

# CPSC Product Recalls and Effect of Social Media

A Practical Guidance® Practice Note by  
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This practice note discusses the impact of social media on Consumer Product Safety Commission (CPSC) recalls and the CPSC's efforts to enhance product safety and relevant public information via social media.

The CPSC is an independent federal agency established by the Consumer Product Safety Act (CPSA) (15 U.S.C. §§ 2051–2089) and charged with protecting the public from unreasonable risks of injury or death associated with consumer products. 15 U.S.C. § 2051(b)(1). One of the ways in which the CPSC carries out this mandate is through consumer product recalls. 15 U.S.C. § 2064(d).

In recent years, the CPSC has recognized the reach of social media and the importance of leveraging social media platforms to enhance the consumer product recall process. In this practice note, we will discuss the impact of social media on the CPSC recall process and provide best practices for companies operating in the consumer product realm.

For comprehensive information about consumer products, see [Consumer Products Resource Kit](#).

For related content, see [Consumer Product Safety Commission General Use Product Compliance](#), [Product Recalls](#), [Consumer Product Instructions and Warning Statements](#), [CPSC Compliance Program Best Practices](#), [Consumer Remedies for Defective Goods or Services](#), [Retailer Consumer Product Compliance Policy for Suppliers](#), [Retailer Consumer Product Compliance Policy for Suppliers \(Direct Import and Private Label Products\)](#), [Social Media Consumers Recall Notice](#), [Consumer Product Safety Commission Testing and Certification Clauses](#), [Product Safety Best Practices for IoT Devices Checklist](#), [Product Label Design Elements for Consumer Products Checklist](#), [Voluntary Consumer Product Recall Checklist](#), [Consumer Complaint Handling Program Checklist](#), and [Formulating CPSC-Compliant Responses to Consumer Complaints Raised on Social Media Checklist](#).

## Duty to Monitor Social Media

Section 15(b) (15 U.S.C. § 2064(b)) of the CPSA requires manufacturers, importers, distributors, and retailers of consumer products to notify the CPSC “immediately” if such products obtain reportable information indicating a product safety concern.

### Types of Reportable Information

#### *Failure to Comply with a Consumer Product Safety Rule or Voluntary Standard*

Section 15(b) also requires companies to submit a report to the CPSC if they obtain information that a product distributed in commerce fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the CPSC has relied

under Section 9 of the CPSA (15 U.S.C. § 2058). The CPSA defines “consumer product safety rule” as “a consumer products safety standard described in [15 U.S.C. § 2056(a)], or a rule under this chapter declaring a consumer product a banned hazardous product.” 15 U.S.C. § 2052(a)(6). The only voluntary standards upon which the CPSC has relied are provisions of ANSI B175.1 (gasoline-powered chainsaws) and ANSI Z21.11.2 (gas-fired room heaters). 16 C.F.R. pt. 1115, App.

### ***Failure to Comply with Any Other Rule, Regulation, Standard, or Ban under the CPSA or Any Other Act Enforced by the CPSC***

Companies are also required to submit a report to the CPSC if they obtain information that a product fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other Act enforced by the CPSC. 15 U.S.C. § 2064(b). It is important to note that the CPSC also enforces several acts other than the CPSA, including the Flammable Fabrics Act (15 U.S.C. §§ 1193–1204); the Federal Hazardous Substances Act (15 U.S.C. §§ 1261–1278); the Children’s Gasoline Burn Prevention Act (110 Pub. L. No. 278, 122 Stat. 2602); the Virginia Graeme Baker Pool and Spa Safety Act (USCS Popular Name V-260); the Poison Prevention Packaging Act (15 U.S.C. §§ 1471–1476); and the Refrigerator Safety Act (15 U.S.C. §§ 1211–1214).

### ***A Defect Which Could Create a Substantial Product Hazard***

Companies are required to submit a report to the CPSC if they obtain information regarding a potential product defect which could create a substantial product hazard. 15 U.S.C. § 2064(b).

The CPSC’s regulations indicate that a defect is “a fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function.” 16 C.F.R. § 1115.4. A product can be defective with respect to its design, manufacture, or warnings, and factors to be used in determining whether a product is defective include the pattern of defect, the number of products distributed in commerce, and the severity of the risk. 16 C.F.R. § 1115.12(g).

But a potential defect, alone, does not necessarily create a Section 15(b) reporting obligation in and of itself. Courts have interpreted the reporting statute to require a report even if there was no actual defect. The Ninth Circuit Court of Appeals found that “[w]here a manufacturer fails to report a potential defect, but it turns out that no actual defect exists, the [CPSC] may decide not to seek a penalty.

