

# CPSC *Advisory*

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## **Consumer Product Safety Commission FAQs**

### **INTRODUCTION**

*The United States Consumer Product Safety Commission (“CPSC”) is an independent federal regulatory agency created to protect consumers against unreasonable risk of serious injury or death from more than 15,000 types of consumer products under the agency’s jurisdiction.*

*The CPSC does this by developing mandatory and voluntary industry standards, banning dangerous consumer products, issuing recalls of currently available products, conducting research on potential product hazards, and reaching out to consumers through media, government, and private organization channels to enhance consumer awareness and education on product safety issues.*

*Since its conception in 1972, the Consumer Product Safety Commission has played a significant role in outlining and issuing safety standards for a wide range of consumer products introduced into the global market. The recent influx of high-profile recalls has heightened consumer awareness and increased regulatory concern regarding both issuance of, and compliance with, safety standards leading Congress to propose legislation to increase federal funding and impose stricter fines and penalties for non-compliance.*

### **Q: WHAT IS THE CONSUMER PRODUCT SAFETY COMMISSION (“CPSC”)?**

**A:** The Consumer Product Safety Commission (“CPSC” or “Commission”) is an independent federal regulatory agency. The CPSC is headed by three Commissioners, nominated by the President and confirmed by the Senate, each serving a seven-year term. The President chooses one Commissioner to act as Chairman.

The work of the CPSC is divided among

numerous offices, including the Office of the General Counsel and the Office of Compliance & Field Operations. The Office of Compliance & Field Operations handles reporting and recalls under Section 15(b) of the Consumer Product Safety Act. To report by telephone under Section 15(b), manufacturers, distributors, and retailers can contact a general number at the CPSC, (301) 504-7913, Ext. 15. Alternatively, reporting entities may contact the individual who is most likely responsible for the subject product.

The CPSC has established a toll-free hotline, (800) 638-CPSC, that individuals may call to report unsafe products and product-related injuries or to hear a variety of recorded messages on product recalls, consumer products, and product safety.

### **Q: ARE MY PRODUCTS SUBJECT TO CPSC JURISDICTION?**

**A:** The Consumer Product Safety Commission asserts jurisdiction over some 15,000 types of consumer products. Under Section 3(a) of the Consumer Product Safety Act, a product is a “consumer product” if it is:

- an “article” or a component part of such “article;”
- a final, manufactured product, rather than anything at an intermediate stage of production; and
- either produced or distributed for sale to a consumer or is for the personal “use, consumption, or enjoyment of a consumer,” in or around a household or residence, a school, in recreation, or

otherwise.

Typically, the determination of whether a product is for consumer versus commercial use includes an analysis of such factors as:

- the cost of the item;
- how and where it is marked (e.g., type of distribution, sales outlet, advertising placement, etc.); and
- actual sales data about who is purchasing the product.

The CPSC has frequently attempted to expand its jurisdiction to reach “commercial” as well as “consumer” products. Seemingly “commercial” items over which the CPSC has successfully asserted jurisdiction include:

- cement-asbestos wallboards used in construction;
- vending machines;
- office copying machines;
- tennis ball machines;
- traffic signals;
- fire alarms;
- elevators;
- escalators; and
- coin-operated laundry machines.

Congress has repeatedly addressed the CPSC’s authority over these products, but has typically acted to restrict the scope of the CPSC’s jurisdiction. For example, after the CPSC asserted jurisdiction over permanently-installed amusement park rides, Congress (in 1981) amended the agency’s statute to limit the agency’s jurisdiction to operator-controlled mechanical amusement rides that

are not permanently fixed to a site.

### **Q:WHAT ARE THE REPORTING REQUIREMENTS FOR POTENTIAL SAFETY HAZARDS?**

**A:** Section 15(b) of the Consumer Product Safety Act and Section 37 requires manufacturers, importers, distributors, and retailers to submit reports to the Consumer Product Safety Commission when products they manufacture, import, distribute, or sell pose a risk to consumer safety.

