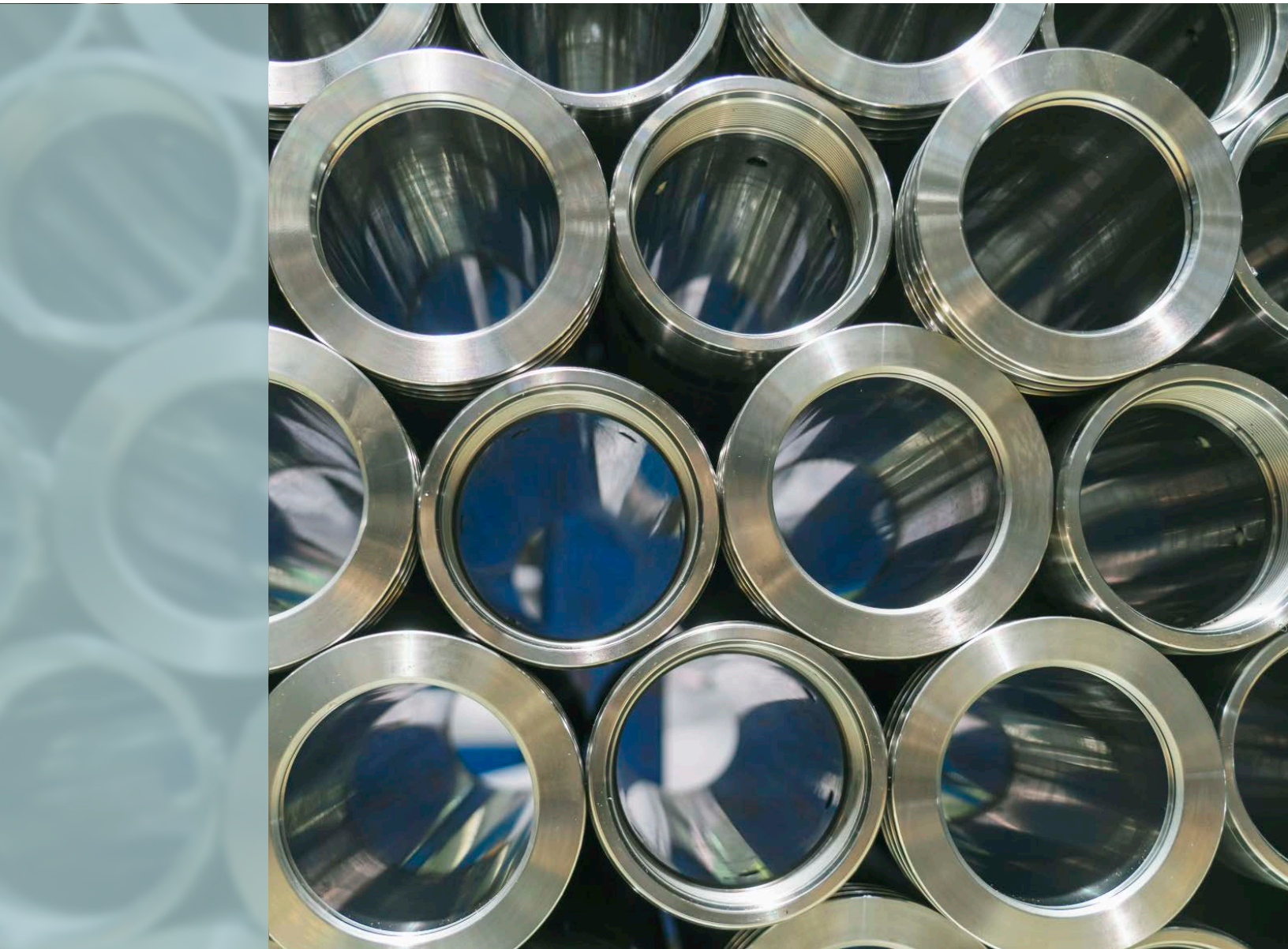




# 2023 Emerging Trends in Product Recall and Product Contamination Insurance

Aon Crisis Solutions



# Table of Contents

<b>The Recall Year in Review: As the Lockdown Subsides</b>	<b>3</b>
The Pandemic's effect on Risk	3
<b>Spotlight: United States and Canada</b>	<b>4</b>
Food, Beverage, Cosmetic, Medical Devices and Biologics Recalls	4
Outbreak Investigations	5
Changes to the Food Safety Modernization Act	6
Consumer Product Safety Commission	7
Automotive Vehicles and Equipment Recalls	8
Canadian Food Safety	11
<b>Spotlight: European Union and United Kingdom</b>	<b>12</b>
Consumable Products	12
Consumer Goods and Automotive	12
<b>Spotlight: Australia and New Zealand</b>	<b>13</b>
Food and Beverage Products	13
Non-Food Consumer Products	13
Automotive Vehicles and Equipment	14
Australia Greenwashing	14
<b>Recall Risk Transfer Options</b>	<b>15</b>
Product Contamination Insurance	15
Insured Losses	16
Coverage Enhancement and Challenges	16
<b>Benchmarking Limits and Retentions</b>	<b>18</b>
Limit Benchmarking — Consumable and Topical Products	18
Limit Benchmarking — Non-Consumable Products	18
Retention Benchmarking — Consumable and Topical Products	19
Retention Benchmarking — Non-Consumable Products	19
<b>Insurance Market Update</b>	<b>20</b>
Recall Market Capacity by Product	20
2023 State of the Product Contamination and Recall Market	22
Product Recall Claims Management	23
<b>Conclusion</b>	<b>24</b>
<b>Sources</b>	<b>25</b>
<b>Contact</b>	<b>26</b>

# The Recall Year in Review: As the Lockdown Subsides

As the world reopens following the coronavirus (COVID-19) pandemic of 2020 and 2021, it was anticipated we would experience a significant increase in the number of recalls in 2022. Common thinking was that, with the resumption of regulatory inspections and less reliance on manufacturer's self-regulation, as well as a greater scrutiny on import sourcing, we would experience more safety issues involving manufactured products.

Since the start of COVID-19, regulators' priorities have focused on conducting mission-critical activities, including inspections, responding to foodborne disease outbreaks, sampling and testing imported food and managing recalls. The FDA, for example, has also prioritized supporting the continuity of the food supply chain and worker safety, while adjusting to state and local travel restrictions. As the United States and the rest of the world gets back to a post-pandemic environment and reinvigorates their oversight activities, we will likely see an increase in the number of recalls globally.

In addition to the increased risk of recall due to stepped-up enforcement, the effects of inflation will also have an influence on the potential financial repercussions of a recall. Higher costs of goods, transportation, salaries and logistical expenses all increase the financial exposures of a recall.

## The Pandemic's Effect on Risk

### Factors Increasing the Risk of Product Recall Incidents

<b>Pandemic Fallout</b> During the pandemic, there was decreased oversight from regulatory agencies, which increased the risk for product recall incidents that would have otherwise been mitigated through regulatory practices.	<b>Transportation Challenges</b> Increasing energy and petroleum costs have resulted in companies altering their processes in transporting products. Ensuring product safety is maintained throughout the transportation process has grown more difficult, increasing the risk of product recall incidents.	<b>Employee Shortages</b> Employee shortages have put a strain on companies to find and retain staff experienced in managing their production procedures. This contributes to an increased risk for quality control issues.
<b>Supply Chain Challenges</b> As supply chain challenges continue, manufacturers may rely on sourcing their components and ingredients from new suppliers. This makes supplier approval procedures critical in mitigating recall incidents.	<b>Inflation</b> Inflation has increased operational costs within companies, pressuring them to partner with new suppliers and/or lay off staff. New procedures, staff and partnerships as a result of inflation have increased the risk of a product recall incident.	<b>Squeezed Margins</b> Companies are looking to suppliers for compensation regarding contamination, defects or other inconveniences. Product recall insurance has been increasingly sought after as pressure increases on suppliers for compensatory damages.