That does not mean, however, that there was no violation of section 2064(b).” *United States v. Mirama Enters.*, 387 F.3d 983, 988 (9th Cir. 2004). The court explained, “[i]nformation about a possible defect triggers the duty to report, which in turn allows the [CPSC] either to conclude that no defect exists or to require appropriate corrective action.” *Id.*

Rather, the defect must create a substantial product hazard. The CPSA defines a “substantial product hazard” as (1) a failure to comply with an applicable consumer product safety rule, which failure creates a substantial risk of injury to the public, or (2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. 15 U.S.C. § 2064(a); 16 C.F.R. § 1115.12(g).

### ***An Unreasonable Risk of Serious Injury or Death***

Finally, companies are required to submit a report to the CPSC if they obtain information regarding a product which could create an unreasonable risk of serious injury or death. 15 U.S.C. § 2064(b).

Determining whether a risk is “unreasonable” involves a balancing of factors, including, but not limited to, the utility of the product or specific aspect of the product that poses a risk, the level of consumer exposure to the risk, the severity and nature of the hazard, and the likelihood of resulting serious injury or death. 16 C.F.R. § 1115.6(b). Information that may indicate the presence of an unreasonable risk includes “reports from experts, test reports, product liability lawsuits or claims, consumer or customer complaints, quality control data, scientific or epidemiological studies, reports of injury, information from other firms or governmental entities, and other relevant information.” 16 C.F.R. § 1115.6(a).

### ***Determining Whether a Duty to Report Exists***

Some of the factors to consider in determining whether a duty to report exists include, but are not limited to, the following:

- Information about engineering, quality control, or production data
- Information about safety-related production or design change(s)
- Product liability suits and/or claims for personal injury or damage
- Information from an independent testing laboratory
- Complaints from a consumer or consumer group

- Information received from the CPSC or other government agency –and–
- Information received from other companies, including requests to return a product or for replacement or credit

16 C.F.R. § 1115.12(f).

In assessing whether a company has obtained information indicating a potential product safety concern, a company is deemed to know what it would have known had it exercised due care in analyzing any information that might indicate a reportable product safety issue. 16 C.F.R. § 1115.11(a)–(b). Companies therefore need to be diligent in checking consumer reports of their products, including monitoring the company’s social media pages for consumer feedback relating to potential safety issues. Information obtained through social media should be assessed to determine whether it prompts further investigation and/or a Section 15(b) report.

With regard to social media, the CPSC has indicated that companies should, at minimum:

- Have their staff or a PR agency monitor social media activity and respond to questions and comments
- Acknowledge customer inquiries by responding on the social media platform at least once –and–
- If the inquiry requires further communication with the customer, direct the conversation off social media by providing a phone number or email to allow the customer to contact the firm’s customer service team directly (See CPSC publication, “Social Media Guide for Recalling Companies,” available [here](#).)

### Time Period for Filing Section 15(b) Reports

Companies must file Section 15(b) reports “immediately”—meaning within 24 hours—after obtaining information that reasonably supports the conclusion that the product fails to comply with a standard, or poses a substantial product hazard. 16 C.F.R. § 1115.14(e). If a company is uncertain about whether information is reportable, it may conduct an investigation lasting no longer than 10 days, unless the company can demonstrate that a longer period is reasonable. 16 C.F.R. § 1115.14(c)–(d). This means companies have to act quickly after discovering a potential product safety concern as failure to submit a timely report can result in serious consequences including civil penalties.

Reporting a product to the CPSC under Section 15(b) does not automatically mean that the CPSC will conclude that corrective action, such as a recall is necessary, but failure to timely file a Section 15(b) report can have

serious consequences. When in doubt, the CPSC urges companies to report. See CPSC publication, “Product Safety Planning, Reporting, and Recall Handbook” (“CPSC’s Recall Handbook,” available [here](#)).

### Penalties for Noncompliance

Late or incomplete Section 15(b) reports can also lead to additional scrutiny and oversight from the CPSC, which can be time-consuming and costly. As related in the CPSC’s Recall Handbook, the CPSA also provides for civil penalties for companies who “knowingly” fail to notify the CPSC of product safety issues in accordance with Section 15(b). 15 U.S.C. §§ 2068(a)(4) and 2069(a)(1). “Knowingly” is defined as either “actual knowledge” or “presumed . . . knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.” 15 U.S.C. § 2069(d). See also *Spectrum Brands*, 218 F. Supp. 3d at 822 (“Since defendant had actual knowledge of the information that required a report, it ‘knowingly’ failed to do so, and no reasonable jury could find otherwise.”).

