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# The Consumer Product Safety Act: Reporting Product Safety Hazards and Practical Guidance

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# Presenters



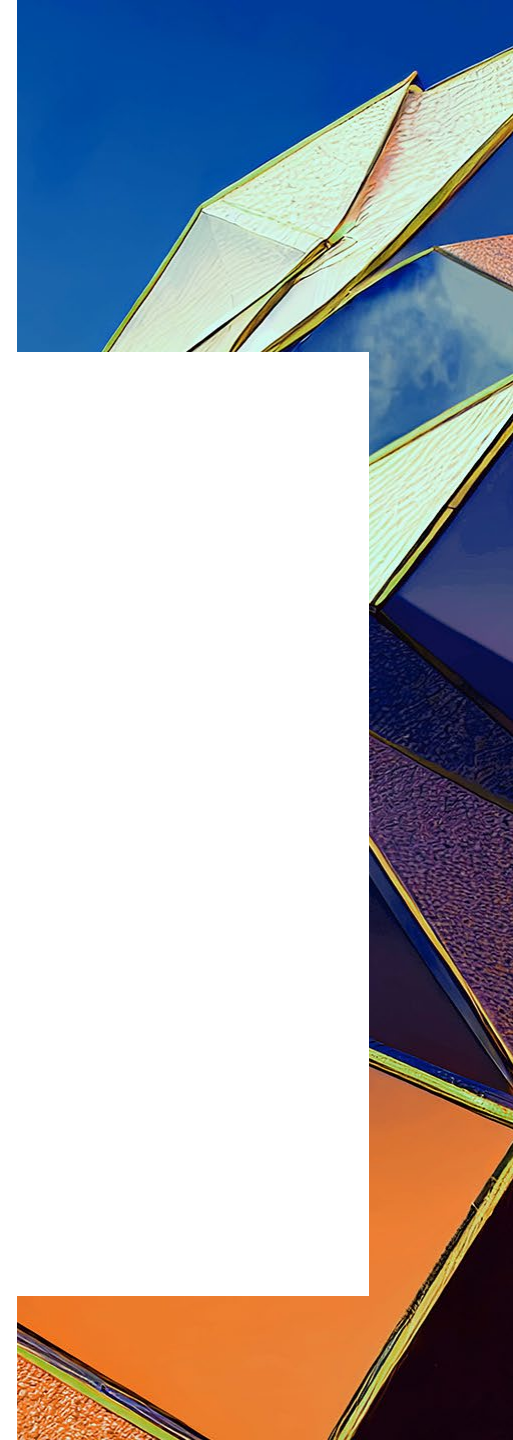
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# Agenda

- What Is the Consumer Product Safety Commission (CPSC)?
- Why Should You Care About the CPSC?
- The Consumer Product Safety Act
- Rule 15(b) Reporting
- Potential Penalties
- Best Practices

# What Is the Consumer Product Safety Commission (CPSC)?

- Agency tasked with “reducing the unreasonable risk of injuries and deaths associated with consumer products.” CPSC accomplishes this by:
  - Issuing and enforcing mandatory standards or banning consumer products if no feasible standard would adequately protect the public;
  - Obtaining the recall of products and arranging for a repair, replacement, or refund for recalled products;
  - Researching potential product hazards;
  - Developing voluntary standards with standards organizations, manufacturers, and businesses;
  - Informing and educating consumers directly and through traditional, online, and social media and by working with foreign, state, and local governments and private organizations; and
  - Educating manufacturers worldwide about our regulations, supply chain integrity, and development of safe products.

# The Current Chair and Commissioners



Chair  
Alexander Hoehn-Saric



Commissioner  
Peter Feldman



Commissioner  
Richard Trumka



Commissioner  
Mary Boyle

# Why Should You Care About the CPSC?

## Statement of Chair Alexander Hoehn-Saric on Verdicts in Gree Dehumidifier Case

For the first time, individuals are being held criminally accountable for putting American's lives at risk by failing to comply with their legal obligations to the Consumer Product Safety Commission (CPSC). The California jury's guilty verdicts for Simon Chu and Charley Loh, the Chief Administrative Officer and the Chief Executive Officer, respectively, of Gree USA, Inc., show that CPSC will pursue not only corporations but also individuals who violate the law.