3 An additional residual effect of the pandemic has been the increase in revenues resulting from inflation. Revenues are generally used to develop a premium base rate in the underwriting process. This higher base rate is then modified based on numerous factors, including the type of product, packaging, traceability, quality control and others — resulting in a higher overall premium, if not a lower rate.

# Spotlight: United States and Canada

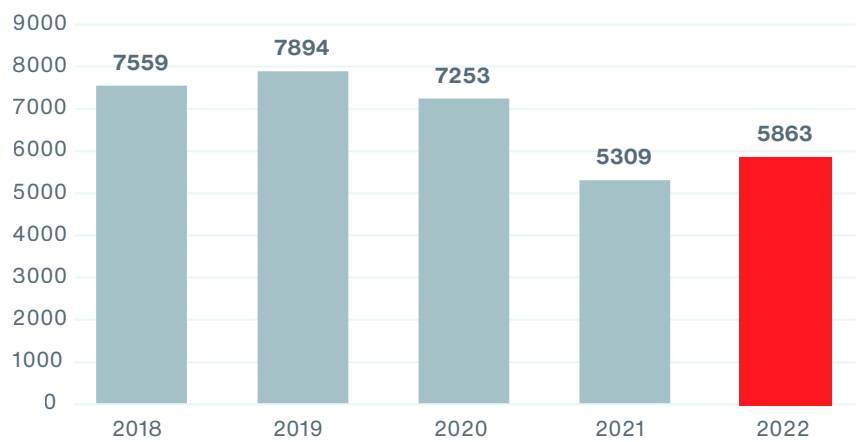
## Food, Beverage, Cosmetic, Medical Devices and Biologics Recalls

Oversight of food safety in the United States lies with the Food and Drug Administration (FDA) and the United States Department of the Agriculture (USDA). The FDA is responsible for ensuring the safety of most domestic and imported foods, while the USDA oversees the safety of meat, poultry and some egg products. State and local health departments also play a role in food safety oversight and enforcement.

<b>Food and beverage recalls are generally initiated due to one of the following issues affecting the products:</b>	<b>Allergen</b> A food product may contain ingredients such as peanuts, milk or eggs that are not identified or are incorrectly identified on the label. These can cause adverse reactions in people who are allergic.	<b>Chemical</b> A food product contains chemical residues such as lead, mercury or pesticides that, at certain levels, can affect human health.
	<b>Extraneous Material</b> A food product contains material from an outside source, such as metal, glass or hair. These are not necessarily a risk to human health.	<b>Microbiological</b> A food product is contaminated by microorganisms, such as bacteria, viruses or parasites, which have the potential to cause illness.
		<b>Other</b> A food product is of concern due to the presence of a hazard that does not fall within one of the above categories. Examples include non-permitted ingredients, nutrition concerns and potential tampering.

The FDA reported 5,863 recalled products in 2022 representing 479 recall events involving food and cosmetic products against only 5,309 in 2021. Although some 10 percent higher in 2022, both years experienced the lowest number of recalled products since 2012.

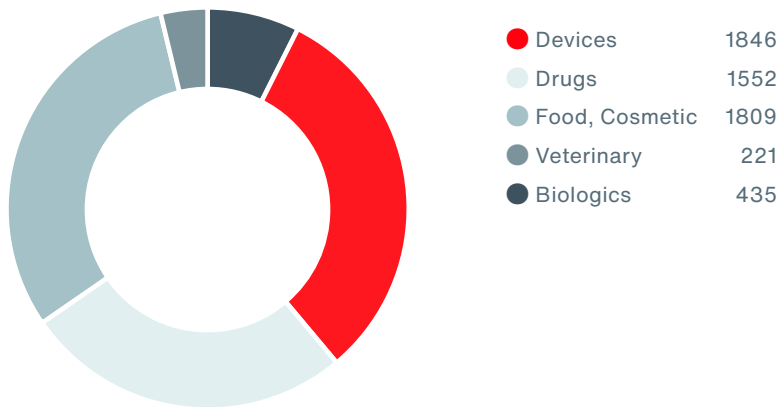
FDA Recalled Products by Fiscal Year



Source: <https://datadashboard.fda.gov/ora/cd/recalls.htm>

However, breaking down the data leads to greater insights. Food, beverage and cosmetic product recalls are actually up over 75 percent from 1,026 in 2021 to 1,809 in 2022. Additionally, drug recalls in 2022 are up almost 75 percent over prior-year recalls. Over 95 percent of FDA recalls were classified as class I or class II recalls. Medical device recalls dropped from 2,606 in 2021 to 1,846 in 2022. The increase in food, beverage, cosmetic and drug product recalls appears to support predictions from food and drug safety advocates.<sup>1</sup>

2022 FDA Recall Products by Type

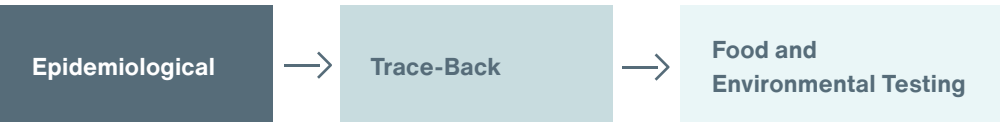


Source: <https://datadashboard.fda.gov/ora/cd/recalls.htm>

Outbreak Investigations

There were several significant outbreak investigations in 2022. Outbreak investigations are coordinated between the U.S. Food and Drug Administration and the Center for Disease Control (CDC). Public health and regulatory officials gather three types of data during an investigation: epidemiologic, trace-back and food and environmental testing. Health officials evaluate all of this type of data to try to identify the source of the outbreak. Actions to protect the public are taken when there is clear and convincing information linking illness to a contaminated food.<sup>11</sup>

Outbreak Investigation Process



Investigators look for patterns in where and when people got sick, and past outbreaks caused by the same germ. Interviews with sick people are conducted to look for foods or other exposures occurring more often than expected. When clusters of unrelated sick people who ate at the same restaurant, shopped at the same grocery store or attended the same event are identified, a common point of contamination in the distribution chain from farm to fork can be traced through whole-genome sequencing to identify when and where the contamination originated.

One of the higher-profile outbreak investigations occurred in early February 2022. On February 17, 2022, the FDA warned consumers not to use certain powdered infant formula products. The manufacturer voluntarily ceased production at the facility and initiated a voluntary recall of certain products. The February 28th recall was made



after a report of the death of an infant with a Cronobacter sakazakii infection who consumed powdered formula from the suspect lot. The recall and facility shutdown resulted in significant shortages of infant formula on top of the overall strains on supply chains experienced during COVID-19. The manufacturer has committed to completing enhanced testing of stored product batches prior to making release determinations.<sup>III</sup>

Outbreak advisories issued by the FDA during 2022 included a broad range of products such as packaged lettuce, peanut butter, strawberries, ice cream, French lentil and leek crumbles, cantaloupe, brie and camembert cheese, seafood, falafel, and alfalfa sprouts.<sup>IV</sup>

## Changes to the Food Safety Modernization Act

In early 2023, the FDA announced one of the most significant changes to the Food Safety Modernization Act (FSMA) with the addition of Section 204(d), Requirements for Additional Traceability Records for Certain Foods (Food Traceability Final Rule). The final rule is a key component of the FDA's New Era of Smarter Food Safety Blueprint and establishes additional traceability recordkeeping requirements beyond those in existing regulations, for persons who manufacture, process, pack or hold foods included on the Food Traceability List (FTL). Food categories included on the FTL include:

- Cheeses, other than hard cheeses
- Shell eggs
- Nut butters
- Cucumbers
- Herbs
- Leafy greens
- Melons
- Peppers
- Sprouts
- Tomatoes
- Tropical tree fruits
- Fruits (fresh cut)
- Vegetables (fresh cut)
- Finfish (fresh, frozen and smoked)
- Crustaceans
- Molluscan shellfish
- Ready-to-eat deli salads