#### **WHAT TO REPORT**

A Section 15(b) report is required whenever a manufacturer, importer, distributor, or retailer of consumer products obtains information that reasonably supports the conclusion that a product:

1. Fails to comply with a consumer product safety standard or ban established by the Commission or a voluntary consumer product safety standard upon which the Commission has relied under Section 9 of the Consumer Product Safety Act;
2. Creates an unreasonable risk of serious injury or death; or
3. Contains a defect that could create a “substantial product hazard.” To comply with the reporting requirements of Section 15(b), companies that manufacture, import, distribute, or sell consumer products should develop a system to review and maintain consumer complaints, inquiries, product liability suits, and warranty claims on the products they handle.

Product manufacturers and importers may first file an Initial Report that contains basic information about the product and potential hazard. They must also file a subsequent

Full Report that contains more detailed information proscribed in the CPSC's regulations. Distributors or retailers that are neither manufacturers nor importers of the products in question are subject to the reporting requirements of Section 15(b), but may satisfy their notification obligations by complying with the less comprehensive reporting requirements of an Initial Report or by notifying the manufacturer or importer of the risk or non-compliance and providing a copy of that notice to the CPSC. The latter method can significantly reduce Section 15(b)'s burden on retailers.

#### WHEN TO REPORT

If a company is uncertain about whether information is reportable, it may investigate the matter. Such an investigation should not exceed ten days, unless the company can demonstrate that a longer timetable for the investigation is reasonable. Companies that have concluded that a substantial product hazard may exist must file an Initial Report within 24 hours of reaching that conclusion. Additionally, reporting is required when a company obtains information indicating that a product fails to comply with a voluntary consumer product safety standard on which the Commission has relied, or creates an unreasonable risk of serious injury or death.

#### WHETHER TO REPORT

Companies frequently grapple with reporting obligations under Section 15(b). The CPSC's regulations have been criticized for failing to provide concrete guidance, and only one court has issued a decision regarding Section 15(b) reporting liability.

The CPSC's mantra is "When in doubt, report." Reporting a product to the CPSC under Section 15 does not mean that the

Commission automatically will conclude that the product constitutes a substantial product hazard or an unreasonable risk of serious injury or death or that corrective action is necessary. Many reports ultimately require no corrective action. However, failure to report to the CPSC potentially subjects a company to fines and penalties, and even criminal liability.

A manufacturer, distributor, or retailer is not obligated to report if it possesses "actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk." An example of this situation would be when a retailer is aware that the manufacturer of a hazardous product has reported the risk to the CPSC.

#### Q: WHAT IS A "SUBSTANTIAL PRODUCT HAZARD"?

**A:** Section 15(b)(2) of the Consumer Product Safety Act requires a manufacturer, importer, distributor, or retailer to report to the Consumer Product Safety Commission whenever a product "contains a defect which could create a substantial product hazard." The two types of "substantial product hazards" are:

- a failure to comply with an applicable consumer product safety rule that creates a substantial risk of injury to the public; and
- a product defect that creates a substantial risk of injury to the public.

#### DOES THE PRODUCT CONTAIN A "DEFECT"?

The Commission's Section 15 rules do not specifically define "defect," but offer illustrative examples. The section describes a defect as including, at a minimum, the commonly accepted dictionary meaning of

the word. In general terms, a defect is a “fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function.” A defect need not be a manufacturing defect; it can also be a design defect or defective instructions or warnings.

#### **DOES THE DEFECT CREATE A SUBSTANTIAL RISK OF INJURY TO THE PUBLIC?**

The degree of risk presented by a product defect is determined by the pattern of the defect, the number of defective products distributed in commerce, and the severity of the risk. The question implies a balancing test of the utility and risk associated with the product. For example, according to examples provided by the CPSC regulations, although the foil finish of a metallicised kite may be attractive and may help the kite fly better, because the kite can conduct electricity from air to ground and can foreseeably become tangled with power lines it is defective within the meaning of Section 15(a), even if designed, manufactured, and marketed as intended.

