subject to the Federal Hazardous Substances Act (FHSA), states that application for authorization to relabel or perform other action to bring violative goods into compliance with the FHSA may be filed only by the owner or consignee of the product. This procedure applies to violative imported products subject to all statutes administered by the CPSC.

The application for authorization to recondition violative goods held at CBP or released under bond must be submitted in writing to the Director of the Office of Compliance and Field Operations at the CPSC or as directed in the LOA.

The application must:

1. Contain detailed proposals for bringing the article into compliance with CPSC requirements.
2. Specify the time and place where the items will be brought into compliance and the approximate time for their completion. CPSC Form #332 may be used to submit this information to the CPSC. A copy of the form generally is provided with the LOA or may be obtained by contacting the Compliance Officer or the CPSC investigator identified in the LOA.

If the request for authorization to recondition is granted, CPSC staff will notify the firm in writing (or via CPSC Form #332 if the application was submitted using the form) that authorization has been granted. The notice from the CPSC will specify:

1. the procedure to be followed;
2. who will supervise the reconditioning (normally CPSC or CBP personnel);
3. a time limit for completing the operation; and
4. such other conditions as are necessary to maintain adequate supervision and control over the article.

If a firm needs an extension of time to complete the reconditioning, the firm must submit a request for an extension in writing to the Director of the Office of Compliance and Field Operations. The request must contain reasonable grounds for the extension, and the Director may grant additional time for completing the reconditioning as he/she deems appropriate.

Once a firm submits an application or request and it is approved, if a firm needs to amend the application, the firm may do so by filing an amended application with the Director of the Office of Compliance and Field Operations, stating reasonable grounds for the amendment. The Director may approve such a request for amendment as deemed appropriate. If ownership of the goods covered by the authorization to recondition changes before the goods are reconditioned, the original owner will be held responsible, unless the new owner has executed a bond and obtained new authorization.

COSTS CHARGEABLE IN CONNECTION WITH RECONDITIONING VIOLATIVE IMPORTS

The cost of CPSC staff supervising the relabeling or other action necessary to bring the goods detained at a port of entry into compliance with CPSC requirements shall be paid by the owner or consignee of the violative goods. The Commission's regulation at 16 C.F.R. § 1500.272 provides for such costs for products detained for violations of the FHSA. The Commission also is authorized to charge for monitoring the reconditioning of products detained under other statutes (see § 17(f) of the CPSA, § 6(d) of the FFA, and § 304(d)(1) of the FD&CA for PPPA violations). The guidelines provided in 16 C.F.R. § 1500.272 are used to determine costs chargeable for monitoring correction of violations under all statutes administered by the CPSC. Such costs must be paid to the CPSC. The costs of such supervision shall include, but are not restricted to, the following:

1. travel expenses of the supervising officer.
2. per diem in lieu of subsistence of the supervising officer when away from the home station as provided by law;
3. services of the supervising officer, to be calculated at the rate of a GS-11, step 1 employee.
4. services of the analyst, to be calculated at the rate of a GS-12, step 1 employee (including use of chemical laboratories and equipment).
5. the minimum charge for services of supervising officers and of analysts shall be not more than the charge for 1 hour, and time after the first hour shall be computed in multiples of 1 hour, disregarding fractional parts less than one-half hour.

CHAPTER 9 – REPORTING REQUIREMENTS

This chapter contains information to familiarize companies with their reporting obligations under the Consumer Product Safety Act (CPSA). Companies that distribute consumer products subject to the provisions of the Federal Hazardous Substances Act (FHSA), Flammable Fabrics Act (FFA), Poison Prevention Packaging Act (PPPA), Refrigerator Safety Act (RSA), Virginia Graeme Baker Pool and Spa

Safety Act (VGBA), and Children’s Gasoline Burn Prevention Act (CGBPA) also must comply with these reporting requirements. The information that follows will help firms identify potentially hazardous consumer products at an early stage, and it will assist firms in understanding when they are obligated legally to report information about such products to the CPSC.

The information contained in this *Handbook* does not replace the CPSC statutes or the CPSC’s interpretative regulations set forth in 16 C.F.R. parts 1115 and 1116.