**“Wiping the Slate Clean”— CPSC Commissioners Signal Higher Penalties to Come in Wake of Vornado Penalty Resolution**



Peter Feldman (CPSC)  @FeldmanCPSC · Aug 3

CPSC needs a principled and effective civil penalty regime. We're still not using all of the tools in our toolbox. TJX Companies' (@TJMaxx) conduct called for meaningful injunctive relief in addition to monetary penalties. My full statement: [tinyurl.com/2u85rjtm](https://tinyurl.com/2u85rjtm)



# Why Should You Care About the CPSC?

## Commissioner Mary T. Boyle Statement on HSN's Agreement to Pay \$16.0 Million Civil Penalty

Indeed, I am concerned that companies with revenues in the hundreds of millions, and even billions, of dollars may consider the current penalty regime merely a cost of doing business. Companies like HSN are in the best position to know what is happening with their products, and it is critical to the American public that they report relevant safety information to CPSC in a timely way. Protecting the public requires a meaningful deterrent. To penalize bad actors and to incentivize companies of all sizes to make consumer safety a top priority, I have been urging Congress to significantly increase CPSC's penalty authority.

## Nord Calls Out CPSC for "Overreach"

NR PLUS REGULATORY POLICY

## The Consumer Product Safety Commission Is Out of Control

sedgwick

Your claim

Solutions

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## The CPSC's proactive stance in 2023

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# The Consumer Product Safety Act (CPSA)

- Enacted in 1972, the CPSA is the CPSC's umbrella statute.
- The CPSA established the agency, defines the CPSC's basic authority, and authorizes the agency to develop standards and bans.
- It also gives the CPSC the authority to pursue recalls and to ban products under certain circumstances.
- The Consumer Product Safety Improvement Act (CPSIA) amended the CPSA in 2007 to provide the CPSC with significant new regulatory and enforcement tools, including lead, phthalates, toy safety, third-party testing and certification, imports, ATVs, civil and criminal penalties and SaferProducts.gov.



# Definition of “Consumer Product”

- The CPSA defines a “Consumer Product” very broadly as “any article, or component part thereof, produced or distributed
  - for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise,  
or
  - for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.”

# Rule 15(b) Reporting

- Obligation to report when a Consumer Product:
  - Fails to comply with a voluntary standard upon which the Commission has relied
  - Fails to comply with any other rule, regulation, standard, or ban under the Act or any other Act enforced by the Commission
  - Contains a defect that could create a **substantial product hazard**
  - Creates an **unreasonable risk of serious injury or death**

# Rule 15(b) Reporting: “Contains a defect which could create a substantial product hazard”

- Factors to consider:
  - Pattern of defect
  - Number of defective products distributed in commerce
  - Severity of the potential injury
  - Likelihood of Injury
- Must consider all reasonably available information, including engineering and quality control, safety-related design changes, independent testing results, product liability suits, claims for personal injury or property damage, consumer complaints (directly to the company but also on social media), information received from the CPSC, and information received from other sources



# Rule 15(b) Reporting: “Creates an unreasonable risk of serious injury or death”

- “Unreasonable risk”
  - Report if a reasonable person could conclude given the information available that a product creates an unreasonable risk of serious injury or death
  - Involves balancing of factors, including:
    - Product’s utility
    - Nature and extent of the risk
    - Availability of alternative designs or products that could eliminate the risk
- “Serious injury” includes “grievous” injuries
  - Examples: mutilation, amputation, severe burns, and electrical shock

# Rule 15(b) Reporting: Who Must Report?

- Manufacturers
- Importers
- Distributors
- Retailers

Unless there is **actual knowledge** that the Commission has been adequately informed of the situation in question.

- Example: The manufacturer provides written confirmation to the retailer that it reported, including providing a copy of the submission.