Of course, the CPSC recognizes that not all products that present a risk of injury are defective. For example, a knife has a sharp blade that can cause injury. Sharpness, however, is necessary for a knife to function as intended. Thus, the risk of injury is outweighed by the usefulness of the sharp knife.

Absent an actual serious injury or death, no final determination as to the existence of such risks may be possible; nonetheless, the company must evaluate available information to determine whether it reasonably supports a finding that the risk exists. The standard for determining whether to report is: “Could a reasonable person conclude, given the information available, that a product creates an unreasonable risk of serious injury or death?”

#### **Q: DO RETAILERS HAVE TO REPORT UNDER SECTION 15(b) OF THE CONSUMER PRODUCT SAFETY ACT (“CPSA”)?**

**A:** The short answer is yes. If you are a retailer or distributor of a product and you have received information that the product you sold has caused injury or is likely to present a substantial product hazard, you must file a report under Section 15(b). The CPSC has obtained significant civil penalties from retailers including Wal-Mart, The Limited, Inc., and Nordstrom. The CPSC is particularly likely to go after the retailer when the manufacturer or importer has limited resources or is not located in the United States.

You are not the manufacturer or importer of a product, but you sell or distribute it, there are three ways to satisfy your obligation to file an Initial Report under Section 15(b). You can:

- call or write to the Office of Compliance and Field Operations, at the Consumer Product Safety Commission in Washington, D.C. (telephone number: 301-504-0608);
- send a letter to the manufacturer or importer of the product describing the nonconformity to a mandatory standard or the risk of injury, with a copy to the CPSC Office of Compliance and Field Operations; or
- send the CPSC Division of Corrective Actions reportable information about a safety hazard that you have received from another firm.

If, however, you have received the reportable information from the product manufacturer, who informs you that a report has already been filed with the Commission, you do not need to report it again.

The second option above may be the simplest way to comply and should take care of any reporting obligations. If you decide to file an Initial Report, the required information is set forth under 16 CFR 1115.13(c).

#### **Q: WHAT ARE THE REPORTING REQUIREMENTS FOR LAWSUITS?**

**A:** The Consumer Product Safety Improvement Act (“CPSA”) of 1990 was enacted to increase reporting of potential product hazards to the CPSC through the imposition of an additional reporting requirement. Section 37 of the CPSA requires any manufacturer or importer whose consumer product has been the subject of three civil actions within a two year period to file a report with the Commission. By law, reporting under Section 37 is not an admission of the existence of an unreasonable risk or injury, a defect, a substantial product hazard, an imminent hazard, or any other liability under any statute.

Similar to Section 15(b) reports, Section 37 reports are comprised of factual data concerning the potentially dangerous products. A manufacturer must report:

- the model and model number or designation of the consumer product;
- whether the lawsuit involved death or grievous bodily injury, and in the latter case a statement of the category of injury; and
- whether the case resulted in a final settlement or judgment in favor of the plaintiff, and, if a judgment, the names of the case and court and the case number.

A manufacturer must report within 30 days after a judgment or final settlement in the last

of the three lawsuits. The same is true of any additional lawsuits involving the same model that are settled or adjudicated in favor of the plaintiff during the same two year period.

#### **Q: DO I HAVE TO REPORT ON PRODUCTS SOLD ABROAD OR IMPORTED?**

**A:** The reporting obligations contained in Section 15(b) of the Consumer Product Safety Act apply to potential product hazards associated with all products distributed in U.S. commerce. Accordingly, U.S. distributors of imported products have the same reporting obligations as U.S. manufacturers. While offshore manufacturers of products sold in the United States theoretically have a duty to report as well, it is questionable whether the CPSC could establish jurisdiction over these parties in the event of an alleged failure to report. In enforcement actions involving imported products, the Commission typically looks to the U. S. importer as the party primarily responsible for reporting substantial product hazards.