STATUTORY REQUIREMENTS

REPORTING UNDER SECTION 15 OF THE CPSA

Section 15(b) of the CPSA defines responsibilities of manufacturers, importers, distributors and retailers of consumer products. Each is required to notify the Commission immediately if it obtains information that reasonably supports the conclusion that a product:

1. fails to comply with a consumer product safety rule or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA;
2. fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other statute enforced by the Commission;
3. contains a defect which could create a substantial product hazard described in section 15(a)(2) of the CPSA; or
4. creates an unreasonable risk of serious injury or death.

The Commission's interpretative regulation (16 C.F.R. part 1115) explains the firm’s obligations and those of the Commission. A copy of the regulation can be found at: <http://www.cpsc.gov/BUSINFO/frnotices/fr06/E611758.pdf>.

Firms may report under Section 15 online at: <https://www.saferproducts.gov/CPSRMSpublic/Section15>.

REPORTING PRODUCTS INVOLVED IN LAWSUITS

In addition to the reporting requirements at 15 U.S.C. § 2064(b), section 37 of the CPSA, 15 U.S.C. § 2084, requires manufacturers (including importers) of a consumer product to report to the Commission, if:

- (1) a particular model of a consumer product is the subject of at least three civil actions that have been filed in federal or state court;

- (2) each lawsuit alleges the involvement of that model in death or grievous bodily injury (as defined in section 37(e)(1)); and
- (3) at least three of the actions result in a final settlement involving the manufacturer or in a judgment for the plaintiff within any one of the 2-year periods specified in section 37(b).

The first 2-year period began on January 1, 1991, and it ended on December 31, 1992. Subsequent 2-year periods started on January 1 in the following years: 1993, 1995, 1997, 1999, 2001, 2003, and so forth. Manufacturers must file a report within 30 days after the settlement or court judgment in the third civil action and within 30 days after any subsequent settlement or judgment in that 2 year period, any other such action to which the section 37 reporting requirement applies.

REPORTING CERTAIN CHOKING INCIDENTS

Section 102 of the Child Safety Protection Act (CSPA), Public Law 103-267, requires that manufacturers, distributors, retailers, and importers report certain choking incidents to the Commission. The products involved include: marbles, balls with a diameter of 1.75" or less ("small balls"), or latex balloons; or a toy or game that contains such a marble, ball, balloon, or other small part. The firm must report information that reasonably supports the conclusion:

1. that a child (regardless of age) choked on such a marble, small ball, balloon, or small part; and
2. that, as a result of the incident, the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

The Commission's interpretive regulation at 16 C.F.R. part 1117 provides more information on this reporting requirement.

WHY REPORTING IS REQUIRED

The intent of Congress in enacting the reporting requirements was to encourage widespread reporting of potential product hazards. Congress not only sought to have the Commission uncover substantial product hazards, but Congress also intended for the Commission to identify risks of injury that the agency could attempt to prevent through its own efforts, such as information and education programs, safety labeling, and adoption of product safety standards.

Although the CPSC relies on sources other than firm reports to identify substantial product hazards, reporting by companies under the reporting provisions is invaluable because firms often learn of product safety problems long before the Commission. For this reason, any firm involved in the manufacture, importation, distribution, or sale of consumer products should develop a system of reviewing and

maintaining consumer complaints, inquiries, product liability suits, and comments on the products they handle.

If a firm reports to the Commission under section 15 of the CPSA, it does not necessarily mean that a substantial product hazard exists. Section 15 requires firms to report whenever a product: (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9; (2) fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other Act enforced by the Commission; (3) contains a defect that *could* create a substantial product hazard; or (4) creates an unreasonable risk of serious injury or death.

Thus, a product need not actually create a substantial product hazard to trigger the reporting requirement.

WHEN TO REPORT UNDER SECTION 15 OF THE CPSA

It is the Commission's view that a firm should take the all-important first step of notifying the Commission when the information available to the firm reasonably indicates that a report is required. It is in the firm's best interest to assign the responsibility of reporting to someone in executive authority. A firm should report immediately (within 24 hours) after a firm has obtained information which reasonably supports the conclusion that its consumer product:

- fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard upon which the Commission has relied under section 9;
- fails to comply with any other rule, regulation, standard, or ban under the CPSA, or any other Act enforced by the Commission;
- contains a defect which could create a substantial risk of injury to the public; or,
- creates an unreasonable risk of serious injury or death.

See, 15 U.S.C. §2064(b) and 16 CFR part 1115.

