

Crisis Control Newsletter

Crisis Control Newsletter from RQA, Inc.—A Catlin Preferred Provider to Foodservice, Food Processing and Consumer Products Industries

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Canada & Australia Safety Laws -Possible Liabilities

CANADA

On June 20, 2011, Canada's new Consumer Product Safety Act went into force. This legislation, which is similar to most of the other safety laws around the world, establishes a reporting requirement to Health Canada.

The legislation requires mandatory reports for "incidents" involving:

(a) an occurrence in Canada or elsewhere that resulted or may reasonably have been expected to result in an individual's death or in serious adverse effects on their health, including a serious injury;

(b) a defect or characteristic that may reasonably be expected to result in an individual's death or in serious adverse effects on their health, including a serious injury;

(c) incorrect or insufficient information on a label or in instructions — or the lack of a label or instructions—that may reasonably be expected to result in an individual's death or in serious adverse effects on their health, including a serious injury; or

(*d*) a recall or measure that is initiated for human health or safety reasons by a foreign entity or Canadian entities.

Section 14(1)(a) of the legislation makes clear that potential future harm constitutes an "occurrence" requiring a report if it "may reasonably have been expected" to result in death or serious injury. Section 14(1)(b) and the guidance make clear that even without an "occurrence," a report is required if "a defect or *characteristic* may reasonably be *expected* to result in an individual's death or serious injury." And section 14(1)(d) and the guidance make clear that a recall anywhere in the world related to a product or a part sold in a product in Canada would require a report.

Other complicated reporting responsibility questions remain unanswered. Reporting responsibility belongs to a product manufacturer, importer, or seller. But what if a product manufacturer is based in the United States and becomes aware of an incident in the United States or elsewhere in the world that might require a report in Canada? That manufacturer is not a Canadian entity. Is it required to report to Health Canada, or is it required to tell a Canadian entity that the manufacturer sells the product to, e.g., the importer, the retailer, or Canadian subsidiary or division? And what happens if the manufacturer doesn't? None of this is dealt with in the legislation or in the Health Canada guidance. Companies will need to make decisions about how they will interpret and comply with this requirement.

AUSTRALIA

Australia's new product safety law, referred to as the Australia Consumer Law, took effect on January 1, 2011. The Australian Competition and Consumer Commission will administer the new law. As with Health Canada, the Australian commission issued a guidance, *A Guide to the Mandatory Reporting Law in Relation to Consumer Goods*, in December 2010. Concerning reporting, the Australian guide states the following:

Individual suppliers are responsible for reporting incidents where consumer goods have been associated with a death or serious injury or illness of any person.

Canada & Australia Safety Laws (cont)

The second trigger, that the supplier has become aware of a death, serious injury or illness, only triggers the reporting requirement if either:

- The supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or
- The supplier becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods.

All participants in the supply chain are required to comply with the Australian reporting requirement within two days of becoming aware of an incident. This includes a retailer, a dealer, a distributor, an installer, a repairer, an importer, a manufacturer, and an exporter of the consumer good in question.

However, as in Canada, interesting questions remain about the responsibility of a foreign entity in the supply chain to inform Australian members of the supply chain about an incident occurring beyond Australia that may trigger the reporting duty. The Australian commission has said that members of the Australian supply chain do not have obligations to take active steps to seek information regarding foreign incidents.

Despite these restrictions, non-Australian manufacturers will have to decide how to meet these reporting requirements under Australian law to minimize future risk of harm in Australia and elsewhere.

CONCLUSION

Product safety reporting requirements will continue to expand. And those countries that have adopted such requirements may choose to become more aggressive in enforcing compliance and sending similar, strong messages about the necessity of companies to deal proactively with safety issues.

Given the significant increase in the potential for fines and the potentially devastating effect such fines can have on reputations, it is clear that manufacturers and others in the chain of distribution should ensure that their post-sale monitoring systems can deal with these new reporting responsibilities. In addition, companies must make sure that the reports and subsequent corrective actions are performed in defensible ways in the event of lawsuits involving recalled products.