On June 7, 2001, the Commission published a policy statement and amendment to its interpretive rule under Section 15(b) stating its position that among the information that firms should study and evaluate in order to determine whether they have a reporting obligation is “information about product experience, performance, design, or manufacture outside the United States that is relevant to products sold or distributed in the United States.” The information in question could pertain to a U.S.-made product sold abroad – the CPSC’s notice of the policy specifically cited the Bridgestone/Firestone tire recall of 2000, which was triggered by initial reports of tire failures in several foreign markets – or to foreign-made products. Thus, it is the CPSC’s position that if a firm obtains

information that meets the criteria for filing a Section 15(b) report that is relevant to a product it sells or distributes in the United States, it must report that information to the CPSC, even when it pertains to products sold overseas.

**Q: WHAT IS THE EFFECT OF A PRELIMINARY HAZARD DETERMINATION ON MY PRODUCT LIABILITY RISK?**

**A:** Once the Consumer Product Safety Commission receives a Section 15(b) report, it would typically reply with a letter stating its “preliminary determination” as to whether the product is, or is not, a substantial product hazard. In 1995, the CPSC implemented the Fast Track Reporting Program because it believed that some companies may not have been reporting for fear that the receipt of a preliminary determination letter could have an adverse effect on current or future product liability litigation. The CPSC’s Fast Track recall procedures were specifically designed to allow companies to file Section 15(b) reports and, if necessary, conduct a recall without the normal staff process of making a “preliminary determination.”

Preliminary determination letters may be discoverable in civil litigation or through the Freedom of Information Act. The CPSC does not routinely publish these letters in the Federal Register or in press releases. Knowledge that there has been a preliminary determination by the CPSC involving your product could increase a plaintiff’s leverage in any settlement negotiation. You can object to the introduction of the preliminary determination letter on the grounds that it is “preliminary” and does not constitute a final governmental report. Even if successful, the letter may be used to cross-examine your witnesses or on the issues of notice of a

potential substantial product defect.

**Q: HOW DOES THE FAST TRACK RECALL PROGRAM WORK?**

**A:** The Fast Track Reporting Program was implemented in 1995 to give companies an incentive to take immediate corrective actions. The program streamlines procedural steps including, significantly, that the Consumer Product Safety Commission will not make a preliminary determination of a substantial product hazard, as it would in a traditional Section 15(b) reporting scenario.

The Fast Track program may be appropriate when the company has identified a product safety problem, knows how to fix it, and is prepared to take corrective action. A recall or other corrective action must begin within 20 days of the company’s report to CPSC.

To participate in the Fast Track Program, the company must:

- provide a Full Report to CPSC (one that provides information responsive to 16 CFR § 1115.12);
- agree to be in the Program; and
- quickly provide an acceptable corrective action plan.
- A Fast Track Corrective Action Plan must include the following:
- sufficient product design and testing information to enable staff to determine whether the proposed fix corrects the problem identified;
- description of the Corrective Action (refund, repair, replacement);
- notice to distributors, retailers and consumers;



- a joint news release with CPSC;
- a point-of-purchase poster (if appropriate); and
- other notices targeted to product owners and users, which may include radio spots, newspaper ads, and video news release.

The CPSC typically asks companies to use their websites to publish information about recalls and safety issues.

### **Q: WHAT ARE THE RISKS ASSOCIATED WITH NOT REPORTING?**

**A:** The Commission frequently penalizes firms for failing to report products that create a “substantial product hazard” or an unreasonable risk of serious injury or death. Fines have been large, and the number of penalties assessed is on the rise.