The Consumer Product Safety Improvement Act, which amended the CPSA, increased the maximum authorized penalty amounts to \$100,000 per violation with a \$15 million cap for a related series of violations. (The CPSC has treated each unit of a product as a separate violation, so the potential penalty for a related series of violations can easily reach the statutory maximum. See 15 U.S.C. §§ 1194(e)(1), 1264(c)(1), and 2069(a)(1).) Those numbers increase each year to account for inflation. The most recent maximum penalty amounts are \$117,656 per violation, and up to \$17,140,340 for any related series of violations. See 86 Fed. Reg. 68,244 (Dec. 1, 2021).

The maximum civil penalty can be even larger where companies fail to comply with Section 15(b) reporting requirements and commit other violations, such as selling recalled products. For example, on January 5, 2023, the CPSC announced a \$19,065,000 civil penalty agreement with Peloton for failing to immediately report product safety concerns as required by Section 15(b). Richard Trumka, a CPSC commissioner, explained (see [here](#)) that the penalty was “larger than the maximum civil penalty allowed by law for a single violation because Peloton committed two distinct violations by both failing to report incidents and selling recalled units.” *Id.*

In addition to seeking civil penalties, the CPSC also has the authority to seek injunctive relief and other legal remedies to address safety issues related to consumer products.

# Use of Social Media to Publicize Recalls

A company that discovers it has manufactured, distributed, or retailed hazardous products is required to develop and implement a comprehensive “corrective action plan” outlining the steps the company will take to correct the identified safety issue and prevent it from occurring again. (The term “corrective action plan” (CAP) refers to any type of remedial action taken by a company to address product safety concerns, such as returning the product to the manufacturer, repairing the product, and/or public notice of the hazard. The CPSC refers to corrective actions as “recalls” because the public and media recognize and respond more readily to that description. See CPSC’s Recall Handbook, 3–4. The information that should be included in a CAP is set forth at 16 C.F.R. § 1115.20(a).)

A CAP is a crucial part of the recall process as it ensures that manufacturers take responsibility for their products and take appropriate measures to protect consumers from harm.

As part of the CAP, a company must come up with a plan for notifying the public of the recall. Recall notices communicate important information about the recall to the public (15 U.S.C. § 2064(i)), and must be disseminated in a way that reaches the affected consumers and motivates those consumers to respond and act. In keeping with CPSC regulations, recall notices can take many forms, including, but not limited to:

- Letter, website posting, electronic mail, RSS feed, or text message
- Computer, radio, television, or other electronic transmission or medium
- Video news release, press release, recall alert, web stream, or other form of news release
- Newspaper, magazine, catalog, or other publication – and–
- Advertisement, newsletter, and service bulletin

16 C.F.R. § 1115.26(b)(1).

In recent years, the CPSC has also encouraged companies to use social media as a method for communicating recall notices.

Like traditional forms of notice, recall notices transmitted via social media must provide sufficient information and motivation for consumers to identify the product and take the action requested by the recalling company. However, the CPSC recognizes that social media platforms may limit the amount of information that can be included in any one

post such that companies may not be able to incorporate all of the information that is required to be in a traditional notice. Instead, the CPSC has instructed companies providing a recall notice on social media to include the following:

- **“Recall” designation.** The CPSC’s “Social Media Guide for Recalling Companies” (“CPSC’s Social Media Guide”) (available [here](#)) relates that the word “recall” should appear prominently in social media recall notices, and it should be used in manner appropriate to the social media platform being used. For example, it may be appropriate to use a “Recall” hashtag (i.e., “#Recall”), if the recall is published on a platform where hashtags are regularly used, such as Twitter, Facebook, or Instagram. The word “safety” also should appear. See id.
- **Product name.** The name of the product must be included in the social media notice. See 16 C.F.R. § 1115.29(c) and the CPSC’s Social Media Guide.
- **Description of hazard.** Social media notices must include a description of the hazard that identifies the dangers and motivates the consumer to respond. 15 U.S.C. § 2064(i)(2). As noted above, however, the CPSC has recognized that it is often impracticable or impossible to include the same detailed description in a social media notice on a platform that may limit the number of words or characters permitted in each post. The CPSC has therefore indicated that companies issuing social media notices should strive to comply with the spirit of the content requirements.
- **Photo of the recalled product.** As related by the CPSC’s Social Media Guide, most social media platforms permit posts to include photos, so the CPSC expects social media notices to comply with the requirement to include a hi-resolution color photograph that clearly shows identifying features of the product. Using photos also increases the “priority” of a post on social media feeds and recall views. See id. The CPSC also asks companies to use videos to give even greater priority on the various platforms where possible. See id.
- **Link to website and news release.** Social media recall notices must contain links to the page(s) on the company’s dedicated recall web page. CPSC’s Recall Handbook, 23. Providing a link to page(s) on the company website—with detailed information about the recall—is particularly important for social media notices which may not include all of the information that otherwise would be included in a traditional notice.
- **Keep it clear and concise.** Social media posts should be concise (i.e., #Recall hashtag, product name, hazard, remedy). See CPSC’s Social Media Guide.

