

ALERT

Home Depot to Pay \$5.7 Million Penalty to Settle Allegations of Selling Recalled Products

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The Consumer Product Safety Commission (CPSC) announced today that it has provisionally agreed to a \$5.7 million penalty settlement with Home Depot U.S.A., Inc. arising from that company's alleged unlawful sales of recalled products. This would be one of the largest civil penalties in recent years, and the largest in recent memory for the sale of recalled products.

The agreement resolves claims from the CPSC that the company illegally sold numerous recalled products over the course of four years. The settlement agreement is not yet final, however, because CPSC rules require the agency to accept public comment before finalization. Therefore, it is possible—though historically unlikely—that the agreement could be modified prior to signature.

According to the allegations presented in the agreement, CPSC believes that Home Depot sold or distributed at least 2,816 units of 33 different recalled products between 2012 to 2016. Home Depot self-reported many of the post-recall sales in May of 2015. In November of 2015, the CPSC and Home Depot jointly published a press release notifying Home Depot's customers of the improper sales. But CPSC asserts that additional units of the same and other recalled products subsequently were sold. Some allegedly had been recalled prior to the press release and some afterward. It is not clear how much the penalty amount was affected by the alleged sales after the November 2015 press release.

For its part, Home Depot states in the proposed settlement agreement that its internal policies already prohibited such sales, and that the company took "reasonable measures" to prevent these sales. Home Depot notes that it discovered the violations after an

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internal review, and voluntarily self-disclosed the issue to the agency, whereupon Home Depot and CPSC worked cooperatively to address the identified issues.

Home Depot will also agree to implement more rigorous internal compliance programs, overseen by CPSC, to ensure that additional post-recall sales do not occur. These programs will include:

- Written standards, policies, and procedures designed to ensure compliance with the Consumer Product Safety Act (CPSA) statutes and regulations;
- Procedures to ensure that relevant information is conveyed effectively to appropriate personnel responsible for CPSA compliance;
- Mechanisms to train Home Depot employees on company policies and procedures to prevent future violations of CPSA;
- A program for the appropriate disposition of recalled goods;
- Management oversight of that program, including a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- Senior management responsibility for, and general board oversight of, CPSA compliance; and
- Retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to the agency.

Home Depot also would agree to ensure that its existing system of internal control is effective in ensuring that all CPSC mandated information is promptly disclosed to the agency on a timely, truthful, complete, and accurate manner. Home Depot's progress to implement and abide by all of these corrective measures will be overseen by CPSC staff, and it seems likely that Home Depot will be asked to report on a regular basis.

CPSC has a history of vigorously investigating post-recall sales. The corrective actions Home Depot would agree to may provide a useful guide for other companies seeking to improve their post-recall strategies.