### **CIVIL AND CRIMINAL PENALTIES**

CPSC penalty authority stems from Section 2069(a)(1) of the Consumer Product Safety Act. Since the enactment of the CPSA, these penalties have been increased to \$8,000 per violation, with a cap of \$1,825,000. The CPSC takes the position that there is one violation for each allegedly defective unit sold. Thus, if 250,000 units have been sold, an \$8,000 penalty can be assessed for each unit. In *United States v. Shelton Wholesale, Inc.*, 34 F. Supp.2d 1147 (W.D. Mo. 1999), the court agreed with the CPSC’s interpretation.

Individuals may also be held criminally liable for failing to report defects. Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any act or practice constituting a violation of these sections is individually liable for such violation. Courts have applied a

negligence standard to impute a presumption of knowledge.

### **OTHER RISKS OF NON-REPORTING**

Companies should be concerned about more than just the financial consequences for failure to report defects, including:

- The CPSC publicizes penalty awards through press releases, video news releases, and press conferences. Penalties adversely affect brand and company image.
- Penalties lead to increased scrutiny of all the company’s products subject to CPSC jurisdiction.
- Penalties may be admitted into evidence in pending and future product liability litigation, potentially influencing punitive damage awards.
- Penalty proceedings are often used to induce companies to modify internal company procedures.
- Criminal penalties may also apply to individuals who knowingly violate reporting requirements.

### **Q: WHAT SHOULD I DO IF THE CPSC VISITS A COMPANY’S FACILITY TO INSPECT?**

**A:** First and foremost, do not panic when the Consumer Product Safety Commission shows up at your door for an inspection. With a thorough and up-to-date CPSC compliance program in place, the company will be prepared to handle the situation. Refer to your CPSC compliance program so that you know what types of information the CPSC will be seeking, and for what types of information you should seek advice from counsel before providing. Call your attorney to inform him or her of the visit, to request

advice or ask questions about the information sought by investigators, and to allow your attorney an opportunity to contact the CPSC directly regarding the inspection.

### WHAT TO EXPECT

To ensure compliance with the Consumer Product Safety Act, the CPSC has broad inspection power. Inspections are initiated when the Commission or its delegate (e.g., the U.S. Customs Service) authorizes the issuance of written notice of inspection. Upon presentation of the inspection notice and appropriate credentials, the CPSC investigators have broad latitude in conducting their inspection. The investigators may:

- Enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured or held in connection with distribution in commerce, or any conveyance being used to transport consumer products;
- Inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, or establishment where consumer products are manufactured, held or transported and which may relate to the safety of those products;
- Have access to and copy all relevant records, books, documents, papers, packaging or labeling;
- Obtain both oral and written information concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product; and
- Obtain samples of items, materials, substances, products, containers, packages,

labels and any component at the manufacturer's, distributor's, or retailer's cost.

Separate notices are required for each inspection. Therefore, any subsequent inspection will require the issuance of a new notice. All inspections must be conducted in a reasonable manner and be completed within a reasonable time.

### CONSEQUENCES FOR FAILURE TO COMPLY WITH AN INSPECTION OR SUBPOENA

The failure to permit access to records or to provide requested information may subject a business to civil penalties, criminal sanctions, and individual liability. So, let the inspectors do their job. Just be prepared with an understanding of what may properly be withheld for review by counsel.

### Q: HOW SHOULD I RESPOND TO A CPSC REQUEST FOR INFORMATION?

**A:** Thoughtfully. The form of the request, naturally, will shape the response. Is it a written request seemingly appearing out of the blue? Is it a written request for comment on an incident report of some kind? Is it a letter asking you to determine whether the company has a reporting obligation? Is it a follow up request for additional information in a pending investigation? Is it a written or oral request to inspect company files?

Typically, the best approach is a cooperative one, particularly if it gives the company an opportunity to alleviate any concerns the staff may have or to clarify an inaccurate report, claims history, or product safety record. Before you formulate a response, ask these basic questions:

- What is the CPSC's stated interest or



request?