It should be no surprise that many of the foods listed on the FTL have been the subject of massive recalls over the past twenty years. As a result, the FDA has now added requirements identified in the Final Rule which will allow for faster identification and rapid removal of potentially contaminated food from the market, resulting in fewer foodborne illnesses and/or deaths. Affected parties have three years to comply with the Final Rule. Food manufacturers with products on the FTL will undoubtedly face increased scrutiny from the FDA.<sup>V</sup>

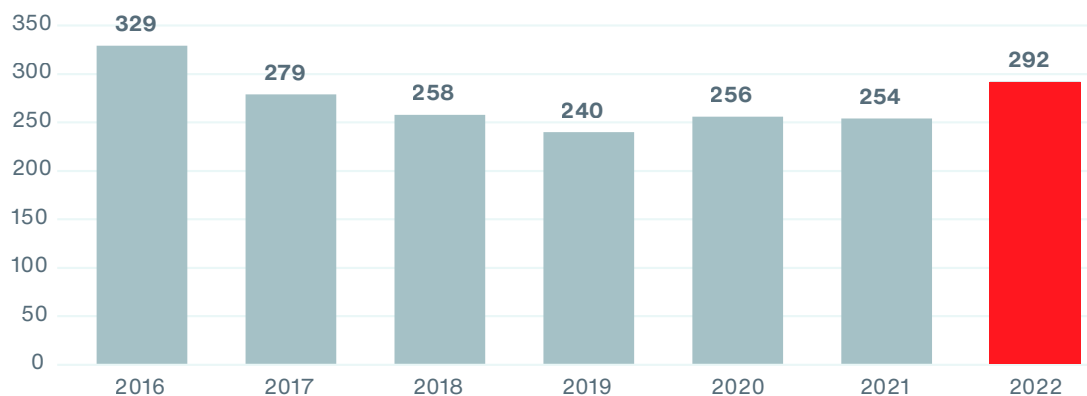
One final noteworthy change within the FDA was the resignation of Frank Yiannas, the Deputy Commissioner for Food Policy and Response during early 2023. Yiannis had been the deputy commissioner since 2018. In his resignation letter, Mr. Yiannas cited concerns about the “decentralized structure of the foods program” which has “significantly impaired FDA’s ability to operate as an integrated food team and protect the public.” Yiannas urged the FDA to consider a new office of the Deputy Commissioner for Foods to oversee FDA’s currently scattered and inefficient approach to food safety.<sup>VI</sup>

## Consumer Product Safety Commission

The United States Consumer Product Safety Commission (CPSC) seeks to promote the safety of consumer products by addressing “unreasonable risks” of injury, developing uniform safety standards and conducting research into product-related illness and injury. Product recalls are reported through CPSC, which works with companies to announce recalls and makes the public aware of other potentially hazardous items.

CPSC recall data found that there were 33 percent more recall announcements in 2022 compared with 2021. The number of recalls announced by the CPSC in 2022 totaled 293, the most since 2016. Many of the recalls involved products that have traditionally been highly regulated by the CPSC, such as children’s products. Most recalls in 2022 were related to products that posed a risk of fire or flammability, choking hazards, excessive levels of lead and other chemicals that may pose harm to human health.<sup>VII</sup>

### CPSC Recalls



Source: <https://publicinterestnetwork.org/wp-content/uploads/2023/04/USP-PROD-RECALLS-FINAL-2-1.pdf>

The group Kids in Danger, which advocates for safe products for children, reported that there were 100 recalls of children’s items in 2022 — higher than any other year since 2013. They made up 34 percent of total recalls last year. Nineteen of the recalls were related to the risk of lead poisoning. Another 32 recalls were of clothing items, the majority of which were pulled from the market for failing to meet federal flammability standards.<sup>VIII</sup>

Newly passed legislation to protect consumers from tip-over-related deaths and injuries associated with dressers, armoires, wardrobes and other clothing storage units was passed by Congress in late 2022. STURDY, which stands for Stop Tip-Overs of Unstable, Risky Dressers on Youth, was signed into law in December 2022. The Consumer Product Safety Commission then voted to adopt the ASTM F2057-23 voluntary standard as a CPSC mandatory safety standard to protect young children from injury and death from furniture tip-over incidents. CPSC staff is aware of 234 fatalities resulting from clothing storage unit tip-overs from January 2000 through April 2022, including 199 child fatalities. CPSC estimates there were 84,100 tip-over-related injuries (an estimated annual average of 5,300 injuries) with clothing storage units that were treated in U.S. hospital emergency departments from 2006 through 2021.<sup>IX</sup>

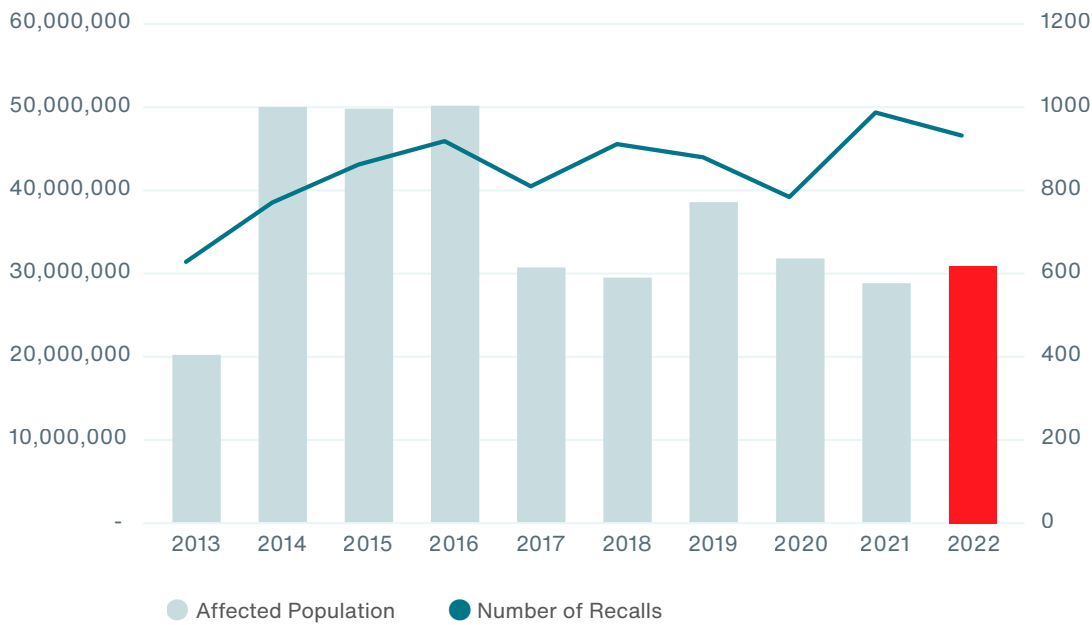
Recalls announced by the CPSC in 2022 were the most since 2016.

## Automotive Vehicles and Equipment Recalls

The National Highway Traffic Safety Administration (NHTSA) issues vehicle safety standards and requires manufacturers to recall vehicles and equipment that have safety-related defects. NHTSA reviews complaints from vehicle owners related to alleged defects, after which it may open an investigation based on the alleged defect. The investigation may then result in a recall recommendation to the manufacturer. If a recall is recommended, NHTSA will then monitor the effectiveness and management of the recall: [www.nhtsa.gov/recalls](http://www.nhtsa.gov/recalls)

Over 30 million vehicles were recalled in the U.S. in 2022, representing an increase of two million over 2021. However, the number of actual recall events dropped from 987 in 2021 to 932 in 2022.