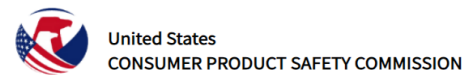
# Rule 15(b) Reporting: When to Report

- When a company has information that reasonably supports the conclusion that one of its products creates a substantial product hazard
  - Immediately (within 24 hours) of obtaining reportable information
  - If the company is “truly uncertain,” then it may investigate for up to 10 working days unless it can demonstrate that a longer time was reasonable under the circumstances



# Rule 15(b) Reporting: When to Report

- Given the CPSC’s guidance and recent trend towards penalizing failures to report at a much greater rate than it penalizes those who report potentially defective products, erring on the side of reporting is prudent.
- CPSC’s view:
  - “When in doubt, report”

A screenshot of the SaferProducts.gov website showing the "Initial Report" form. The page header includes the CPSC logo and the text "SaferProducts.gov Report. Search. Protect.". Below the header is a progress bar showing "0/6 Steps Complete". The steps listed are: Product Description (yellow circle), Manufacturer / Importer / Retailer (grey circle), Hazard Information (grey circle), Nature / Extent of Injury (grey circle), Individual Filing Report (grey circle), and Acknowledgement (grey circle). The "Product Description" section is active and contains a text input field labeled "Enter Product Information". Below this are two more input fields: "Brand Name" with the placeholder "Enter Brand Name" and "Model Name/Number" with the placeholder "Enter Model Name(s)/Number(s) separated by com".

# Difference Between a Report and a Recall

- **Report:** Notice of a product safety or non-compliance issue
  - Death, serious injuries, lawsuit, warranty claims (the law does not require that injury or harm occur to have a reportable issue)
  - Relating to the same issues with the same product (quantity may vary [e.g., one death may be enough versus several minor injuries may not be enough])
- **Recall:** Known defect that creates a substantial risk of injury or unreasonable risk of serious injury or death
  - Known manufacturing defect
  - Known design defect
  - Failure to comply with voluntary or mandatory standard change (e.g., clothing storage units)
  - Done in cooperation with the CPSC, typically *after* a Rule 15(b) report

# What Else Should You Do?

- Initiate a stop sale of the product
- Review all product-related data from all available sources, including supply chain, reports from consumers, social media, online reviews, call center reports, etc.
- Communicate with retailers to learn of similar issues
- Develop a remediation or corrective action plan
- Consider issuing a safety notice or quality bulletin to retailers/consumers



# Penalties for Failing to Report

- **Civil Penalties**

- Now \$120,000 (was \$100,000) for each violation
- It is a separate offense with respect to each consumer product involved
- \$17,150,000 (was 15 million) maximum for any related series of violations

- **Criminal Penalties**

- Any individual director, officer, or agent of a company who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting a violation of the Act may be subject to criminal penalties, including imprisonment for up to five years