- What has prompted this inquiry?
- Is the request from a field office or CPSC headquarters?
- Is there a specified due date for the response?
- Is the request sufficiently specific and narrow to permit an appropriate response?
- Does the request call for privileged material of any kind?
- Does the request prompt a reporting obligation analysis?
- Who should respond or serve as contact person?

If the request is ambiguous, overbroad, or in any way unclear, think about how it could be refined to address the issue of concern to the CPSC. If it calls for privileged information that should not be produced, this issue will have to be addressed.

Finally, view any company response as a potential trial exhibit, and prepare it accordingly. What seems to be a confidential document today may not be considered as such down the road.

#### **Q: HOW CAN I KEEP INFORMATION I PROVIDE CONFIDENTIAL?**

**A:** Section 6(b)(5) of the Consumer Product Safety Act prohibits the release of information contained in a Section 15(b) report unless a remedial action plan has been accepted in writing, a complaint has been issued, or the reporting firm consents to the release. A company claiming that the information it has submitted is a trade secret or confidential

commercial or financial information must mark such information as “confidential.” A company has a second opportunity to claim confidentiality when it receives notice from the CPSC that its information may be disclosed to the public in response to a request under the Freedom of Information Act. If Section 6(b)(5) does not apply, the CPSC staff will not treat information as exempt from public disclosure.

Unlike Section 15(b), Section 37 of the CPSA contains a number of provisions to ensure that reports remain confidential. For example, the statute provides that lawsuit reports under Section 37 “shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding.” Further, disclosure of Section 37 reports by the CPSC is prohibited. Notwithstanding these protections, reporting under Section 37 has been sluggish.

The CPSC generally does not disclose to the public the following types of information:

- Documents prohibited from disclosure by the CPSA. This provision prohibits the release of (i) trade secrets and confidential commercial or financial information; and (ii) information that identifies manufacturers of consumer products, unless the CPSC has taken reasonable steps to assure it is accurate, its release would be fair under the circumstances, and its release is reasonably related to effectuating the purposes of the acts the Commission administered by the CPSC.
- Information that identifies injured persons and the persons who treated them, without their consent.
- Certain inter-agency and intra-agency memoranda containing opinions and

recommendations prepared to assist in decision-making.

- Personnel, medical and similar files, the disclosure of which would be a clearly unwarranted invasion of personal privacy.
- Investigatory records compiled for law enforcement purposes, when disclosure could reasonably be expected to interfere with enforcement procedures or would disclose techniques, guidelines, and procedures for law enforcement investigations or prosecutions – for example, records from CPSC’s compliance and enforcement files pertaining to active investigations.

#### **Q: CAN THE CPSC MAKE ME STOP SELLING MY PRODUCT?**

**A:** The short answer is “yes,” but only if CPSC persuades a U.S. District Court to grant an injunction. Typically, companies will cooperate with CPSC and voluntarily take appropriate corrective action based on the circumstances. However, when CPSC staff believes a consumer product is hazardous or does not comply with a mandatory standard – and the company does not share staff’s view – a public hearing may be held to determine whether the CPSC should order the manufacturer, distributor, or retailer to take action. The company, consumers, and consumer organizations may all take part in the hearing. If the product is hazardous or does not comply with standards, the CPSC may then order the company to do any or all of the following:

- issue a public notice of the defect or failure to comply;
- mail notice to each person who is a

manufacturer, distributor, or retailer of the product; or

- mail notice to every person to whom the company knows the product was delivered or sold.

If, after the public hearing, the Commission believes that it is in the public interest, it can further order the company to:

- bring the product into conformity with the requirements of the applicable consumer product safety rule or repair the defect in such product;
- replace the product with an equivalent product that complies with the applicable consumer product safety rule, or that does not contain the defect (reimbursement and replacement orders often require the company to submit a plan for taking action on the order); or
- refund the purchase price of the product, less a reasonable allowance for use, if the product has been in the possession of a consumer for one year or more (i) at the time of public notice or (ii) at the time the consumer receives actual notice of the defect or noncompliance, (whichever first occurs).