If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the firm has information which reasonably supports the conclusion that its consumer product:

- fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard upon which the Commission has relied under section 9;
- fails to comply with any other rule, regulation, standard, or ban under the CPSA, or any other Act enforced by the Commission;
- contains a defect which could create a substantial risk of injury to the public; or,
- creates an unreasonable risk of serious injury or death.

Thus, a firm could report to the Commission before the conclusion of a reasonably expeditious investigation and evaluation if the reportable information becomes known during the course of the investigation. In lieu of the investigation, the firm may report the information immediately.¹³

REPORTING PROCEDURES

The Commission considers a firm to have knowledge of product safety information when such information is received by an employee or official of the firm who may reasonably be expected to be capable of appreciating the significance of that information. Under ordinary circumstances, five days is the maximum reasonable time for that information to reach the chief executive officer or other official assigned responsibility for complying with the reporting requirements. Weekends and holidays are not counted in that timetable. 16 C.F.R. §§ 1115.11(a) and 1115.14(b).

The Commission will evaluate whether and when a firm should have reported. This evaluation will be based, in part, on what a reasonable person, acting under the circumstances, knows about the hazard posed by the product. Thus, a firm shall be deemed to know what it would have known if it had exercised due care in ascertaining the accuracy of complaints or other representations. 16 C.F.R. § 1115.11(b).

¹³ 43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34230, Aug. 4, 1992.

PENALTIES FOR FAILURE TO REPORT

Failure to report in accordance with the above-referenced requirement is a prohibited act under sections 19(a)(3), (4), and (11) of the CPSA, 15 U.S.C. §§ 2068(a)(3), (4), and (11), which makes it unlawful for any person to fail to furnish information required by sections 15(b) or section 37 of the CPSA and section 102 of the Child Safety Protection Act.

Any person who knowingly commits a prohibited act is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069, including fines up to \$15.15 million for a related series of violations, and criminal penalties under section 21 of the CPSA, 15 U.S.C. § 2070, which includes fines up to \$500,000, or imprisonment for not more than 5 years, for a knowing and willful violation of section 19, or both, plus forfeiture of assets associated with the violations. Chapter 2 of this *Handbook* provides additional details regarding the penalties.

If a firm is not certain about its reporting obligation, it can contact the Office of Compliance and Field Operations at Sect15@cpsc.gov.

CHAPTER 10 – EXPORT REQUIREMENTS

This Chapter provides information on the requirement to notify the CPSC before exporting products that violate statutes and mandatory rules, regulations, standards, or bans administered by the Commission or for exporting products manufactured domestically for export that do not comply with U.S. law.

POLICY STATEMENT REGARDING PROHIBITION OF EXPORTATION

When the CPSC advises a firm that a product it manufactures, distributes, or imports fails to comply with an applicable CPSC statute, rule, regulation, standard, or ban, one option the firm may wish to consider, depending on the product, is whether the goods may be exported. CPSC has established specific requirements related to the exportation of noncomplying products that prohibit or restrict such exportation. Noncomplying foods, drugs, and cosmetics under the PPPA are not covered by the Commission's export notification requirements. Following is a discussion of these limitations.

PRODUCTS SUBJECT TO THE CPSA

The Commission's regulation at 16 C.F.R. § 1019.33(a) states that the Commission interprets the provisions of the CPSA to prohibit the export of products that fail to comply with an applicable consumer product safety standard or banning rule issued under that Act **if those products have at any time been distributed in commerce for use in the United States.**

Therefore, export of such products can take place only if the CPSC exercises its discretion not to prevent their export.

PRODUCTS SUBJECT TO THE FHSA

The Commission's regulation at 16 C.F.R. § 1019.33(b) states that the Commission interprets the provisions of the FHSA to prohibit the export of products that are misbranded hazardous substances or banned hazardous substances **if those products have at any time been sold or offered for sale in domestic commerce.**

Therefore, export of such banned or misbranded hazardous substances can take place only if the CPSC exercises its discretion not to prevent their export.

PRODUCTS SUBJECT TO THE FFA

In accordance with Section 15(c) of the FFA, the Commission requires notification before any person exports a product that fails to comply with an applicable flammability safety standard issued under that Act.

Therefore, export of such products can take place only if the CPSC receives the required notification.

PROHIBITIONS ON EXPORTATION

In accordance with § 18(c) of the CPSA, § 5(b)(3) of the FHSA, and § 15(d) of the FFA, the Commission may prohibit the exportation of any product regulated under these statutes.