### NHTSA 10-Year Vehicle Recall History



Source: [https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/2022-Recalls-Annual-Report\\_030223-tag.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/2022-Recalls-Annual-Report_030223-tag.pdf)

The Takata airbag recall continues to be the largest recall in history. In 2014, NHTSA asked several manufacturers to recall vehicles with Takata airbags in hot and humid regions because of airbag ruptures observed in Florida and Puerto Rico. The initial recall has been expanded numerous times since then and was expanded beyond the initial “hot and humid” regions. To date, some 67 million air bags have been recalled because these air bags can explode when deployed, causing serious injury or even death. NHTSA determined the root cause of the problem as ammonium-nitrate-based propellant without a chemical drying agent where moisture, high temperatures and age can result in improperly inflating airbags. Approximately 11 million vehicles have yet to be repaired.

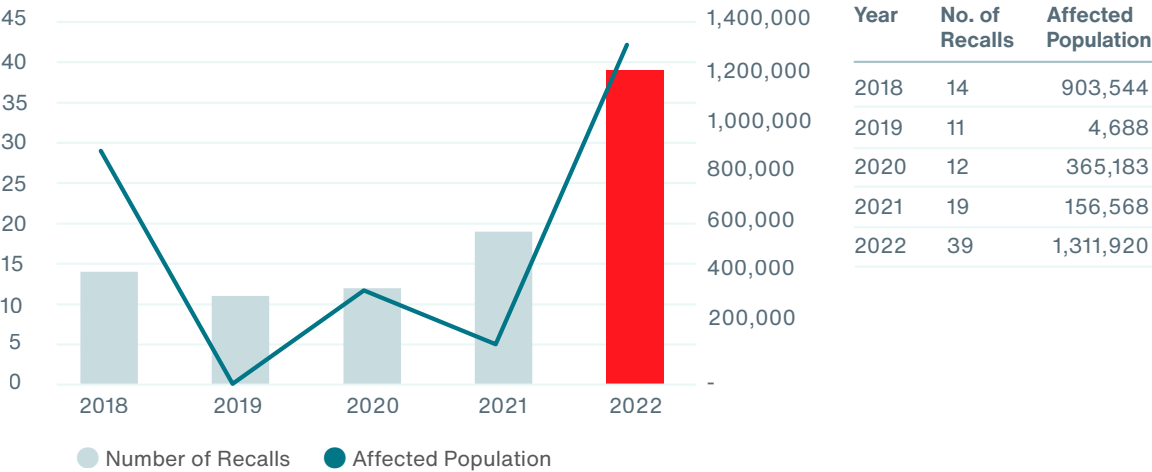


Electric Vehicle and Advanced Driver Assistance Systems

Worldwide, electric vehicles (EVs) are expected to comprise more than one-half of new vehicle sales by 2035. Increased public demand for electric vehicle transportation is expected to drive the growth. Factors such as technological improvements, government mandates, regulations and attitudes regarding climate change are anticipated to further fuel the growth. States are also looking to go beyond electrifying light-duty vehicles by including medium- and heavy-duty vehicles in their EV policies.<sup>xi</sup>

This anticipated rapid growth of electric cars comes with a host of new risks and claims scenarios for manufacturers, suppliers and insurers. From pressure and scrutiny from lawmakers and regulators — particularly in response to existing and still unknown safety risks — to increased repair costs, challenges maintaining a trained workforce, and insurance and liability implications, most agree that the EV industry has a winding road ahead. There are multiple ongoing issues impacting EVs, from recalls due to vehicle fires or loss of power to questions about driving range and infrastructure necessary to support significant increases in adoption.

NHTSA Electric Vehicle Recall History

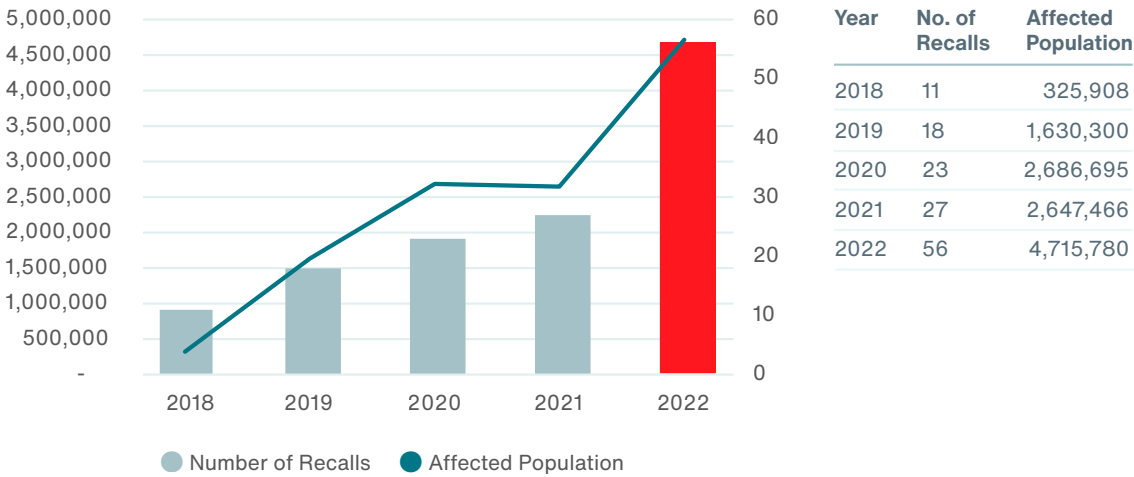


Source: [https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/2022-Recalls-Annual-Report\\_030223-tag.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/2022-Recalls-Annual-Report_030223-tag.pdf)

The number of electric vehicles recalled in 2022 increased eight-fold year over year, from 156,568 vehicles to 1,311,920 vehicles. The number or recall events involving electric vehicles more than doubled to 39 events. As automakers rush to market with these new electric vehicles, they will continue to seek smaller, lighter and longer-lasting batteries. With this increase in electrification of vehicles, automakers are seeking a reliable supply and bringing as much electric vehicle battery production in-house as possible, thus allowing for less dependence on foreign suppliers. This dramatic change in production focus will inevitably bring more aggressive investigations and enforcement by NHTSA, not only for the recall of unsafe products, but also to ensure recalled batteries are recycled, re-used or disposed of properly once they’ve reached the end of their life cycle.

Electric vehicle recalls have typically occurred in vehicles that are less than two years old, with the scope of the recall being generally limited to a few hundred units. However, the 2020 – 2021 recall of Chevy Bolt demonstrates the potential for significantly larger recall events. General Motors announced that its battery supplier had agreed to reimburse it for the \$2 billion in estimated costs and expenses associated with the recall.<sup>xii</sup>

NHTSA ADAS Vehicle Recall History



Source: [https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/2022-Recalls-Annual-Report\\_030223-tag.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/2022-Recalls-Annual-Report_030223-tag.pdf)

Advanced driver assistance systems (ADAS) are technologies that assist drivers in driving and parking functions. Through a safe human-machine interface, ADAS increases car and road safety. ADAS uses automated technology, such as sensors and cameras, to detect nearby obstacles or driver errors, and responds accordingly. ADAS can enable various levels of autonomous driving, depending on the features installed in the car.

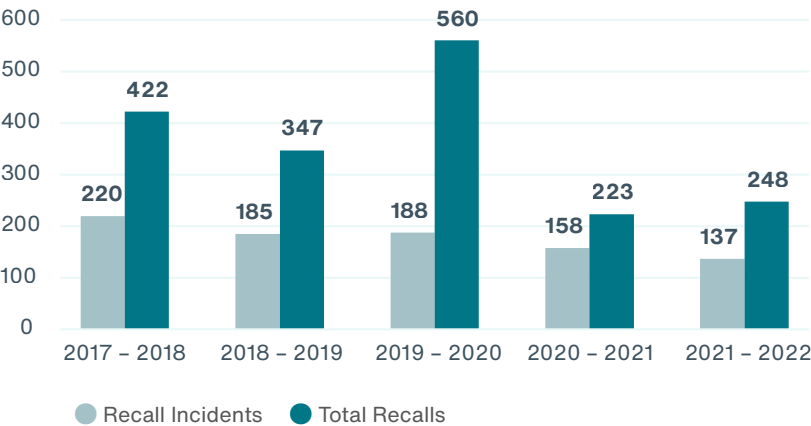
As both electric vehicle production ramps up and advanced driver-assistance technologies proliferate, we anticipate more frequent and larger recall events. The number of recalls specific to fires remains very small relative to internal combustion engine-powered cars. There’s no evidence that electric vehicles catch fire at a rate higher than internal combustion cars, but the topic has received increased scrutiny as more EVs hit the road.

