

Making the recall Decision

Editor's note: This is the fourth in a series on food safety and the legalities of product recall.

In the food manufacturing industry, the decision to recall a product is perhaps the most difficult, both professionally and emotionally, for any company to make. Decision-makers

are confronted with a myriad of concerns, and their actions in effecting the recall will undoubtedly be second-guessed by others in the company, stockholders, media, customers and consumers, governmental regulators, public health agencies, insurance providers, attorneys for persons claiming injury from the product, and a judge or jury indeed, balancing all of these competing interests may seem impossible.

Nevertheless, the primary concern for the company must be to protect the public health. A company with a good product that also demonstrates appropriate responsibility and concern for consumer health and safety will not only minimize its long-term business risk associated with the recall, but also will reap the rewards of being viewed publicly as a responsible corporate citizen.

Should there be a recall and if so, what should be recalled?

While there will be many big decisions to make throughout the recall process, the most important decisions will have to be made quickly: Should there be a recall, and how broad should it be?

The first question can be answered only on a case-by-case basis. A guiding principle, however, is that a product should be recalled if there is credible evidence that it has caused any illnesses due to suspected contamination or any other unsafe condition in the product.

As discussed in the second article of this series, credible evidence can be developed by government agencies, which often rely on epidemiology, microbiology and molecular testing to find the source of similar illnesses. Your own internal investigation and testing also may lead to a conclusion that your product might cause illness. No matter the source of such evidence, using good judgment listening to government recommendations and, ultimately, being intent on protecting consumer safety is the best way to tackle this difficult decision. The second question – what should be recalled? – can prove as difficult to decide as the first. Of course, if a recall is necessary, your company would prefer a very small recall with little or no publicity. This approach may not only be unrealistic, but it also has the potential to create more severe problems for the company in the future.

The goal should be to effectuate the recall as quickly and as broadly as necessary. This means that the company should not delay its recall while it waits to receive "all available information" or until it conducts "a thorough internal investigation," which are analyses that companies generally undertake before making major decisions. In the recall context, time is of the essence. Also, the company must determine the appropriate scope and range of the recall by looking broadly at what dates of production should be included in the recall, as well as whether any additional products could be adversely affected as a result of cross-contamination or the use of common manufacturing equipment or similar processes.

Of course, in determining the scope of the recall it is imperative that a company seriously consider any recommendations by governmental regulators such as the FDA or USDA. Like it or not, government agencies

will be heavily involved in the recall process, particularly for recalls that impact consumer health. In meat and poultry recalls, for example, the Food Safety & Inspection Service will assign a recall classification based on an evaluation of the risk posed to public health, followed by instructions about the recommended depth and scope of the recall and, later, effectiveness checks to determine how well the recall is being implemented.

Although these government agencies cannot mandate a recall, failure to abide by a regulatory agency's recommendations could subject your company to harsh regulatory reprisals, such as a withdrawal of inspectors from a plant or fines, while also causing a deterioration of the future relationship between the company and its regulators. Intuitively, a company that is seen as cooperating with its regulators is more likely to receive information they may have regarding the recall-related issues, as well as assistance in generating as much favorable public relations information as possible. Ignoring a government agency's recommendation can subject the company to public criticism and may lead to highly unfavorable evidence against the company in any civil or criminal investigations and proceedings.

The best approach is to designate one or two senior company officials to interface as much as possible with government regulators and any public health agency involved in the investigations. Having open lines of communication with the government will be instrumental in arriving at a mutually agreed-upon recall plan. Undertaking an appropriately broad recall at the outset may eliminate the need to issue a second or third recall which, if required, will cause additional negative publicity and erosion of consumer and customer confidence in your company.

Create a written recall plan now

Because the primary goal of any recall plan should be protecting consumer safety, it is imperative that your company put measures in place before a crisis arises so that you can act immediately and with a clear understanding of the next steps. Any recall, no matter how small, diverts attention from your usual business operations. Companies that succeed in keeping recall-related disruption to a minimum often have in place well-planned and tested strategies that focus on one goal: getting the affected product out of the hands of consumers and other end-users as quickly as possible.

Components of an effectively written recall plan

Designate a recall coordinator.

A recall coordinator should be prepared to handle all recall activities at a moment's notice and should have sufficient authority within your company to make decisions in a timely fashion, without having to report to top management, and to put them into effect immediately. The FSIS recommends that your recall coordinator be knowledgeable about every aspect of your company's operations, including purchasing, processing, quality assurance, distribution, and consumer complaints, and that the recall coordinator select other members of your recall team.

Designate a recall team.

Your recall team should be a microcosm of your company: managers of key departments such as quality assurance, operations, sales and marketing, customer service, transportation, risk management, human resources and accounting. The FSIS recommends preparing a contact list of all internal and external personnel who are to be involved in recall actions and specifying an alternative for each identified employee.

Have recall protocols in place.

Each member of the recall team should be assigned specific responsibilities and procedures should be put in place so that they can be accomplished in the midst of the flurry of activity that accompanies a recall. Here are examples of the issues each department represented on your recall team should contemplate so that your recall action plan is as comprehensive as possible:

- * *Sales and marketing:* Because getting your product out of the marketplace is the goal of your recall, sales and marketing representatives on your recall team should devise a system for communicating with your customers not only to announce a recall but to provide instructions about what to do once the product has been identified and removed from the shelf, storeroom and warehouse.

It is vital that contact information for all customers be up-to-date. You should determine how your sales force, including any independent sales brokers, will be utilized during a recall.

All of your communications with customers should be documented in phone logs that specify date and contact person. Repeated follow-ups – or "sweeps" – to customers to verify that they have retrieved recalled product from the stream of commerce should be planned.

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- * *Community and media relations:* It is imperative, both for public health as well as community relations purposes, that your company provide consumers with answers to their questions.

A toll-free hotline reserved exclusively for consumer-related recall questions should be established, particularly if the recall involves brand name products that could already be in consumers' refrigerators and cabinets.

If you have a Web site, warnings and reminders not to eat the recalled product should be prominently displayed with links to important information. Also, the company should designate only one person to speak publicly to avoid conflicting communications.

- * *Transportation/receiving:* Your transportation department should be prepared to effectuate retrieval immediately by scheduling product pickups from customers. There are companies that specialize in retrieval of recalled product from retailers, wholesalers and consumers.

Once the product is returned to you, disposal and storage of the product will become an issue. If litigation is pending or anticipated, consult with your company's attorney to determine the extent to which you are required to preserve returned product to avoid spoliation of evidence liability.

- * *Accounting/customer service:* In order to maintain good customer relations, you may wish to give – and customers may expect – reimbursement or account credits for all recalled product.

You should formulate a reimbursement plan that provides incentives for customers to get products off their shelves as quickly as possible.

- * *Quality assurance/marketing:* As your quality assurance team works with government inspectors to determine the source of the problem, your marketing department, depending on the scale of the recall, may wish to make arrangements for alternative production so that you do not lose market share.

- * *Risk management:* Your risk management department should not only be knowledgeable about the extent of your recall-related insurance coverage, but should also be aware of the notice requirements imposed by the policies you hold. **FP**

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