

Reporting Of Product Defects, Risks And Failure To Comply Reporting Requirements Under Section 15



Section 15(b) of the CPSA requires that manufacturers, importers, distributors and retailers of consumer products must notify the Consumer Product Safety Commission (CPSC) immediately if it obtains information which reasonably supports the conclusion that a product distributed in commerce:

- fails to meet a consumer product safety standard or banning regulation
- contains a defect which could create a substantial hazard to a consumer
- creates an unreasonable risk of serious injury or death
- fails to comply with a voluntary standard which the CPSC has relied on, under the CPSA

The following information should be included in a report:

- Description of the Product
- Name and address of the company (manufacturer, distributor, importer or retailer)
- The possible product defect or unreasonable risk of serious injury or death
- Nature and extent of the injury or possible injury associated with the product
- Name, address and telephone number of the person informing the Commission
- A timetable for providing information not immediately available

The reporting firm must report “immediately,” or within 24 hours of obtaining the information. The CPSC encourages companies to report potential substantial product hazards even while their own investigations are continuing.

Firms may investigate the matter for 10 working days. If a company is uncertain if the information is

reportable, the firm may spend a reasonable time investigating the matter. The CPSC will presume that the firm has received and considered all information at the end of the 10 working days.

The CPSC considers the company to have obtained knowledge of product safety related information when the information is received by an employee of the firm. Once that occurs, the firm has 5 working days for the information to reach the CEO or the person assigned with the reporting duties.

The commission will then evaluate whether or when a firm should have reported. This evaluation will be based on what the company actually knew about the hazard posed by the product or on what a reasonable person should have known about the product hazard if they had exercised due care. A firm is deemed to know what it would have known had it exercised due care in analyzing reports of injury, consumer complaints, warranty of returns, reports of experts, in house engineering analysis and any other related information.

Confidentiality of Reports:

The CPSC is prohibited from releasing information unless a remedial action plan has been accepted by the firm in writing, a complaint has been issued or the reporting firm consents to the release. The reporting firm must mark “confidential” on the report if the information submitted is trade secret, confidential commercial or financial information

How can one determine when a product creates a “substantial product hazard?”

Section 15 lists criteria for determining when a product creates a substantial product hazard. Any one of these factors could mean the existence of a substantial product hazard.

- **The pattern of defect:** The defect could stem from the design, composition, content, construction, finish, or packaging of a product or from warnings or instructions that accompany the product.
- **The number of defective products** distributed: A single defective product could be the basis for a substantial product hazard if an injury is likely or could be serious. Alternatively, defective products posing no risk of serious injury or having very little chance of causing even minor injury would not be considered to present a substantial product hazard.
- **The severity of risk:** A risk is considered severe if the injury that might occur is serious and if the injury is likely to occur.
- **The likelihood of injury:** The likelihood is determined by considering the number of injuries that have occurred, or that could occur, the intended or reasonable foreseeable use or misuse of the product and the population group exposed to the product.

A substantial product hazard also exists when a product does not comply with applicable consumer product safety rules.

Hazard Priority System

The CPSC applies a hazard priority system which classifies the severity of the problem. The hazard priority system allows the Commission to rank the defective products as Class A, B or C hazards.

Class A, B And C Hazards

CLASS A Hazard

- Exists when a risk of death or grievous injury or illness is likely or very likely, or serious injury is very likely
- Warrants the highest level of attention
- Calls for a company to take immediate comprehensive and imaginative corrective action measures

CLASS B Hazard

- Exists when a risk of death or grievous injury or illness is not likely to occur, but is possible, or when a serious injury or illness is likely, or if moderate injury or illness is very likely

CLASS C Hazard

- Exists when a risk of serious injury or illness is not likely, but is possible, or when moderate injury or illness is not necessarily likely but is possible

Regardless of whether a product defect is classified as a Class A, B, or C, the common element is that each of these defects creates a substantial product hazard that requires corrective action to reduce the risk of injury. The priority given to a product defect provides a guideline for determine how best to communicate with owners and users of the defective product and to get them to respond appropriately.

While some companies are extremely effective in communicating to consumers independently, it is still in a company's best interest to work with the Commission, using both the company's and the CPSC's skills and resources to conduct an effective product recall.

Want to Speed Up the Process? Consider CPSC's Fast Track Product Recall Program

A firm that files a section 15 report might want to use an alternative procedure that the Commission has established called the Fast Track Product Recall Program. If a company reports a potential product defect, and within 20 working days of filing the report, implements a consumer level voluntary recall with the CPSC, the staff may not make a preliminary determination that the product contains a defect that creates a substantial product hazard. This program allows the staff and company to work together on a corrective action plan almost immediately, rather than spending the time and other resources to investigate the reported defect.

To participate in the program the company must provide all of the information required for a full report, request to participate in the program and submit a proposed corrective action plan with sufficient time for the Commission staff to analyze any proposed repair, replacement or refund offer and to evaluate all notice material before the announcement. Implementation of the voluntary recall must occur within 20 days of the report.

Where To Report

Telephone: 301.504.7913

Fax: 301.504.0359

Electronically at www.cpsc.gov



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