

NTIA, for each facilities-based provider of broadband service in their state, a list of all census blocks of no greater than two square miles in area in which broadband service is available to end users, along with the associated service characteristics identified in the Technical Appendix. For those census blocks larger in area than two square miles, Awardees must provide NTIA, for each facilities-based provider of broadband service in their state, either the address-specific data as described in the original Notice or a list of all street segments with address ranges in such census blocks, as contained within the U.S. Census Bureau's TIGER 4/Line Files or such other database of at least equivalent granularity, in which broadband service is available to end users, along with the associated service characteristics identified in the Technical Appendix. Awardees are not required to report the 11 fields of data expressly denominated as "End User" fields in the Record Format chart. Additionally, Awardees are not required to provide Maximum Advertised Downstream or Maximum Advertised Upstream Speed at the address level and may satisfy this requirement by providing such speeds across each service area or local franchise area, by Metropolitan or Rural Statistical Area.

(b) Availability by Shapefile—Wireless Services not Provided to a Specific Address

With respect to the "Availability Area Shapefile Details," item 4 will be satisfied if each polygon indicates the subscriber broadband service authorized maximum downstream and upstream speed available.

## 2. Residential Broadband Service Pricing in Provider's Service Area

(a) Average Revenue per End User and Weighted Average Speed

Awardees are not required to report average revenue per end user. Awardees must satisfy the remaining conditions of this section, provided that such data may be reported across a provider's service or local franchise area, by Metropolitan or Rural Statistical Area.

## 3. Broadband Service Infrastructure in Provider's Service Area

(a) Last-Mile Connection Points

Awardees are not required to report the data identified in this section. Nevertheless, to the extent an Awardee is unable to reasonably verify the

network service area availability data required under Section 1 of the Technical Appendix by other means, the Awardee should be prepared to conduct verification by reference to the first points of aggregation in the networks (serving facilities) used by facilities-based providers to provide broadband service to end users, as described in this section of the Technical Appendix.

## Clarification With Respect to Use of Data

NTIA intends no changes to the use of data collected hereunder, except to the extent that the clarifications and deferrals provided in this Notice may affect the type and level of detail of the data reported, or as otherwise expressly provided in this Notice. In light of these clarifications and deferrals, NTIA intends to identify all broadband providers by name on the broadband map, rather than leaving such identification to the discretion of the provider.<sup>5</sup> Thus, an address-specific search of the map shall identify the names of all providers whose service is available in the corresponding census block or street segment.

With respect to nondisclosure agreements between broadband service providers and awardees (see Notice Section V(B)), NTIA expects awardees to enter into such agreements upon the request of the service provider. Further, NTIA will condition its disclosure of Confidential Information to the FCC or other Federal agencies upon the agency's agreement to treat the data as confidential as provided in the Notice and as otherwise consistent with applicable law.

All other requirements provided in the Notice published on July 8, 2009, remain unchanged.

Dated: August 7, 2009.

**Lawrence E. Strickling,**

*Assistant Secretary for Communications and Information.*

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<sup>5</sup> In light of the clarification regarding reporting of availability data at a census block or street segment level rather than street address level, the definition of "Confidential Information" in section III of the Notice published on July 8, 2009, shall no longer include the identification of a service provider's specific Service Area. A service provider's "footprint" will likewise no longer be included in the definition of "Confidential Information." Notice, 74 FR at 32549.

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09-C0031]

### Ross Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Ross Stores, Inc., containing a civil penalty of \$500,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to Comment 09-C0031, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Renee K. Haslett, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7673.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: August 6, 2009.

**Todd A. Stevenson,**  
*Secretary.*

### In the Matter of Ross Stores, Inc.; Settlement Agreement

1. In accordance with 16 CFR 1118.20, Ross Stores, Inc. ("Ross") and the staff ("Staff") of the United States Consumer Product Safety Commission ("Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

#### Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product

<sup>4</sup> Topologically Integrated Geographic Encoding and Referencing (TIGER) is available at <http://www.census.gov>.

Safety Act, 15 U.S.C. 2051–2089 (“CPSA”).

3. Ross is a corporation organized and existing under the laws of Delaware, with its principal offices located in Pleasanton, California. At all times relevant hereto, Ross sold apparel.

#### *Staff Allegations*

4. From September to December, 2006, Ross held for sale and/or sold the following children’s upper outerwear product with drawstrings at the neck: Seena International, Inc., Brooklyn Express children’s hooded sweatshirts. From July 2007 to January 2008, Ross held for sale and/or sold the following children’s upper outerwear products with drawstrings at the neck: Scope Imports, Inc., boys’ hooded sweatshirts; Liberty Apparel Company, Inc., Jewel brand girls’ hooded sweatshirts; and Siegfried & Parzifal, Inc., Karl Kani boys’ fleece hooded sweatshirts. The products identified in this paragraph are collectively referred to herein as “Sweatshirts.”

