

Reporting Safety Problems

U.S. Perspective

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Views expressed in this presentation are those of CPSC staff and do not necessarily represent the views of the Commission



Reporting to CPSC

- The main reporting requirement comes from Section 15 of the Consumer Product Safety Act (CPSA)
- Section 15 applies to manufacturers, distributors and retailers of “consumer products”
- Company that imports a product is considered its manufacturer



What Is a “Consumer Product”?

- The CPSA defines “consumer product” broadly, but excludes some products regulated by other federal agencies:
 - Cars and related equipment (NHTSA)
 - Food, drugs, medical devices, cosmetics (FDA)
 - Firearms (ATF)
 - Airplanes (FAA), boats (Coast Guard)
 - Pesticides (EPA)



Section 15 Reporting

- Section 15 requires companies to report to CPSC “immediately” if they obtain information raising safety concerns about products they make or sell
- The reporting requirement applies to four types of safety concerns



Four Types of Safety Problems

- Product fails to comply with a mandatory safety standard or ban under CPSA
- Product fails to comply with certain voluntary standards
- Product contains a defect which could create a “substantial product hazard”
- Product creates an “unreasonable risk”



1. Violation of Mandatory Standards

- Reporting is required if product “fails to comply with an applicable consumer product safety rule”
- Requirement covers safety standards and bans adopted under the CPSA
- Examples: standards for bicycle helmets, lawn mowers, cigarette lighters; ban of products containing lead paint



2. Violation of Voluntary Standards

- Requirement applies only to voluntary standards “upon which the Commission has relied under section 9” of CPSA
- Only two such standards currently:
 - Gas powered chain saws
 - Gas fired room heaters
- Violations of other voluntary standards still may trigger reporting as “substantial product hazard”



3. Substantial Product Hazard

- “Substantial product hazard” exists if a product defect creates a substantial risk of injury

BUT:

- Report is required if product “contains a defect which *could* create a substantial product hazard”



4. Unreasonable Risk

- Report is required if product “creates an unreasonable risk of serious injury or death”
- No requirement of “defect”
- Serious injury defined in regulations to include injuries that require medical attention, cause day off work



How Quickly Is Report Required?

- Must report “immediately” once information “reasonably supports the conclusion” that safety issue exists
- Immediately means within 24 hours, but ten days to conduct investigations
- Phrase “reasonably supports conclusion” is intended to require reporting even when no final determination is possible



Retailer Reporting

- Regulations permit retailers to make simpler reports. Can telephone CPSC or write manufacturer with copy to CPSC
- Report not necessary if retailer has actual knowledge that CPSC is “adequately informed” BUT
- Regulations set high standard for when CPSC is “adequately informed”



Substantial Product Hazard

- Probably most ambiguous area
- Defect is threshold question
 - Manufacturing defects (doesn't meet specs)
 - Design defects
 - Inadequate warnings, assembly instructions
 - Safety device malfunctions
- Design changes raise issue



Substantial Product Hazard

- Most defects could present a substantial product hazard if [1] the public is exposed to significant numbers or [2] if the possible injury is serious *or* likely
- Since the extent of exposure and/or seriousness or likelihood of injury are not known when defect first appears, firms urged to “report when in doubt”



Substantial Product Hazard

- CPSC gives “considerable significance” to a failure to meet a standard or ban under the Federal Hazardous Substances Act, Flammable Fabrics Act or Poison Prevention Packaging Act
- Example: rule banning small parts on toys for children under age three



Substantial Product Hazard

- Firms must evaluate whether failure to comply with voluntary standard is a defect that could create a substantial product hazard
- Some voluntary standards receive priority attention from CPSC
- Example: immersion protection for hair dryers



Why Do Firms Fail to Report?

- Ignorance of the law
- Fear that CPSC will require corrective action (for example, recall) even when not justified
- Fear of product liability lawsuits



Is Fear of CPSC Valid?

- Virtually all consumer product recalls and corrective actions in U.S. are voluntary
- More than half of reports to CPSC ask for “fast track” treatment, meaning firm wants to implement recall or other corrective action right away
- Of remaining reports, only about half result in recall



Is Fear of Lawsuits Valid?

- CPSC allows firms to deny that safety issue must be reported even when they are reporting one
- Information reported to CPSC is not available to the public while staff conducts its investigation BUT
- Trial lawyers can often get report before the investigation is complete
- Trial lawyers can often make report look like admission of unsafe product



Reporting to CPSC

- There have been more than 200 reports to the CPSC each year for the last twelve years
- Between 2000 and 2004, CPSC averaged 360 reports per year



Section 15 Reports

- FY 2004 - 450 (252 Fast Track)
- FY 2003 - 340 (176 Fast Track)
- FY 2002 - 367 (210 Fast Track)
- FY 2001 - 346 (219 Fast Track)
- FY 2000 - 295 (180 Fast Track)



Penalties for Not Reporting

- Section 15 is enforced by penalties for not reporting or for reporting too late
- Penalty currently is \$7,000 for failure to report an individual product, subject to a maximum of \$1,650,000 for a series of related violations
- Penalty caps for individual product and series will increase on 1/1/2005