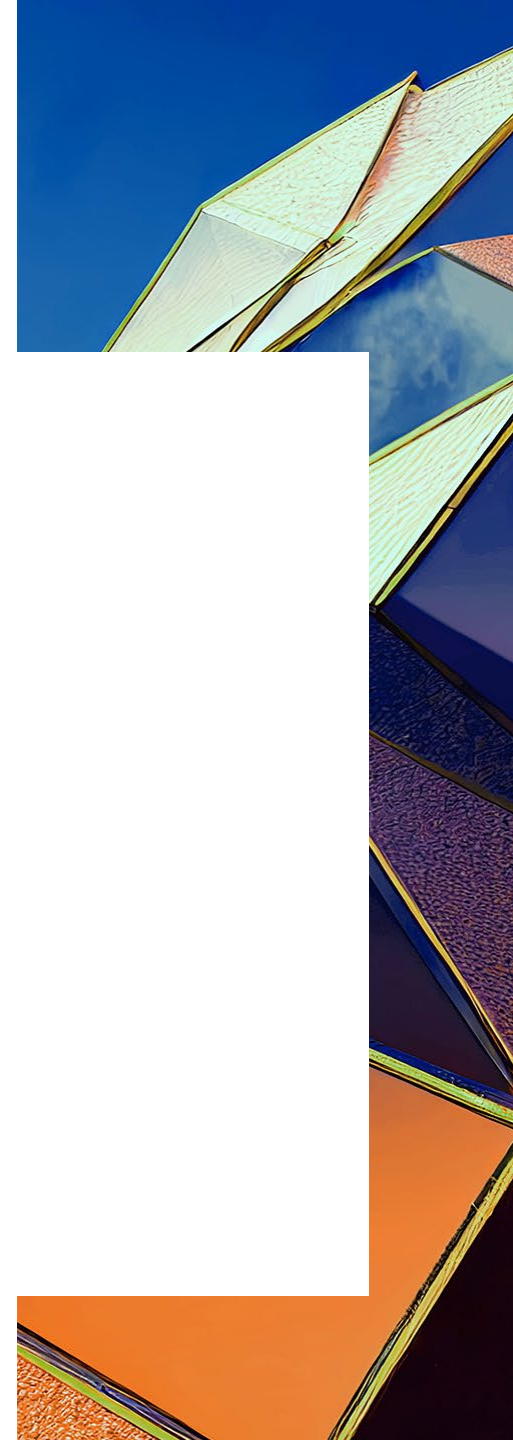
# Civil Penalties Are Increasing

**2015**

Fine	Product	Company
\$4,300,000	Go-Karts & Accessories	Baja/One World Technologies
\$1,575,000	Lawn Mowers	Black & Decker (U.S.) Inc.
\$3,500,000	Dishwashers/Ovens/Stoves/Ranges/Microwaves	General Electric
\$2,600,000	Knives/Cutters/Blades/Sheaths/Axes	Gerber/Fiskars Brands
\$2,000,000	Ovens/Stoves/Ranges/Microwaves	Meijer
\$3,400,000	Chairs	Office Depot, Inc.
\$700,000	Blinds, Shades & Cords	Williams-Sonoma

**2007**

Fine	Product	Company
\$50,000	Clothing (Children)	Black Dog Tavern
\$975,000	Toy Miscellaneous	Mattel / Fisher Price
\$750,000	Vacuum Cleaners/Sweepers	Hoover
\$300,000	Grills, Smokers & Accessories	Nexgrill



