

# Enhanced recall regulations proposed under the US Consumer Product Safety Improvement Act of 2008

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## Introduction

The United State's legislation, Consumer Product Safety Improvement Act of 2008 (the Act), which became law on 14 August 2008, imposes a number of new requirements on product manufacturers, distributors, and retailers. The focus of this article is the draft regulations proposed by the Consumer Product Safety Commission (CPSC) on 20 March 2009 that include guidelines and requirements for product recall notices.

The proposed regulations would apply to manufacturers (including importers), retailers, and distributors of all consumer products and not just "children's products" otherwise regulated under the Act. They represent a substantial enhancement of past recall-related procedures and likely will impose significantly greater burdens on those who are required to implement mandatory consumer product recalls in the future. The new requirements will also serve as guidelines the CPSC will use for negotiating the terms of future voluntary product recalls.

The CPSC will be accepting public comments on these regulations until 20 April 2009, after which they are likely to be quickly finalised, published in the Federal Register, and put into effect.

## Proposed content of recall notices

Pursuant to the new draft regulations, the following descriptions are required to be included in a recall notice:

- a description of the product, including model number or stock keeping unit;
- names by which the product is commonly known;
- a photograph of the product with any other identifying information, such as colour, identifying tags, or labels;
- a clear and concise statement of the action being taken with respect to the product;
- the number of units of the product covered by the recall;
- a description of the substantial product hazard that clearly enables consumers to identify the risks of

potential injury or death associated with the product, including the problem or hazard/risk that lead to the recall;

- identification of the manufacturers' and significant retailers' of the product;
- the approximate price of the product or a price range;
- the dates between which the product was manufactured and sold; and
- the number and description of any injuries or deaths associated with the product, including the ages of those killed or injured and the dates on which the CPSC received such information.

In addition to the above, under the proposed regulations the word "recall" would also need to be included in the recall notice to help attract consumer and media attention to the action being taken.

## Proposed distribution of future recall notices

The proposed regulations also suggest that direct-recall notices will need to be issued to identified consumers "where possible". In addition to the provision to consumers of the more robust information delineated above, this would represent a fairly significant departure from the past predominant practice of broad, general distributions of recall notices to consumers at large through press releases and website postings, absent class action settlements requiring enhanced distribution of notices.

## Conclusion

Some of the changes being made to the Act will affect all businesses involved in the distribution of consumer products, not just those who manufacture, distribute, or sell so-called "children's products". The Act's expanded recall notice and dissemination requirements fall into this category, and the CPSC's proposal implementing these requirements portends some substantial and potentially burdensome changes in both the content and distribution of recall notices in the future.

Coupled with its implementation of the more stringent requirements contained in the Act, the increased budget for the CPSC and changes to its leadership under the Obama Administration will likely result in increased enforcement of consumer product safety requirements, including recalls. Companies also face significantly higher penalties (up to US \$100,000 for an individual violation, and US \$15m aggregate) for failure to comply.



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