PALEY ROTHMAN
ATTORNEYS AT LAW

CPSC Reporting Requirement Penalties Continue

By

It has been several years since the enactment of the Consumer Product Safety Improvement Act of 2008 (CPSIA) that significantly increased the Consumer Product Safety Commission's (CPSC) regulatory powers. It also dramatically increased the civil and criminal penalties that the Commission can assess for violations.

One of the CPSC's enforcement priorities in recent years has been the obligation of companies to report potentially product hazards in a timely manner. Federal law requires manufacturers, distributors, and retailers to report to CPSC immediately (within 24 hours) of obtaining information reasonably supporting the conclusion that a product contains a defect that could create a substantial product hazard or an unreasonable risk of serious injury or death, or that fails to comply with any consumer product safety rule or any other rule, regulation, standard or ban enforced by the CPSC.

When a company issues a recall, or the CPSC investigates a product with a defect that could create a substantial product hazard, the CPSC almost always investigates whether the company met its reporting obligations. In 2012, CPSC announced that it had reached agreements with six different firms to pay a total of more than $4 million in civil penalties to resolve the claims that those firms violated their reporting duties. In January 2013, the CPSC announced that another firm had agreed to pay $725,000 to resolve the Commission's claim that the company knowingly failed to comply with its reporting obligations. The fact that the CSPC continues to collect significant penalties for alleged violations of the reporting obligation suggests that companies' understanding of what must be reported and their compliance systems require greater attention.

Manufacturers are not required to report every defective product to the CPSC, but a company must report those that pose a substantial hazard within 24 hours of being made aware of that information. It is important to remember that the reporting obligation may arise even before an injury has occurred or a company has determined that a hazard exists. Specifically, the duty to report may be triggered as soon as a company receives information about the potential for a substantial hazard that must be reported. The circumstances under which the defect manifests itself, the user of the product, the number of products in the stream of commerce and the severity of the potential risk are factors to consider when determining if a company has an obligation to report to the CPSC.

The CPSC recognizes that a company may need to undertake a reasonably expeditious investigation to determine if information must be reported. The 24-hour clock for the company to report may begin even before that investigation is complete if the company obtains information that reasonably supports the conclusion that a product creates a risk of serious injury or death, or is otherwise reportable. Once a company knows or should know that a potential injury is serious and/or is likely to occur, it may have an obligation to report to the CPSC. Failure to do so may lead to civil penalties - and a willful failure to report can even result in criminal penalties.

Establishing internal compliance teams and programs are an effective way for companies to monitor potential product hazards and to ensure that any reporting obligations are satisfied. To the extent possible, compliance programs should be implemented by teams that include individuals with product safety, legal, manufacturing, marketing and public relations responsibilities. These professionals should be given the tools to monitor product safety concerns and clear guidelines so that they can proactively meet the reporting obligations.