In extreme circumstances, the CPSC may go to court to obtain an order, forcing a party to stop selling a product. The CPSC must move the court for a preliminary injunction to restrain the distribution. If an injunction is granted, it will remain in effect for as long as the court determines. The CPSC may move for an extension of that time if it deems an extension is necessary.

#### **Q: HOW AND WHEN DOES THE CPSC REFER A MATTER TO THE DEPARTMENT**

### **OF JUSTICE FOR CIVIL/CRIMINAL PROSECUTION?**

**A:** Following a CPSC investigation under Section 15(b) or Section 37, if the CPSC pursues enforcement and no agreement is reached between the manufacturer and the CPSC staff, the matter is forwarded to the CPSC Commissioners for a vote on a referral to the Department of Justice (“DOJ”). The CPSC Commissioners have access to all of the information previously provided to the CPSC staff. There is no bar to any ex parte discussions between the staff and the Commissioners. The company can, and in most cases should, prepare a written submission to the individual Commissioners prior to the vote. The proceedings during which a vote is taken are not open to the public. There are no formal procedures for the company to discuss the proposed penalty action with any of the individual Commissioners or their staffs. Some Commissioners will meet with the company prior to a vote, others will not. If such a meeting is held, it is likely that a member of the CPSC Office of General Counsel will be present.

The Commission does not have the authority to force companies to pay civil penalties. It must institute penalty proceedings in a United States District Court. It is up to the court to determine the amount of the penalties.

### **Q: ARE THERE GUIDELINES IN PLACE TO REGULATE THE SCOPE AND USE OF THE CPSC’S SUBPOENA POWER?**

**A:** The CPSC prefers to obtain information on a voluntary basis; however, when it is unable to do so, it issues subpoenas or general or special orders. The CPSC subpoena can require the production of documentary evidence (subpoena duces tecum) or the

attendance and testimony of witnesses (subpoena ad testificandum). The CPSC also has the power to issue general or special orders requiring the submission of written reports or answers to questions. Recipients of subpoenas may file a motion to limit or quash the subpoena within ten days of receipt. All motions to limit or quash are ruled upon by the CPSC. The CPSC may negotiate and approve the terms of satisfactory compliance with subpoenas and general or special orders, or extend the time for compliance.

The failure to permit access to records or to provide requested information may subject a business to civil penalties, criminal sanctions, and individual liability. Any person who knowingly violates the CPSA provisions relating to inspections or subpoenas is subject to a civil penalty not to exceed \$8,000 for each violation. Each failure to comply constitutes a separate violation. If the violation is a continuing one, each day constitutes a separate offense, except that the maximum civil penalty shall not exceed \$1,825,000 for any related series of violations. A willful violation can result in a fine of up to \$50,000, or imprisonment for up to one year, or both.

Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any acts or practice constituting a violation of these sections, is individually liable for such violation.

### **KELLEY DRYE COLLIER SHANNON**

#### **CONSUMER PRODUCT SAFETY PRACTICE**

Kelley Drye’s Consumer Product Safety practice members have a long and successful history representing clients before the Consumer Product Safety Commission. We

have the experience to provide advice on the difficult issues of how and when potentially hazardous consumer products must be reported to the CPSC. If product recalls are necessary, we work with our clients and CPSC staff to quickly develop and implement cost-effective communications programs that satisfy product liability concerns and minimize potential penalties. When the CPSC threatens or brings enforcement actions, our team of skilled professionals advises our clients on appropriate strategies.

Our clients include a broad spectrum of manufacturers and retailers of consumer products, including home appliances, electronics, fire and security systems, outdoor power equipment, clothing, and sporting goods. We work with manufacturers, retailers, and national industry groups to develop effective product safety compliance programs that identify and address product safety issues before they come to the attention of regulators.

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