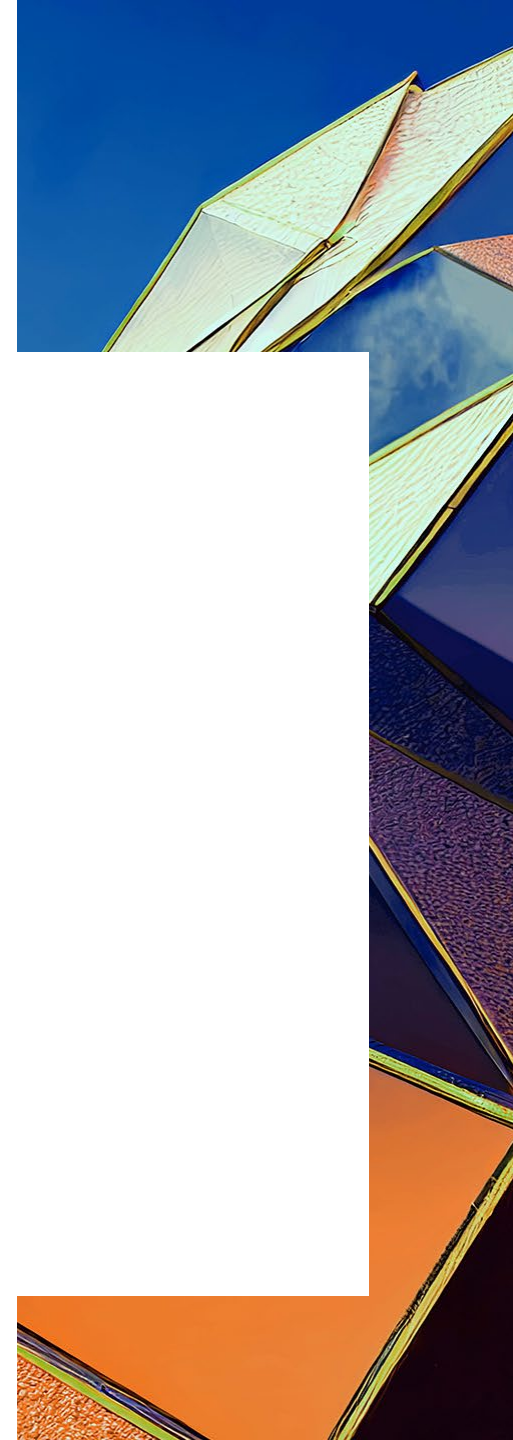
# Civil Penalties Are Increasing

**2022**

Fine	Product	Company
\$13,000,000	Recalled Infant Sleepers (selling recalled products)	TJX Companies
\$12,000,000	Fire extinguishers (failure to report, scope too narrow)	Walter Kidde Portable Equip.
\$7,950,000	Exercise equipment (failure to report)	Cybox International
\$7,500,000	Space Heaters (failure to report)	Vornado Air
\$6,500,000	Exercise equipment (failure to report)	Core Health & Fitness
\$5,000,000	ATV (knowing violation of import laws)	Segway Powersports

**2023**

Fine	Product	Company
\$19,065,000	Treadmills (failure to report, selling recalled products)	Peloton Interactive
\$15,800,000	Portable generators (failure to report)	Generac Power Systems
\$11,500,000	Cooktops (failure to report)	Whirlpool Corp.
\$9,000,000	Portable air conditioners (failure to report)	BJ's Wholesale Club
\$16,000,000	Steamers (failure to report)	HSN



# Civil Penalties Are Going to Continue Increasing

“I don't think, from my perspective as the Chairman of the agency, that we are seeing civil penalties that are reflective of what ***Congress expected and demanded*** of us in the CPSIA.”

“My direction to CPSC staff is to make sure that they're starting early in the process, and whenever they get a case that falls under the new amount, they are ***pushing as hard as the facts allow and the law permits for a civil penalty that is much more reflective of what Congress intended.***”