By: Ken Ross, former partner and now Of Counsel in the Minneapolis office of Bowman and Brooke LLP

Food and Drug Administration Recalls (www.fda.gov)

Product: Cheese
Incident: Possible Health Risk–*Listeria monocytogenes*

A South River, NJ firm has issued a recall of 14.0 oz fresh cheese, fresh cheese in banana leaf and string cheese because it may be contaminated with *Listeria monocytogenes*. *Listeria monocytogenes* is an organism that can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. The State of New Jersey Department of Health and Senior Services discovered that the fresh cheese in banana leaf was contaminated with *Listeria monocytogenes*. The firm has ceased production and distribution as they continue their investigation as to what may have caused the problem. The product was distributed from 2/23/12—3/14/12 through direct delivery to retail stores, supermarkets and restaurants located in NJ and PA. Consumers who have purchased the affected products should return to the place of purchase for a full refund. Contact the company directly with any questions.

Product: Beef Stew Mix
Incident: Possible Health Risk–*Undeclared Allergen*

A Sparks, MD firm has announced a voluntarily recall of their 1.45 oz containers of a single lot code of beef stew mix because it may be mispackaged with brown gravy and may contain undeclared milk. People who have an allergy to or severe sensitivity to milk run the risk of serious or life threatening allergic reactions if they consume this product. So far, no illnesses or allergic reactions have been reported to date. The mislabeled beef stew mix was distributed to a specific grocery store chain in AL, FL, GA, TN and SC. Consumers who have purchased the product in question may return the product to their local store for a full refund. Consumers with further questions should contact the company or visit their website for more details.

United States Department of Agriculture Recalls (www.usda.gov)

Product: Ready –To-Eat Pizza Stick Products
Incident: Possible Health Risk–*Non-Inspection*

A Syracuse, IN establishment has recalled approximately 147 pounds of frozen, fully cooked, ready-to-eat pizza stick products because a meat ingredient used in the product may have been produced without the benefit of federal inspection. The problem was discovered during an ongoing food safety assessment of the company. FSIS personnel determined that a raw ground pork ingredient used by the company was purchased from an unapproved source whose raw pork products may not have been federally inspected. So far, FSIS has not received any consumer complaints or reports of illness. These pizza stick products were produced on Feb. 2 and Feb. 29, 2012. They then were sold to a food distributor for further distribution to a caterer and other institutions in Indiana in boxes containing 100 pizza sticks. Consumers and media with questions should contact the company directly.

Product: Pizza Topping Products
Incident: Possible Health Risk–*Undeclared Allergen*

A South Hutchinson, KS establishment is recalling approximately 12,060 pounds of pizza topping products because of misbranding and they may contain an undeclared allergen. The packaging identifies the products as beef, but they actually contain pork. Additionally, the pork products contain soy, a known potential allergen, which is not declared on the label. The 10-pound cartons containing two 5-pound packages of pizza toppings were produced on Jan. 12, 2012 and were sold to foodservice institutions nationwide via a distributor. These products were intended for use in restaurants or institutional food operations and are not sold in retail grocery stores. The problem was reported by a product purchaser. There have not been any reports of adverse reactions due to consumption of these products. Consumers and media with questions should contact the company directly.

Consumer Product Safety Commission Recalls (www.cpsc.gov)

Product: LED Night Lights
Incident: Hazard– *Fire & Burn*

A Saddle River, NJ importer is voluntarily recalling about 227,000 LED night lights. The three different model night lights are rectangular and are about 2-3/16 in. high, 3-1/2 in. wide and 1-1/4 in. deep. The front housings for each are either white or nickel colored plastic with four horizontal vents and a round light sensor above the top vent. An electrical short circuit in the night light can cause it to overheat and smolder or melt , posing fire and burn hazards to consumers. These night lights were manufactured in China and sold at hardware stores, home centers and lighting showrooms from March 2009 through October 2010. The importer has received 25 reports of the night lights smoking, burning, melting and charring. No injuries have been reported. Consumers should immediately stop using the recalled night lights, remove them from the wall sockets and contact the firm for instructions on receiving a refund.

Product: Desktop Computers
Incident: Hazard-*Fire*

A Morrisville, NC manufacturer/importer in cooperation with the CPSC is recalling approximately 50,500 units of all-in-one desktop computers, or PCs. The computers have flat-panel monitors with the PC integrated into the monitor housing itself. The power supplies are also inside the monitor or PC housing. A defect in an internal component in the power supply can overheat and pose a fire hazard. The PCs were manufactured in Mexico and sold online and by telephone and direct sales through authorized distributors nationwide from May 2010 through Jan. 2012. Only certain models of these computers built in this time frame are affected. The firm has received reports of one fire incident and one smoke incident in the US. No injuries have been reported. Consumers should stop using the computers, unplug the power supply and contact the firm to schedule an appointment for a free replacement of the power supply.

Crisis Control is a newsletter jointly published by RQA, Inc. & Catlin Group.

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