

<b>Product Responsibility Best Practices</b>	<b>SUBJECT</b> CPSC Field Investigations		<b>LAST UPDATE</b> July 2018
	<b>APPLIES TO</b> • Suppliers • Distributors	<b>FOCUS ON</b> How to effectively respond to a CPSC field investigation.	
	<b>QUICK LINKS</b> • PPAI Corporate Responsibility: <a href="http://www.ppai.org/inside-ppai/corporate-responsibility/">www.ppai.org/inside-ppai/corporate-responsibility/</a> • UL: <a href="http://industries.ul.com/premiums-promotional-and-licensed-goods">industries.ul.com/premiums-promotional-and-licensed-goods</a> • Consumer Product Safety Commission: <a href="http://www.cpsc.gov">www.cpsc.gov</a>		<b>Intended for intermediate compliance programs</b>

*Italic grey text indicates a hyperlink listed in the Online Resources section of this document.*

When it is determined by the *Consumer Product Safety Commission (CPSC)* that a product violates a specific statute or regulation, the CPSC Office of *Compliance and Field Operations* will notify the responsible organization. This could be the product manufacturer, importer, supplier, distributor, or retailer of the product in violation. The notification can be in the form of a Letter of Advice (LOA) and/or an on-site field investigation.

There are three divisions under the Office of Compliance and Field Operations: defect investigations, regulatory enforcement, and field investigations. The responsibilities of the office include:

- Surveillance of market activity
- Enforcing standards and reporting requirements
- Investigating product hazards and defects
- Making preliminary determinations
- Coordinating enforcement efforts with other government agencies
- Developing corrective actions and recall plans
- Guiding and helping organizations comply with laws
- Referring appropriate penalties

This best practice document will review strategies companies can employ to navigate field inspections by the CPSC. It will provide steps that can be taken to help the investigation go as smoothly as possible and mitigate negative consequences. Much of the information in this best practice is sourced directly from the CPSC.

### Inspection Authority

CPSC investigators are granted authority to enter at reasonable times any establishment involved in the manufacture, import, distribution or sale of consumer products per section 16(a) of the *Consumer Product Safety Act (CPSA)*.

“...officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

- (1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce...and
- (2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, firewalled conformity assessment body, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.”

### Comply With An Inspection

Compliance with a CPSC field investigation is not optional. It is unlawful for any person to refuse to permit entry, inspection, access to, or copying of records under section (section 19(a)(3) of the CPSA) and (4(e) of the FHSA).

“(a) It shall be unlawful for any person to...(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection.”

The organization being investigated must provide samples of the product and any information related to the business and the products distributed, imported, and/or manufactured including customer lists (section 16(b) of the CPSA). Failure to comply

can lead to the prohibition of the sale, distribution, or importation of the organization's products [Section 16(d) of the CPSA and Section 17(a)(5) and (g)].

It is critical that organizations understand that transparency is the optimal approach. It is a crime to lie to a federal inspector. It is unlawful to "misrepresent to any officer or employee of the Commission the scope of consumer products subject to an action required under section 12 or 15, or to make a material misrepresentation to such an officer or employee in the course of an investigation..." (section 19(a)(13) of the CPSA).

*Title 18 of the United States Code Section 1001* makes it a crime to make false statements including:

1. falsifies, conceals, or covers up by any trick, scheme, or device, a material fact;
2. makes any materially false, fictitious, or fraudulent statement or representation; or
3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

### Non-Compliance Penalties

**Civil penalties** of up to \$100,000 for each violation or inspection refusal may be imposed and shall not exceed \$15,000,000 (section 20 of the CPSA).

**Criminal penalties** up to five years' imprisonment, a fine, and/or forfeiture of assets associated with the violation (Section 21 of the CPSA).

### What Prompts An Inspection

Inspections can be triggered by a variety of events—most common of which include:

- Ongoing market surveillance and compliance monitoring of voluntary and regulated product standards
- Response to a consumer complaint or incident
- Response to a trade complaint
- Follow-up to surveillance

### What Happens During A CPSC Investigation

- Field investigators will typically arrive unannounced, identify themselves, and show credentials, usually in the form of a badge.
- The investigator will then serve a "notice of inspection" and disclose the reason for the visit in specific terms.