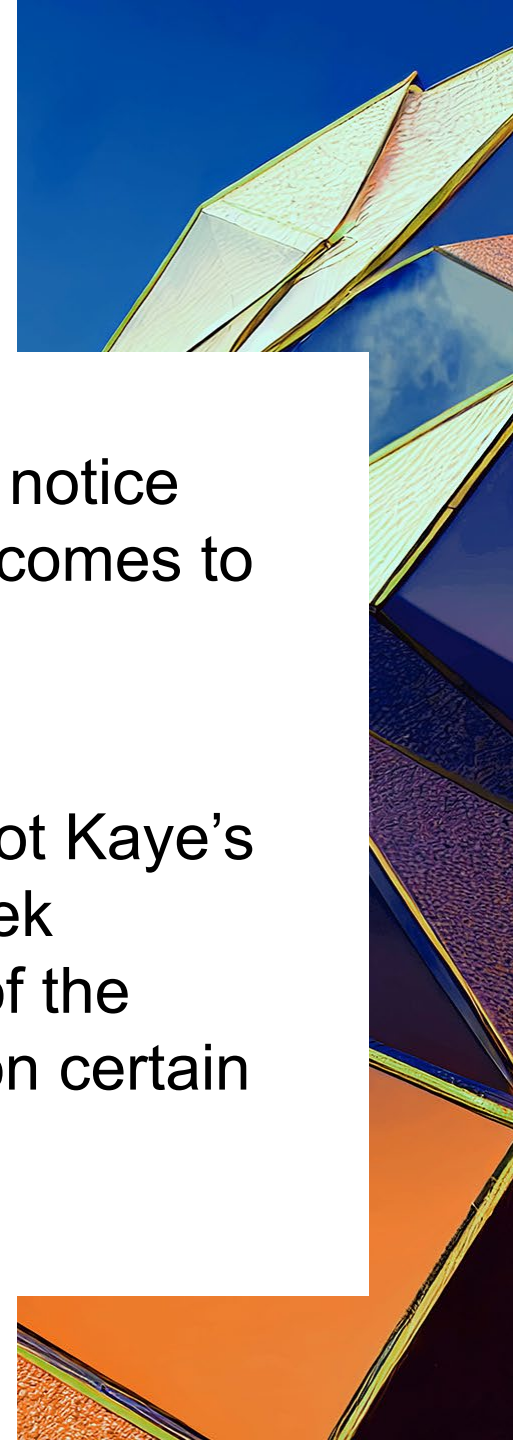
- CPSC Chairman, Elliot F. Kaye - 2015



# Civil Penalties Are Going to Continue Increasing

CPSC Chairman Hoehn-Saric warns that “companies should be on notice that the agency will be even more aggressive in the future” when it comes to the agency’s pursuit of civil *and* potentially criminal penalties.

Hoehn-Saric’s statement is eerily reminiscent of then-Chairman Elliot Kaye’s pronouncements in 2015 and 2016 that he was directing staff to seek significantly higher civil penalties against companies for violations of the CPSA and that he wanted to see eight-figure civil penalties based on certain fact patterns.

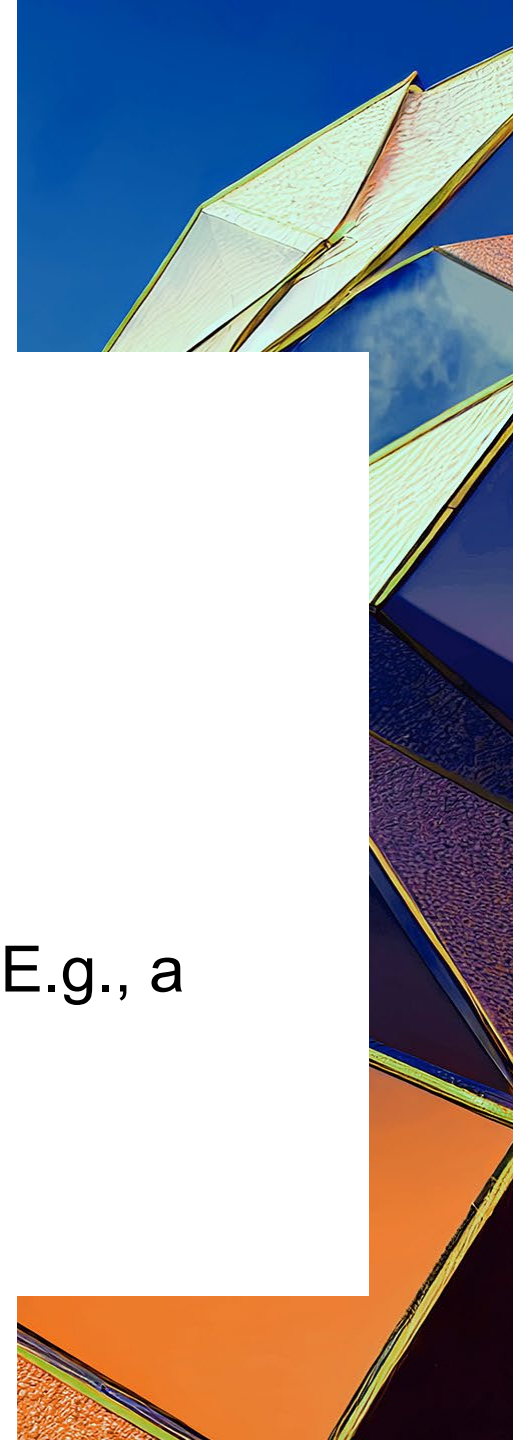


## Best Practices

- Create a “culture of compliance”
  - Prioritize compliance and safety over sales
  - Incentivize internal reporting of safety issues
  - Implement a confidential reporting mechanism
  - Invest in your compliance team

# Best Practices

- Have a compliance program
  - Proactive
    - New products
    - Audit existing product
  - Reactive
    - Step-by-step process for addressing product safety issues (E.g., a workflow document)
    - Recall plan and process



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