

**TRIGGER REPORTING:
The first two years and going forward**

2007 ICPHSO Annual Meeting

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CPSA Section 15 Notification Requirements

- Manufacturers (including importers), distributors and retailers must notify CPSC immediately upon receiving information that:
 - “*reasonably supports the conclusion*” that a consumer product either
 - “contains a defect which *could create a substantial product hazard,*” or
 - “creates an *unreasonable risk* of serious injury or death”

Challenges in Complying with CPSC Notification Requirements

- Possible to be second-guessed by CPSC
- Risk of civil penalties up to \$1.825 million
 - During fiscal 2005, six companies paid a total of \$8.8 million in civil penalties
 - CPSC announced two civil penalties in January 2007 totaling over \$1 million
- Effort to comply can have an unintended adverse impact on a company's:
 - Allocation of resources, and
 - Decision making process

CPSC Reporting Model

- Announced in February 2005 as a “working model” for retailers
- Staff subsequently indicated a willingness also to consider the program for manufacturers
- Criteria
 - Weekly reports to CPSC of agreed upon categories of information
 - Automatic notification triggers
 - Each report of death (report within 24 hours) or injury requiring medical attention or absence from more than a day of school or work
 - Each report of electrocution/shock; entrapment/strangulation of a child; choking or drowning of a child
 - Each product withdrawal (report within 24 hours)

CPSC Reporting Model (cont.)

- Cumulative triggers
 - 3 reports of a recurring hazard (e.g., structural failure/breaks/ruptures/leaks; fire, burn potential/electrical incident; unstable/tipping hazard; etc.)
 - 5 reported injuries from the same product
- No civil penalties for information submitted under the program
- Use of data by CPSC

CPSC Reporting Model: A Look Back

- Wal-Mart
 - During the first 12 months in the program (2004 – 2005), Wal-Mart notified CPSC of about 3,000 consumer complaints.
 - Recalls by Wal-Mart of products it imported have increased (although Wal-Mart may be importing more products than in the past)
 - Wal-Mart has not paid any additional civil penalties after settling the case that prompted Wal-Mart's trigger reporting.
- Sears Holdings (Sears/Kmart)
 - Sears Holdings began participating in the program during mid-2006.

CPSC Reporting Model: Potential Benefits

- Reduce the risk of civil penalties and related investigations
- Allocate resources to whether a recall is warranted instead of whether to notify CPSC
- Eliminate the risk of a civil penalty from decisions about whether to notify

CPSC Reporting Model: Potential Costs

- Participation may require a significant investment in technology and staff
- Potentially more CPSC requests for information and recall investigations
- Potential for civil penalties based upon historical data
- Discovery in civil litigation

Meeting Notification Requirements

- One size does not fit all
 - Companies might reasonably conclude that participation in the program is or is not the best approach for them.
 - Even companies that do participate may not all do so in the same way.
 - Talk to the CPSC staff if you're considering whether to participate.