- The investigator will inspect all locations where the product and records are located. This includes any office, factory, or warehouse area in which the products are manufactured, stored, or held in connection with distributing into commerce. The organization is required by law to provide unimpeded access.
- Some testing can be performed on site, but official testing will be done at the CPSC lab. The CPSC will collect samples themselves in order to avoid a golden sample scenario. All samples will be treated like evidence and sealed to avoid any type of tampering with the product. Any samples taken will be paid for by the investigator.
  - A golden sample is a sample is similar to a pre-production sample in that it is produced by a manufacturer, prior to an actual production run, to meet all established criteria for compliance, so that when reviewed by clients, inspectors and others it will receive a passing grade. Subsequently, there are no guarantees that the production run will meet the same compliance criteria.
- The samples are sent to either CPSC headquarters or to the CPSC's National Product Testing and Evaluation Center. They are maintained under seal and carefully controlled until testing can be completed.
- A preliminary determination regarding the investigation will be made and communicated by the CPSC.
- Corrective action plans and the decision to recall, dispose, or not recall will be determined. A recall plan will be negotiated if deemed appropriate. The field investigator will be present for disposal/destruction of the product unless the CPSC determines that is not necessary.

### How to Handle An Investigations

- Train front office staff how to handle the situation. It is always advisable to be informed and courteous. A script for handling the situation may be helpful to front office staff. Staff should know where to go for assistance and the chain of command for compliance investigations.
- Provide the investigator specifically what he requests. Avoid large amounts of unnecessary documents that will make their job more difficult and time consuming. Well managed technical files simplify the process.

- Do not lie or misrepresent facts.
- Be sure to let the investigator know if any product details are considered confidential.

Organizations are not required to provide standard operating procedures. The CPSC is not concerned with how an organization operates if it does not apply to the process/product involved in the investigation.

Preparation and well managed procedures for technical files will enhance the logistics of gathering multiple pieces of information throughout the organization in a timely and effective manner. Every company is unique and protocols for logistically responding to an investigation will be unique to the individual organization. For example, some companies bring multiple contacts to the meeting with the CPSC while some provide a list of contacts that the investigator will meet with individually. Decide what your process will be and document it.

### ***Mitigate Unannounced Investigations***

Robust compliance programs contain proactive processes that help organizations catch issues early on and then self-report to the CPSC. Monitoring best practices can include:

- Returns from distribution chain
- Replacement orders or parts orders
- Consumer complaints, claims, lawsuits and feedback
- Accelerated life testing results
- Quality assurance

- Product improvement
- Material changes
- Distributor/retailer reports and feedback
- Incidents from CPSC *Injury Clearinghouse*
- Reports and recalls at *SaferProducts.gov*

According to the *SaferProducts.gov* website, the public can submit reports of harm involving consumer products. “Manufacturers (including importers) and private labelers identified in reports will receive a copy of the report, and have the opportunity to comment on them. Completed reports and manufacturer comments are published online at *www.SaferProducts.gov* for anyone to search.”

### ***Online Resources:***

#### **CPSC Office of Compliance and Field Operations:**

[www.cpsc.gov/About-CPSC/Contact-Information/Contact-Specific-Offices-and-Public-Information/Dennis-Blasius/](http://www.cpsc.gov/About-CPSC/Contact-Information/Contact-Specific-Offices-and-Public-Information/Dennis-Blasius/)

#### **Consumer Product Safety Act (CPSA):**

<https://www.cpsc.gov/PageFiles/105435/cpsa.pdf>

#### **Letter of Advice (LOA):** [www.cpsc.gov/en/Recalls/Violations/](http://www.cpsc.gov/en/Recalls/Violations/)

#### **Federal Hazardous Substances Act (FHSA):**

[www.cpsc.gov/en/Business--Manufacturing/Business-Education/Business-Guidance/FHSA-Requirements/](http://www.cpsc.gov/en/Business--Manufacturing/Business-Education/Business-Guidance/FHSA-Requirements/)

#### **Title 18 USC Section 1001:**

<https://www.treasury.gov/resource-center/sanctions/Documents/crimcode.pdf>

#### **CPSC Injury Clearinghouse:**

[www.cpsc.gov/en/About-CPSC/National-Injury-Information-Clearinghouse/](http://www.cpsc.gov/en/About-CPSC/National-Injury-Information-Clearinghouse/)

#### **Saferproducts.gov:** [www.saferproducts.gov/](http://www.saferproducts.gov/)

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