

How Retailers Can Stay Out of Trouble with the CPSC this Holiday Season



Right along with tinsel and eggnog, the annual list of dangerous toys and products issued by consumer watchdogs has become a holiday tradition. The Consumer Product Safety Commission (CPSC) is also watching for potentially dangerous products and has been ramping up enforcement of its reporting and other regulations and obtaining multi-million dollar civil penalties against noncompliant companies. Although most people think of the CPSC as focused on manufacturers, its regulations impose significant requirements on retailers too. Failing to follow them can lead to CPSC enforcement actions, steep civil penalties, and a tarnished reputation.

Below are tips on the requirements the CPSC imposes on retailers and guidance on how to stay out of trouble with the CPSC.

- 1. Retailers must report certain product defects that could affect consumer safety.** Manufacturers, importers, and sellers must report information about products that are potentially unsafe or fail to meet safety standards. The reporting deadlines are strict: a report is required within 24 hours of obtaining reportable information. The only circumstance in which the retailer need not report at all is when it has “actual knowledge” that the CPSC has been “adequately informed” already. Typically this occurs when the manufacturer or importer has already reported. Retailers should verify that the manufacturer’s or importer’s report is accurate and complete before relying on it, and should consider making an independent report regardless. Note that if you sell the product abroad, you may also have independent reporting obligations to foreign regulators.
- 2. Retailers should have written CPSC compliance programs.** The regulations predicate reporting on information that a reasonable company should have; therefore, it is not a defense that the company lacked knowledge of a defect if the information was reasonably available. Retailers should have written policies for collecting and channeling information about potentially unsafe or noncompliant products to determine whether reporting or other corrective action is necessary. The lack of a compliance program is an issue in enforcement proceedings. When the CPSC brings an enforcement action against a company that does not have a compliance program, it typically demands that the company adopt one.

3. **Retailers should check certificates of conformity.** Manufacturers of children's products and other products that are subject to CPSC safety standards, like bicycles and bunk beds, are required to issue certificates certifying that their products comply with the CPSC regulations. These are known as Children's Product Certificates and General Certificates of Conformity. A full list of the products that require certificates is available on the CPSC's [website](#). Manufacturers can make these certificates available on the Internet and do not need to attach them to the product. Although the CPSC does not require that retailers confirm these certificates have been issued or maintain a copy of them, retailers should, to help reduce potential product liability exposure, check that a manufacturer is issuing certificates.
4. **Retailers should have a system to make sure they are not selling recalled products.** It is illegal to sell recalled products. Retailers should have a system in place to ensure that the products they sell have not been recalled.
5. **Retailers who import the goods they sell are considered "manufacturers" under the CPSC rules and have all the duties of the actual manufacturer.** Retailers who import goods into the United States for sale in their stores have the same duties as a manufacturer. These duties apply even if the retailer did not manufacture the goods and include certifying that regulated products comply with safety regulations, ensuring that products meet labeling requirements, and reporting information that a product is potentially unsafe or fails to meet safety standards.

Retailers experience enough pressure during the holiday season without adding CPSC-related regulatory violations to their concerns. Navigating CPSC obligations can be tricky. For further information and guidance on specific regulatory compliance, retailers should contact experienced counsel.

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