## Canadian Food Safety

Canadian food safety is regulated by the Canadian Food Inspection Agency (CFIA) who also have oversight over the implementation of a recall and verify that the industry has effectively removed recalled food from the marketplace. Most recalls in Canada are voluntary, in that they are conducted by the recalling food business, with oversight from the CFIA. If a food business is unable or refuses to conduct a voluntary food recall, the Minister of Health has the power to order a mandatory recall for any food that poses a health risk.

The total number of food recalls in Canada increased from 223 to 248 during fiscal year 2022 (the fiscal year runs from April 20 to March 21). However, the number of recall incidents decreased from 158 to 137 in 2022.

### Canadian Food Recalls FY\* 2017 to 2022



Source: <https://inspection.canada.ca/food-safety-for-consumers/canada-s-food-safety-system/food-recall-incidents-and-food-recalls/eng/1348756225655/1348756345745>

\*Fiscal year runs from April 1 to March 31.

# Spotlight: European Union and United Kingdom

In 2022, automotive, toy and clothing sectors all experienced considerably more recalls across the UK and Europe compared to 2021. Clothing recalls were 58.3 percent higher year over year. At the other end of the spectrum, pharmaceutical recalls were down 16.4 percent. All European recall events in 2022 across all five sectors showed a 4.3 percent increase for the year, with 10,545 recalls in 2022 as compared to 10,109 recalls in 2021.<sup>xiv</sup>

## Consumable Products

The European Union has one of the highest food safety standards in the world. As part of the food safety tools, the Rapid Alert System for Food and Feed was established to ensure the exchange of information between member countries to support swift reaction by food safety authorities in case of risks to public health resulting from the food chain. 2022 experienced a 3.3 percent decrease in the total number of recalls, with 4,519 compared to the 4,674 events in 2021. Fruit and vegetables had the most recalls, with 167 events in the fourth quarter alone. Nuts, nut products and seeds were the second-most impacted product category, with 116 recalls. Poultry meat and poultry meat products accounted for the third-highest number in the fourth quarter, with 109 compared to 85 events in the third quarter.

Germany was the top notifying country, with 151 food and beverage recalls in the fourth quarter of 2022. It was followed by Belgium (109), Italy (108) and the Netherlands (107). The UK reported 37 recalls, a 42.3 percent increase from 26 the previous quarter.<sup>xv</sup>

One of the largest food recalls in 2022 emanated from a Switzerland-based chocolate company when salmonella was detected in a production lot manufactured in its Belgium facility. All chocolate products produced in the facility were put on hold and production was stopped. After conducting a root cause analysis, quality experts identified lecithin as the source of the contamination. The firm reported a reduction of CHF 76.9 million (\$83 million) in operating profit related to the salmonella incident.<sup>xvi</sup>

## Consumer Goods and Automotive

Recalls involving toys increased 43.4 percent in 2022 for a total of 621 recall events. Choking risks were the most common cause of those recalls, accounting for more than 30 percent with 195 events. Electronic recalls increased 7.7 percent in 2022 with a total of 362 events. Electric shock was the leading cause of those events. Clothing recalls also jumped in 2022, up 58 percent with 239 recall events. The vast majority of clothing recalls were related to children's items, with chemical concerns being the leading cause of those events. Europe experienced a 31.7 percent increase in automotive recalls, or 752 events in 2022. The UK accounted for nearly half of those recalls, followed closely by Germany.

# Spotlight: Australia and New Zealand

While there has not been an increase in recalls in Australia like we've seen in other jurisdictions, Australia has had a larger number of withdrawals than in previous years. This means that, while we are not necessarily seeing food safety issues arise, we are seeing numerous "out of spec" products still hitting the market. We believe this is up around 10 to 15 percent than in previous years.

## Food and Beverage Products

Food safety in Australia and New Zealand is overseen by Food Standards Australia New Zealand. One of the larger and more widespread food recalls in Australia in 2022 was the national recall of poppy seeds due to the potential presence of the toxic chemical thebaine. Cases of illness among people who have consumed poppy seeds were reported in Western Australia, New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory.

Thebaine is a naturally occurring plant chemical. Poppy varieties rich in thebaine are used for the production of medicines and are grown in Australia to supply the pharmaceutical industry. Poppy seeds grown for food consumption have little or no detectable thebaine and are safe to consume. Thebaine itself cannot be used as a drug and is toxic to humans in sufficient quantities. Symptoms of thebaine poisoning can include increased respiratory rate and muscle spasms, which can progress to seizures, breathing difficulty and unconsciousness.<sup>xvii</sup>

Australia also experienced several rather unique and unusual recalls in 2022, including one involving beer and a second involving spinach. In the beer incident, a popular craft beer was recalled in late September of 2022 because it had "excess alcohol." The recall was issued due to "secondary fermentation" which could cause excess alcohol and carbonation that "may cause illness if consumed."<sup>xviii</sup>

In another unusual case, baby spinach was recalled in Australia by numerous retailers during late December after reports of customers experiencing adverse health impacts, including becoming delirious and experiencing hallucinations. The cause of the contamination was determined to have been a weed — thornapple or jimsonweed — that inadvertently became mixed in with the spinach. New South Wales Health reported 88 persons with reported symptoms and 11 illnesses. It was confirmed that the recalled spinach products were sourced from one producer and the spinach was located in one field. The producer has been proactive and cooperative in addressing the issue.<sup>xix</sup>

## Non-Food Consumer Products

Product safety regulation in Australia for general consumer products is a shared responsibility between the Australian Competition and Consumer Commission (ACCC) and the states and territories. Working with other regulators, the ACCC identify and address the risk of serious injury and death from safety hazards in consumer products. The ACCC will also negotiate, assess and monitor the effectiveness of voluntary product recalls.<sup>xx</sup>

The total number of consumer product recalls in 2022 was 289, down significantly from 2021 where there were 394 product recalls. Not surprisingly, the leading category of

product recalls in consumer products has been products for babies and children. In 2022 there were 57 recalls within this category, down from 87 in 2021. The vast majority of recalled products were toys. Electronics and technology products had a decrease in recalls from 35 in 2022, down from 56 in 2021.<sup>xxi</sup>

## **Automotive Vehicles and Equipment**

Australian regulators and consumers have begun taking motor vehicle recalls much more seriously. There were almost 90 major vehicle recalls in Australia in 2022, affecting some 290,000 cars. The recalls included most vehicle types or brands, including not only combustion-engine vehicles but also electric cars. The number of automotive and related vehicles recalled in 2022 dropped to 227, down from 291 in 2021.

Automotive and related vehicle recalls in Australia are changing under the new Road Vehicle Standards (RVS) legislation, which became effective in July, 2021. If you are a supplier of vehicles or vehicle components, it's important you keep up to date with this new legislation. Under the RVS legislation, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts will assume regulatory responsibility for road vehicle and approved road vehicle component recalls.

All road vehicles and approved road vehicle components supplied to the Australian market must comply with standards under the RVS legislation. If they do not comply, or there is an issue with their safety, vehicle and component suppliers should undertake a voluntary recall to either fix the issue or remove the item from the market as soon as possible. Recalls can be either voluntary or compulsory, depending on their nature. A voluntary recall is action taken by vehicle and component suppliers to fix a safety or non-compliance issue with a road vehicle or approved component. A compulsory recall occurs when the responsible Commonwealth Minister issues a compulsory recall notice to suppliers if it appears they have not taken satisfactory action to prevent injury or to rectify non-compliance with applicable standards.