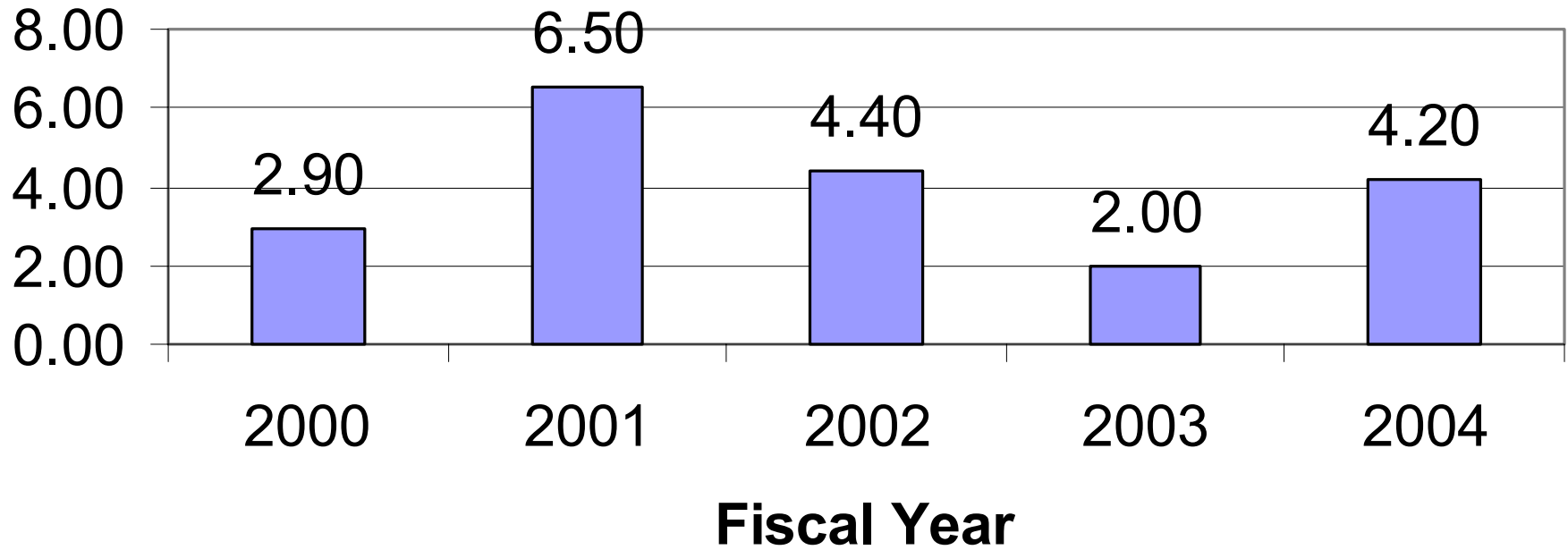
Civil Penalties Collected

- FY '04 - \$4,200,000 involving 10 firms
- FY '03 - \$2,350,000 involving 5 firms
- FY '02 - \$4,215,000 involving 13 firms
- FY '01 - \$6,500,000 involving 11 firms



CPSC Civil Penalties

Amount in Millions



CPSC Evaluation

- **The staff conducts an independent analysis of the information supplied by the manufacturer**
- **The staff considers whether the product is defective**
- **The staff considers what degree of risk is presented**
- **Generally, risk analysis takes account of the number of products and severity of possible injury and likelihood of injury**



Hazard Priority System

- CPSC staff assigns a general risk class so that one product can be compared to others
- Class A hazard is worst, Class B and Class C are less risky but still a substantial hazard in the staff's view



Source of Recalls

	A	B	C	D
Firm reported	0	8	21	87
Staff initiated	0	63	25	6



Most Recalls Are Voluntary

If manufacturer does not agree to conduct a recall, CPSC staff can seek a mandatory recall

- Mandatory recall requires elaborate legal proceeding before an administrative judge and Commission review**
- On average, this procedure is used less than once a year**



Corrective Action Plan

- **If manufacturer agrees to recall, it must file a Corrective Action Plan**
- **Each plan is tailored to the specific case**
- **Stop production, stop distribution, stop retail sales, notify consumers**
- **Different cases call for different consumer remedies, which may involve repair, replacement, refund or other solutions to eliminate the risk**



Fast Track Recalls

- **“Fast Track” is a process for rapid implementation of recalls when manufacturers do not want to wait for staff risk analysis**
- **Firm must initiate recall within 20 working days**
- **Staff does not make preliminary determination of risk**



Consumer Notification

- **GOAL:** To reach as many of the owners of the recalled products as possible and provide incentive for them to stop using recalled products and participate in remedy



Consumer Notification Techniques

- **Joint press release**
- **Video news release**
- **Point of purchase poster**
- **Email notice**
- **Specialty posters (example: pediatrician's office)**
- **Web site**
- **Paid advertisements**
- **Product registration cards**



Consumer Incentives

- **Bounty/Reward**
 - Cash/Gift/Certificate
- **Postage-paid shipping label or package**
- **Free or substantial contribution towards accessory products**



Implementing a Recall

- **Coordination With Retailers**
 - Early notification
 - Lock out sales
 - Isolate stock
 - Consumer notification timing



Recall Completion Reports

- **Recalling firms must provide monthly reports on the progress of their recall including information on**
 - **Number of products retrieved/corrected from chain of distribution**
 - **Number of products returned/corrected from consumers**



Voluntary Recalls

Fiscal Year (October thru September)

- FY 2004 - 354 - 219 Fast Track**
- FY 2003 – 278 – 154 Fast Track**
- FY 2002 – 391 – 212 Fast Track**
- FY 2001 – 345 – 204 Fast Track**
- FY 2000 – 309 – 156 Fast Track**



Industry Guidance On Line

www.cpssc.gov

- **Recall Information Companies**
- **Testing Laboratories**
- **Other Industry Guidance**
 - **Regulatory Summaries**
 - **Staff Guidance**



Industry Guidance

- **WWW.CPSC.GOV**
 - Business Icon
 - Regulations
 - Industry Guidance