Under § 17(e) of the CPSA, products refused admission shall be destroyed unless, upon application by the owner, consignee, or importer of record, the Secretary of the Treasury permits the export of the product in lieu of destruction. If the product is not exported within 90 days of approval, the product will be destroyed.¹⁴

¹⁴ If, in lieu of refusal of admission by the CPSC, CPSC staff chooses to recommend that the product be seized by CBP, the process by which a firm may petition to export the product is subject to CBP law and regulations.

Before prohibiting exportation of such products, the Commission would have to make a factual determination about the existence of an unreasonable risk to consumers within the United States. Section 19(a)(15) of the CPSA prohibits the export from the United States for purpose of sale any consumer product or substance regulated by the Commission (other than a consumer product or substance), the export of which is permitted by the Secretary of the Treasury that:

- (A) is subject to an order issued under section 12 or 15 of the CPSA or is a banned hazardous substance within the meaning of section 2(q)(1) of FHSA; or
- (B) is subject to a voluntary corrective action taken by the manufacturer in consultation with the Commission, of which action the Commission has notified the public; or
- (C) violates an order issued by the Commission under section 18(c) of the CPSA prohibiting export from the United States.

Under section 15(d) of the FFA, the Commission has separate authority to prohibit, by order, a person from exporting from the United States for purposes of sale any fabric or related material that the Commission determines is not in conformity with an applicable standard or rule under the FFA, unless the importing country has notified the Commission that such country accepts the importation of such fabric or related material. In addition, section 15(e) of the FFA states allows the Secretary of the Treasury to permit export under section 17(e) [of the CPSA.]

EXPORT NOTIFICATION REQUIREMENTS

The Commission's regulation at 16 C.F.R. part 1019 requires that, before a firm may export products that fail to comply with the CPSA, FHSA, and FFA, a firm must notify the Commission at least 30 days in advance of the exportation date and include approval from the accepting country. Section 15(e) of the FFA states allows the Secretary of the Treasury to permit export under section 17(e).

The following information must be provided to the Commission:

1. Name, address, and telephone number of the U.S. exporter;
2. Name and address of each consignee;
3. Quantity and description of the goods to be exported to each consignee, including brand or trade names, or model, or other identifying numbers;
4. Identification of the standards, bans, regulations, and statutory provisions applicable to the goods being exported, and an accurate description of the manner in which the goods fail to comply with applicable requirements; and,
5. Anticipated date of shipment and port of destination.

Address the notification of intent to export to:

Assistant Executive Director for Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD. 20814-4408
Facsimile 301-504-0359

The following paragraphs reflect the requirements of the various statutes:

CPSA Violations - Export notification is required by section 18(b) of the CPSA, 15 U.S.C. § 2067(b). The failure to provide such notice is a prohibited act under section 19(a)(10), 15 U.S.C. § 2068(a)(10), and is subject to the penalties described in sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070.

FHSA Violations - Export notification is required by section 14(d) of the FHSA, 15 U.S.C. § 1273. The failure to provide such notice is a prohibited act under section 4(i) of the FHSA, 15 U.S.C. § 1263(i), and subject to the penalties described in section 5 of the FHSA, 15 U.S.C. § 1264.

FFA Violations - Export notification is required by section 15(c) of the FFA, 15 U.S.C. § 1202(c). The failure to provide such notice is subject to the criminal penalties of section 3 and 8(b) of the FFA, 15 U.S.C. § 1196, imprisonment of not more than 5 years for a knowing and willful violation, a fine determined under Section 3571 of Title 18, or both.

CHAPTER 11 – CONFIDENTIAL TREATMENT OF INFORMATION

This Chapter provides information on the confidential treatment of information submitted to the CPSC in response to a LOA; a report filed with the Commission under sections 15 or 37 of the Consumer Product Safety Act (CPSA) or Section 102 of the Child Safety Protection Act; and requests for Exportation of violative product.