## **Australia Greenwashing**

In October 2022 the Australian Competition & Consumer Commission announced it would be addressing “greenwashing” in company websites. Greenwashing is a form of marketing or PR that deceptively highlights environmental credentials of the brand in order to appeal to more environmentally minded consumers. The ACCC announced the intention to examine over 200 company websites, looking for misleading environmental claims. These were to be conducted across a number of categories of product including food and beverage, cosmetics, clothing, appliances, energy and vehicles.

The ACCC announced the results of its examination in March 2023 where it revealed that, of the 247 businesses reviewed in the sweep, 57 percent were found to have made claims that the ACCC deemed “greenwashing.” The ACCC claimed that cosmetics, food and beverage and clothing and footwear had a particularly high incidence of greenwashing claims.

The ACCC reminded businesses that if they are making environmental claims about their products, they “are obliged to back up these claims through reliable scientific reports, transparent supply chain information, reputable third-party certification or other forms of evidence.”<sup>xxiii</sup>



# Recall Risk Transfer Options

Appropriate risk management of product recall exposures involves many aspects that are both product-specific and enterprise-wide. From a product risk perspective, insurance underwriters delineate not only the relative risk of a product, but also whether or not the product is an end product utilized directly by the consumer or if the product is a component or ingredient that may become a part of the final or end product. The interplay between products may significantly influence the exposure and the appropriate management of the risk.

The insurance industry further delineates the risk by the end use of the product. Is the product a consumable or topical product or is the product a finished consumer good? Before exploring the current state of the product recall market, it is important to understand some subtle differences between the available types of insurance.

## Product Contamination Insurance

Product contamination insurance is typically for food and beverage or consumable products. Product contamination insurance policies provide coverage for the risk of a contamination event that renders the product unsafe or dangerous if consumed or used. The product need not necessarily be the subject of a recall. For example, if a product has not yet been distributed, but is found to be contaminated, certain coverages under the policy may be triggered under contamination policies. Product recall insurance, which is more commonly used for non-food products, generally requires that the product has actually been recalled for the policy to be triggered.

### Insured Events Typically Found under Product Contamination Insurance Policy

Accidental Contamination	Malicious Tampering	Government Recall	Adverse Publicity	Intentionally Impaired Ingredient
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### Insured Events Typically Found under Product Recall Insurance Policy

Product Recall	Government Recall	Impaired Property	Product Guarantee
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Traditionally, both types of policies require that the recall is a safety-related event where either there has been, or the potential exists for, bodily injury or property damage if the product were used. However, there are certain instances where these policies may be extended to cover non-safety-related events. For example, both types of policies may include coverage for “government recall” events whereby the regulatory agency with oversight for the product may order or require a recall based on the potential for serious injury. Environmental testing of a manufacturing site by regulators may uncover a potentially deadly pathogen, which leads to the agency requiring the recall of products although no product has actually been confirmed to be contaminated.

## Insured Losses

Covered losses for either product contamination or product recall policies are highly customizable but generally may provide reimbursement for losses across a variety of categories.

Product Contamination or Recall Insured Losses			
Pre-Recall Expense	Extra Expense	Recall Costs	Brand Rehabilitation
Repair, Replace, Refund	Third-Party Recall Liability	Business Interruption	Crisis Consulting Expense

Covered events and/or covered losses vary by carrier and may significantly influence the costs and effectiveness of the policy. It is advisable to engage with brokers and underwriters who have a strong understanding of the availability of coverage across markets and who have technical experience in the area.

## Coverage Enhancements and Challenges

The increase in the number of carriers has created a competitive environment despite recent market losses. This competitive market environment has challenged underwriters to develop enhanced coverage options in order to compete beyond pricing. Whenever new coverages are introduced into the market it is important to understand why the enhanced coverage is being offered. In some instances, carriers may offer what appears to be an enhanced coverage, but in reality, it may otherwise already be covered under the policy. This can be particularly difficult when coverage enhancements may be subject to a sublimit. By accepting a sublimit, you may inadvertently limit coverage which otherwise might be provided under the policy to the full limit.

Coverage Enhancements		
Mold	Rancidity	Import Violation
Border Rejection	Religious Certification	Pest Infestation

In analyzing coverage for mold, rancidity and pest infestation it is important to understand that the definition of accidental contamination requires that the product “has or would cause bodily injury.” Depending on the type of mold, rancidity or pest infestation, the potential for bodily injury could be debated. For example, certain types of molds are harmless while others are not; even if only a small percentage of the population is at risk.

Product recalls due to non-compliance with religious certification would generally not meet the bodily injury or property damage threshold required under a product contamination insurance policy. These religious certifications refer to a strict set of dietary rules such as “kosher” or “halal” certifications. Although not injurious to health, these products would not meet the standards of production required and therefore would need to be recalled and either relabeled or destroyed.

Import violation means any accidental or unintentional contamination, impairment or mislabeling of insured products which results in the issuance of a notice of detention and hearing and/or a notice of refusal of entry by a regulatory agency to the named insured or their authorized importer of record.

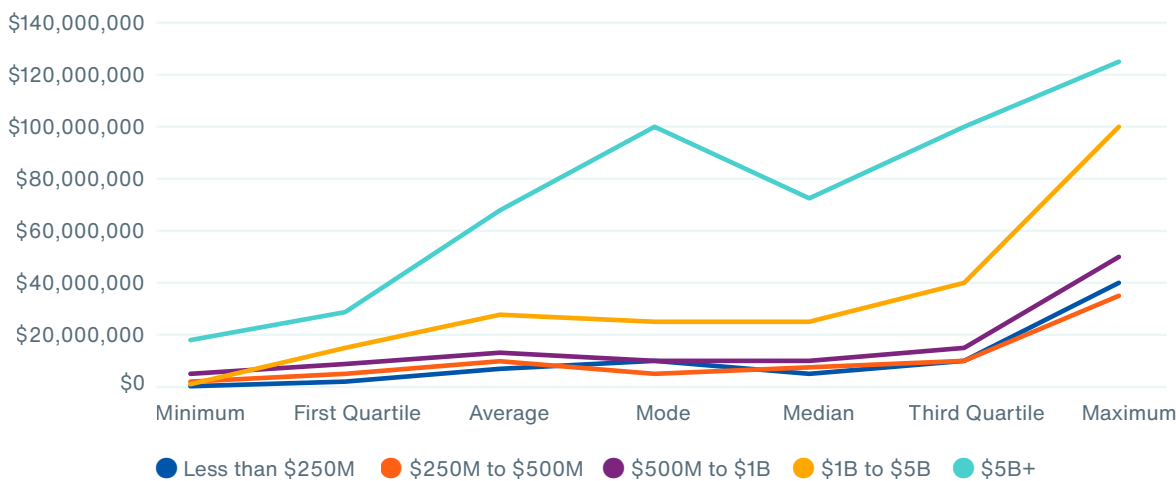
These coverages are in the early stages of development and have not received market-wide acceptance by all carriers. It is important to note that sublimits will likely apply and not all program participants will be able to offer the coverage. This may result in difficulty building layered programs, with potential coverage gaps applying to these newer coverages.