- **Feature the post.** If possible, companies should make the recall notice a featured post on their social media platforms. See *id.*
- **Paid advertising.** The CPSC also encourages companies to use paid advertising as a means of targeting the demographic that likely purchased the recalled product. See *id.*

The CPSC also requires companies to provide links to social media recall notices on the home page of the company's website. The recall notice must remain prominently posted on the company's website for an extended period of time. See *id.*; and *Zen Magnets, LLC*, Docket No. 12-2 (CPSC Oct. 26, 2017) (affirmed by *Zen Magnets, LLC v. Consumer Product Safety Commission*, 968 F.3d 1156, 1162 (C.A.10 (Colo.), 2020)).

See 16 C.F.R. § 1115.29.

At minimum, companies should post social media notices on all social media platforms that were used to market the product, that the companies used for business purposes, or which consumers are likely to use. Recalling companies must file monthly progress reports with the CPSC. These reports must include how many times the company posted the recall notice on social media (including Facebook, Twitter, and Instagram) and the number of shares, likes, and retweets.

It is important to note that the CPSC must review and agree upon press releases, notices, and social media communications that a company intends to use in a product recall before they are disseminated. 16 C.F.R. § 1115.29. Also, while social media can be a valuable tool in the CPSC recall process, it is not a replacement for traditional communication methods. Companies should continue to use a variety of channels to communicate with consumers about safety hazards and recalls. However, by following best practices and guidelines provided by the CPSC, companies can effectively use social media along with traditional forms of communication to notify the public of recalls and ensure the safety of their customers and stakeholders.

## Best Practices – Developing Compliance and Recall Policies including Procedures for Social Media

The CPSC encourages companies to develop and implement comprehensive compliance policies that set forth written procedures for identifying, escalating and, if

appropriate, reporting consumer product safety concerns. These policies not only help companies to quickly identify potential product safety concerns, but are also viewed favorably by the CPSC in the event of a reporting violation. 16 C.F.R. § 1119.4(b)(1).

A compliance program should be tailored to meet the specific needs of the company to which it applies. At minimum, however, it is recommended that a compliance program do the following:

- State the company's dedication to maintaining a safety-conscious culture, including the commitment of senior management to the program and product safety overall.
- State how the company receives feedback on issues related to product safety (e.g., customer complaints, warranty claims, etc.) and how that information is escalated and addressed.
- Establish a product safety committee to assess escalated product safety concerns and determine what action, if any, needs to be taken (e.g., reporting the information to a federal agency, issuing a voluntary recall, etc.).
- Include a whistleblower provision that encourages employees to report potential product safety concerns without fear of reprisal.
- Include a document retention policy of no less than five years. –and–
- Be regularly reviewed and updated as your company and its products evolve—including procedures related to social media.

Information that companies may want to consider incorporating into their compliance programs regarding social media includes, but is not limited to, the following:

- Procedures for identifying and monitoring information from social media pertaining to potential product safety concerns
- Procedures to encourage consumers to submit their concerns through formal company channels, such as a company's customer complaint systems
- A description of how information on social media is escalated and handled internally by the company, including, if applicable, a description of the company's social media response team

In addition to developing a robust compliance program, companies should also consider developing a recall plan so that they can act quickly with regard to any serious product safety concerns—again, including how the company will monitor, use, and respond to social media during an ongoing recall.

Finally, merely having a written compliance program or recall plan in place won't make a difference unless the company's employees are actually trained on those policies and procedures. Companies should therefore train employees on how to spot and properly document product safety issues. Companies should also make sure that they stay informed as to new social media platforms and update their policies, procedures, and training programs accordingly.

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- [Formulating CPSC-Compliant Responses to Consumer Complaints Raised on Social Media Checklist](#)

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Kelly focuses her practice on a variety of complex litigation matters, including commercial disputes, product liability, and international trade proceedings before the U.S. Department of Commerce and the U.S. International Trade Commission. Kelly also assists clients in tackling sophisticated regulatory and compliance issues. She has experience advising on regulations promulgated by the Consumer Product Safety Commission (CPSC), U.S. Food and Drug Administration (FDA), Federal Trade Commission (FTC), and other state and federal agencies. She also has experience with regulatory reporting obligations, government inquiries, product safety programs, and risk prevention issues.

Kelly is a member of the DRI Young Lawyers Steering Committee and is co-chair of the DRI Young Lawyers Publications Committee. Outside of her everyday practice, Kelly is committed to bringing diversity and inclusion to the practice of law. She was a founding member of the Diversity and Inclusion Task Force at her former firm.

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