CONFIDENTIALITY OF INFORMATION UNDER SECTION 6 OF THE CPSA

Section 6(a) of the CPSA, 15 U.S.C. § 2055(a), provides protection for trade secrets or confidential information. Section 6(a)(3), 15 U.S.C. § 2055(a)(3), gives manufacturers an opportunity to mark information as confidential. If you believe any of the information you submit to the Commission is a trade secret, or privileged or confidential information, you must include with your submission a request that the information be considered exempt from disclosure or indicate that a request will be submitted within 10 working days of the submission. The failure to make a request within that time will be considered an acknowledgment that you do not

wish to claim exempt status. In accordance with the Commission's regulation at 16 C.F.R. § 1015.18(c), the following information must be included with the request for exemption:

1. Specifically identify the exact portion(s) of the document claimed to be confidential;
2. State whether the information claimed to be confidential has ever been released in any manner to a person who was not an employee or in a confidential relationship with the firm;
3. State whether the information so specified is known commonly within the industry or is readily ascertainable by outside persons with a minimum of time and effort;
4. State how release of the information so specified would be likely to cause substantial harm to the firm's competitive position; and
5. State whether the submitter is authorized to make claims of confidentiality on behalf of the person or organization concerned.

If the Commission determines that information marked as confidential may be disclosed because it is not confidential, the Commission must provide written notice that it intends to disclose this information, 15 U.S.C. § 2055(a)(5). This notice must be provided not less than 10 working days prior to disclosure. Any person receiving such notice may bring an action in an appropriate district court to prevent disclosure of the information, 15 U.S.C. § 2055(a)(6).

The Commission's regulations under the Freedom of Information Act, 16 C.F.R. § 1015, govern confidential treatment of requests for exportation of violative products that have claimed trade secret or confidential commercial or financial information.

In addition, section 6(b) of the CPSA, 15 U.S.C. § 2055(b), also provides limitations on the Commission's disclosure of any information identifying manufacturers or private labelers, and further limits the Commission's disclosure of information received under section 15(b) of the CPSA, 15 U.S.C. § 2055(b)(5).

CONFIDENTIALITY OF REPORTS UNDER SECTION 15(b) OF THE CPSA

The Commission often receives requests for information provided by firms under section 15(b) of the CPSA, 15 U.S.C. § 2064(b). Section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5), prohibits the release of such information unless:

1. a remedial action has been accepted in writing,
2. the Commission has issued a complaint under sections 15(c) or (d), alleging that the product presents a substantial product hazard,
3. the person who submitted the information under section 15(b) consents to the release, or
4. the Commission publishes a finding that the public health and safety requires public disclosure with a lesser period of notice than is required (15 days).

Reports under section 102 of the Child Safety Protection Act receive the same confidential treatment as information submitted under section 15 of the CPSA.

CONFIDENTIALITY OF REPORTS UNDER SECTION 37 OF THE CPSA

Section 6(e) of the CPSA, 15 U.S.C. § 2055(e), protects from disclosure certain information submitted to the Commission by a manufacturer pursuant to section 37 of the CPSA, 15 U.S.C. § 2084. See Chapter 9 of this *Handbook* for information on the Section 37 reporting requirement.

Section 6(e)(1) provides that information furnished under sections 37(c)(1) and (c)(2)(A) may not be disclosed publicly, 15 U.S.C. §§ 2084 (c)(1) and (c)(2)(A). Section 6(e)(2), 15 U.S.C. § 2055(e)(2), provides that any report submitted pursuant to sections 37(c)(1) or (c)(2)(a) shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a state or federal court or in any administrative proceeding, except in an action against such manufacturer under sections 20, 21, or 22 of the CPSA, 15 U.S.C. §§ 2069, 2070, 2071, for failure to furnish information required by section 37.

USE OF INFORMATION BY THE COMMISSION

As part of any recall or other corrective action plan undertaken by a firm, pertinent information relating to the corrective action plan may be included in the recall section of the CPSC website or in other publicly available materials. The information may include the date the corrective action plan is initiated, the name of the firm involved, the name of the product(s) involved, the geographic area of distribution of the product(s), the hazard identified by Commission staff, the labeling of the product(s), and the type of corrective action being taken.

SHARING OF INFORMATION WITH FEDERAL, STATE, LOCAL AND FOREIGN GOVERNMENT AGENCIES

Notwithstanding the requirements of subsections (a)(3) and (b) of section 6 of the CPSA, relating to public disclosure of information, the Commission may make information available to any federal, state, local, or foreign government agency upon the prior certification of an appropriate official of any such agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement or consumer protection purposes, with certain restrictions. See section 29 of the CPSA, 15 U.S.C. § 2078.