# Benchmarking Limits and Retentions

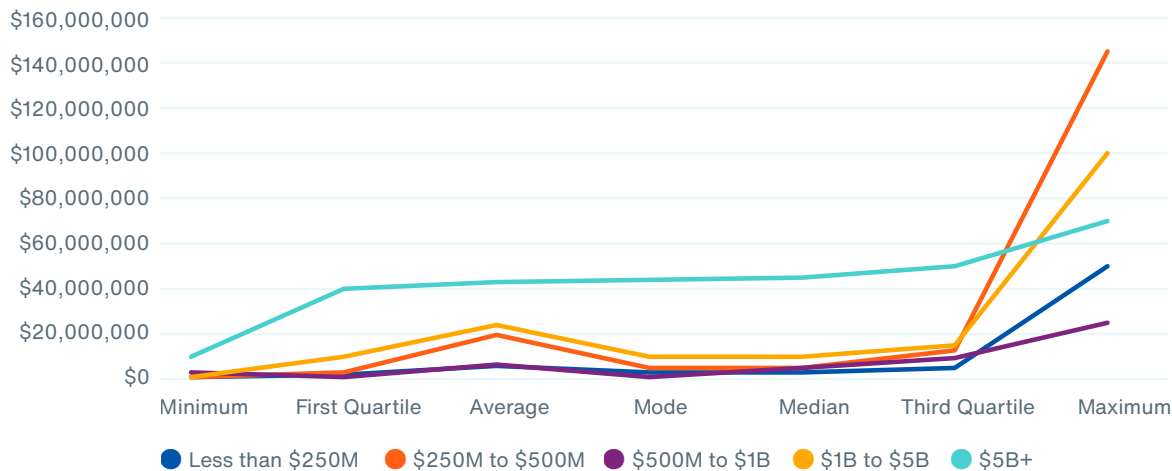
Aon’s Crisis Solutions practice maintains a proprietary database of purchasing trends. Reviewing historical purchasing trends is one method to consider in determining a program’s optimal structure. Historical data can also assist in analyzing trends to plan for changes in pricing and risk retention that are driven by the appetite of the insurance marketplace.

With these insights, our brokers are positioned to partner with insureds to have fact-based underwriter discussions, anticipate current and trending risks and achieve best-in-class placement results. Our recommendations are backed by facts.

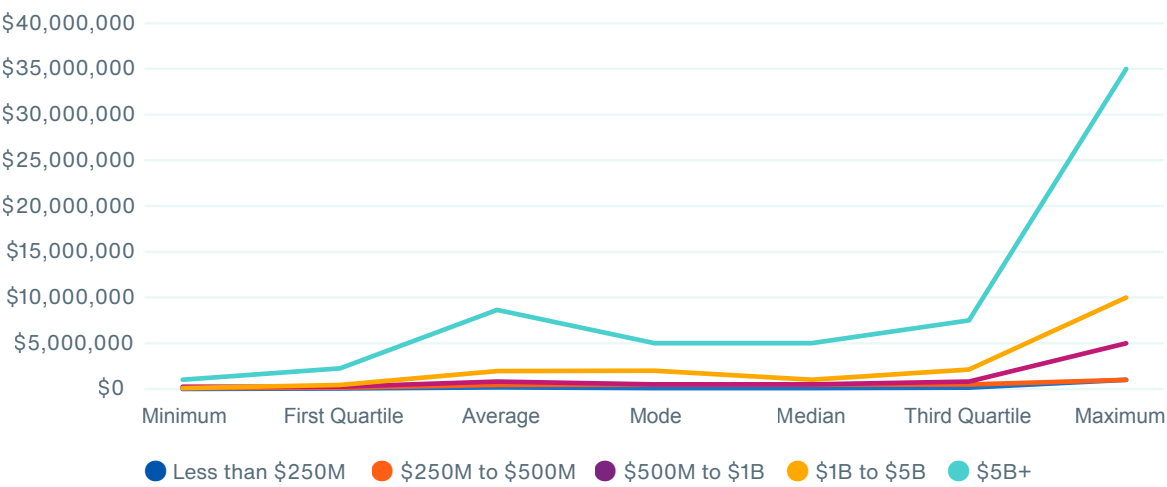
## Limit Benchmarking — Consumable and Topical Products



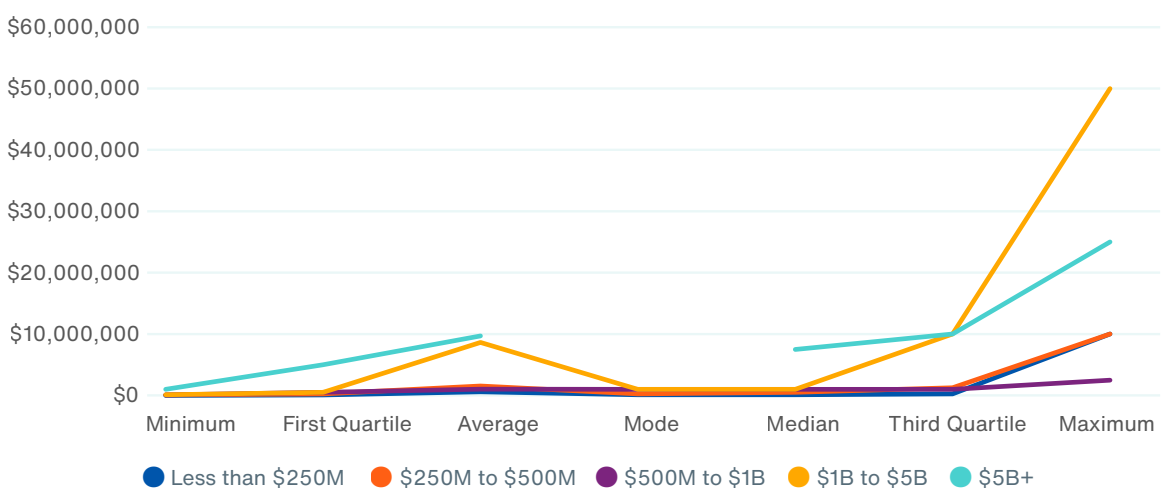
## Limit Benchmarking — Non-Consumable Products



Retention Benchmarking — Consumable and Topical Products



Retention Benchmarking — Non-Consumable Products



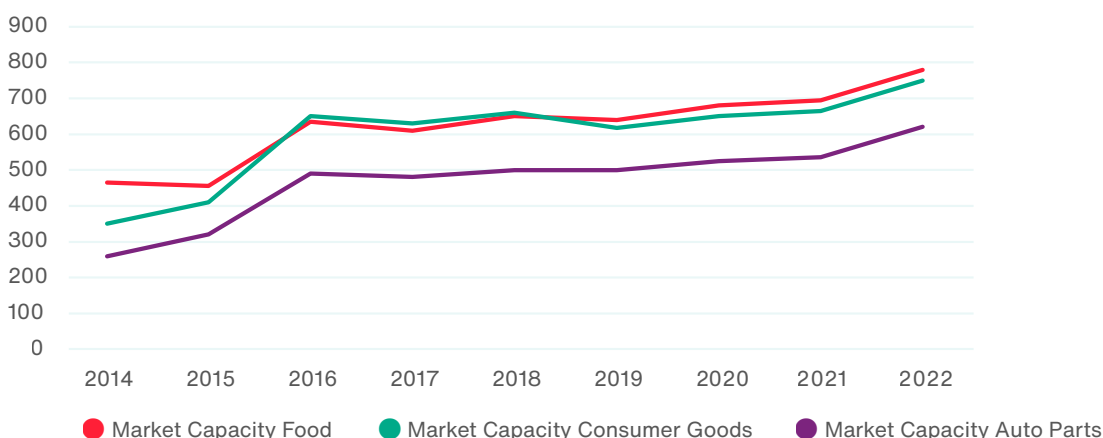
# Insurance Market Update

The product recall insurance marketplace has, after several profitable years, experienced a dramatic uptick in claims. Many of these claims were paid in 2022 while others remain in the adjustment process. Typically, these claims take more than 12 months to close given the business interruption aspect of coverage that continues for 12 – 18 months following the notice of the claim.

Losses in 2022 came across different product categories, including the food and beverage, consumer product and automotive industries. A single food ingredient resulted in 53 separate recalls during the summer of 2022 in the United States due to microbial contamination concerns. Products affected ranged from baked goods to beverages.

Despite the increases in the number of recalls, we have seen a number of new carriers and managing general agents enter the marketplace offering a combined additional capacity of \$85 million. Additional capacity entering the recall marketplace increased by 12 – 15 percent year over year, depending on product category. Automotive capacity continues to be the most limited among product categories, but leads this year's capacity in growth by 15.88 percent. In fact, since 2014, market capacity has more than doubled across all product categories.

## Recall Market Capacity by Product



Market capacity has increased steadily over the last 10 years across all product categories.

Overall, the market remains competitive but selective, with insurers looking to attract new buyers with strong risk management practices. Market conditions are also favorable for most renewals, with carriers offering competitive premiums and broad terms. However, on the back of a very challenging 2022, especially in the food and beverage sector, insurers remain disciplined and selective.

Local European insurers, who have historically written product recall as part of a combined general liability-product liability package policy, are moving away from this practice with clients experiencing large increases on premium and retentions. This has meant that more clients are exploring standalone policies and utilizing London market capacity, which has now become competitive against the local European markets.



Consumable products and consumer goods continue to be favored product categories over automotive component risks based on total market capacity. It is important to note that our review of market capacity compares the aggregate of the maximum capacity offered by each carrier within a particular product category. Aon placed recall policies with 33 different carriers in 2022.

2022 began with DUAL LLC adding \$25 million in capacity to the marketplace. DUAL announced their intent to enter the recall marketplace in the summer of 2021 with a team of underwriters recruited from SwissRe. DUAL's capacity runs across all product categories and they have been actively pursuing new business.

Market appetite and risk transfer capacity is limited for automotive component parts, with a maximum available capacity for automotive recall of \$150 million to \$200 million, depending on the component parts involved. Safety-critical components have the most limited capacity. Electric vehicle component parts used in battery modules would likely cap at \$100 million to \$150 million.

BluNiche, led by industry veteran Neil Evans, began offering recall insurance during the summer of 2022. Target industries for BluNiche include food, drink, restaurants, Pharma OTC, CBD, consumer products and auto components. BluNiche adds an additional capacity of \$25 million to the market.

Property, commercial and specialty insurer and reinsurer IQUW launched a new crisis management facility to help businesses anticipate, prevent, respond to and recover from a wide variety of risks in June of 2022. The new global crisis management portfolio will initially focus on product recall, including product contamination, auto and other component part recall and first-party recall risks with a capacity of \$15 million. This new facility is led by Jon Atkinson, who joined IQUW from Talbot Underwriting Ltd.

Finally, in October of 2022, Nexus Underwriting entered the domestic recall market offering coverage to the food and beverage, consumer goods and automotive component part industries. With a capacity of \$10 million, Nexus will offer coverage on a primary and excess basis. The Nexus Underwriting facility is being led by Christof Bentele and will focus on U.S.-based risks.

Ark Syndicate 4020 announced on March 20, 2023 that effective immediately, they will cease to write product recall business. The statement read in part, "After careful consideration, we have taken the difficult decision to close the account. Despite increased loss frequency in the sector, terms and conditions are not improving sufficiently to enable us to attain our near- and long-term profitability goals in this class." The Ark Syndicate only began entertaining product recall risks in June of 2021. Renewals will be allowed to runoff at natural expiration and Ark will maintain its in-house claims handling. Long-term agreements will be honored.

Despite increasing frequency and severity in product recall claims, significant new capacity has entered the recall market over the past 12 – 18 months, which has made for a particularly competitive marketplace. While the departure of Ark, a relative newcomer to the recall market, will not alone change the market dynamics, if we see additional carrier departures in the coming months, this could be a precursor of a hardening recall market.

## 2023 State of the Product Contamination and Recall Market

Coverage	Capacity	Losses
<p>Competition continues to drive innovation, with more carriers looking to add broader coverage offerings and enhancements. For example, eight markets now include a version of the new mold and pest infestation coverages, with others looking at adding it in the future. Markets are also looking for ways to offer broader solutions, like addressing the increasing demand for coverage in the electronic vehicles sector.</p>	<p>Market capacity is abundant, with new carriers entering the market in 2022 via managing general agents. Newer entrants continue to seek market share and have been successful, particularly on excess programs.</p>	<p>The industry is seeing an increase in loss activity across all product portfolios. Several markets have incurred significant losses in 2022 as the number of recalls exceeded pre-pandemic levels. Aon does expect that if losses continue, the market may harden in the future, but the marketplace remains competitive at present.</p>
Pricing	Limits	Retentions
<p>The recall market continues to be competitive as a result of new markets vying for market share and incumbent markets seeking to hold on to renewals. 2022 saw a continued drop in average and median rates across all product groups. Most clients who are experiencing rate decreases have long-term carrier relationships and clean loss histories or have moved to newer carriers.</p>	<p>Limits purchased in 2022 remained relatively flat year over year. However, the favorable pricing for recall insurance, especially on excess layers, juxtaposed to the approximate increased cost of a potential recall as a result of inflation and transportation challenges, fosters an environment where exploring higher limits is worthwhile.</p>	<p>The appropriate retention is unique to every company's individual circumstances. However, average retentions increased in 2022. Factors that led to higher retentions are the increase in claims activity being seen across all product lines and premium pressure in other lines of insurance. For smaller risks, there is usually little incentive for marginal retention increases and significant penalties for reduced retentions.</p>

Product Recall Claims Management

Product recall and contamination insurance policies present unique claims challenges. These policies are a hybrid between property and liability policies. Essentially, a liability type of event that has or would cause bodily injury or property damage and results in a recall triggers the policy. However, insured losses tend to more closely follow property losses, including recall, replacement, business interruption and extra expenses. Policy triggers for government recall, adverse publicity and impaired property extensions may also come into play.

Complicating the matter further is the issue of other insurance policies that may contribute or partially contribute to the loss. If a contamination or recall policy’s “other insurance” clause states that it is excess to other valid and collectible insurance, the insurer may request its policyholder provide access to its other policies. An insurer should not be requesting these policies as a pretext to deny coverage; rather, it asks for the policies to determine whether any other insurance, such as CGL or property, may contribute financially to the loss.

Preparations for Efficient Claims Management

Engage Adjusters and Accountants Early	Utilize a Common Consultant When Available	Prepare NDAs in Advance
Agree on Expectations for Claim Management	Communicate Prior to Settling with Partners	Cooperate and Work Together

Product recall claims create a fundamental cash flow risk to your business. Professional claims preparation and consulting services can help ensure that your organization receives proper reimbursement for losses covered by your policy, and these services can expedite the recovery process. Preparing and presenting the claim in a fashion that achieves a fast and favorable recovery can be key to getting your business back on track.

Addressing a multimillion-dollar loss requires defined objectives, a comprehensive strategy, timelines, documentation, and most importantly, a dedicated team that executes the plan. Insurers often engage experts such as independent adjusters and forensic accountants to assess the magnitude of the claim on their behalf. Without a dedicated team leading your claim efforts during what is often a period of high stress and great uncertainty, the claims process can easily go off the track.

Every product recall policy is different and every claim unique. For the application of sublimits and coverage provisions, you need to work with an experienced claims professional to help segregate costs appropriately, maximize recovery and ensure that all loss components are identified and included in the claim.

Proper categorization of costs is a significant issue when presenting claims to carriers. The most subjective part of the claim is the process of quantifying your loss of profits. You can maximize your claim efficiently by using forensic accountants on your behalf to leverage detailed analysis of pertinent financial statements and also by using proven analytic methodologies to calculate and document the loss. The goal is to put your business back in good standing so it can resume normal and profitable operations.

# Conclusion

The first line of defense against product recall or product contamination risk starts internally. Every company must have proper quality control and safety plans, good manufacturing procedures, supply chain management, traceability capabilities and a well-conceived recall plan.

Supplementing these procedures with risk management and transfer mechanisms to help test and prepare for a recall crisis and protect against financial loss through insurance should round out your product recall risk management program.

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