5. Ross sold Sweatshirts to consumers.

6. The Sweatshirts are “consumer product[s],” and, at all times relevant hereto, Ross was a “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (“Guidelines”) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children’s upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure Sweatshirts they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission’s Director of the Office of Compliance to manufacturers, importers, and retailers of children’s upper outerwear. The letter urges them to make certain that all children’s upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children’s upper outerwear with

drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (“FHSA”) section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA’s section 15(b) reporting requirements.

10. Ross informed the Commission that there had been no incidents or injuries associated with the Sweatshirts.

11. Ross’s distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff’s May 2006 defect notice, and posed a strangulation hazard to children.

12. Recalls have been announced regarding the Sweatshirts.

13. Ross had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Ross had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Ross to immediately inform the Commission of the defect and risk.

14. Ross knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term “knowingly” is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Ross to civil penalties.

#### *Ross’s Responsive Allegations*

15. Ross denies the Staff’s allegations above, including, but not limited to, any allegation that Ross knowingly violated the CPSA.

16. Ross has entered into this Agreement solely to avoid protracted litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of Ross.

#### *Agreement of the Parties*

17. Under the CPSA, the Commission has jurisdiction over this matter and over Ross.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Ross, or a determination by the Commission, that Ross knowingly violated the CPSA.

19. In settlement of the Staff’s allegations, Ross shall pay a civil penalty in the amount of five hundred thousand dollars (\$500,000.00) within twenty (20) calendar days of service of the Commission’s final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

20. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

21. Upon the Commission’s final acceptance of the Agreement and issuance of the final Order, Ross knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission’s actions; (3) a determination by the Commission of whether Ross failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and the Order.

23. The Agreement and the Order shall apply to, and be binding upon, Ross and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Ross and each of its successors and assigns to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such

provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Ross agree that severing the provision materially affects the purpose of the Agreement and the Order.

Ross Stores, Inc.

Dated: 6/25/09

By:

Mark LeHocky,

Senior Vice President

General Counsel & Corporate Secretary

ROSS STORES, INC.

4440 Rosewood Drive

Pleasanton, CA 94588

Dated: 6/26/09

By:

Jeffrey B. Margulies,

Fulbright & Jaworski L.L.P.

555 South Flower Street, Forty-First Floor

Los Angeles, CA 90071

Counsel for Ross Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION STAFF

Cheryl A. Falvey,

General Counsel.

Ronald G. Yelenik,

Assistant General Counsel,

Office of the General Counsel.

Dated: 6/29/09

By:

Renee K. Haslett,

Trial Attorney

Division of Compliance,

Office of the General Counsel.

#### In the Matter of Ross Stores, Inc.; Order

Upon consideration of the Settlement Agreement entered into between Ross Stores, Inc. ("Ross") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Ross, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is

*further ordered*, that Ross shall pay a civil penalty in the amount of five hundred thousand dollars (\$500,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Ross to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Ross at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 5th day August, 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary

U.S. Consumer Product Safety Commission

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## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2009-1]

### Risk Assessment Methodologies at Defense Nuclear Facilities

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice, recommendation.

**SUMMARY:** The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) which identifies the need for adequate policies and associated standards and guidance on the use of quantitative risk assessment methodologies at the Department of Energy's (DOE) defense nuclear facilities.

**DATES:** Comments, data, views, or arguments concerning the recommendation are due on or before September 11, 2009.

**ADDRESSES:** Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004-2001.

**FOR FURTHER INFORMATION CONTACT:** Brian Grosner or Andrew L. Thibadeau at the address above or telephone number (202-694-7000).

Dated: August 5, 2009.

**Joseph F. Bader,**

Acting Vice Chairman.

### RECOMMENDATION 2009-1 TO THE SECRETARY OF ENERGY

*Risk Assessment Methodologies at Defense Nuclear Facilities Pursuant to 42 U.S.C. 2286(a)(5), Atomic Energy Act of 1954, As Amended*

Dated: July 30, 2009.

#### Overview

Quantitative risk assessment techniques are widely used to improve the safety of complex engineering systems. Such techniques have been relied upon in the nuclear industry for decades. One of the seminal documents, known as WASH-1400, used an event-tree, fault-tree methodology to assess the risk of accidents at nuclear power reactors operating in the United States.<sup>1</sup> Today, the U.S. Nuclear Regulatory Commission (NRC) employs a more sophisticated set of risk assessment tools and methodologies.<sup>2</sup> Likewise, the National Aeronautics and Space Administration (NASA) has developed and implemented a

<sup>1</sup> The Reactor Safety Study, October 1975 (sometimes known as the "Rasmussen Report").

<sup>2</sup> The NRC approach is summarized at <http://www.nrc.gov/about-nrc/regulatory/risk-informed.html>.

detailed policy on the use of quantitative risk assessment for its missions.<sup>3</sup>

The Department of Energy (DOE) has historically endorsed a "bounding" or deterministic approach to hazard and accident analysis, which continues to have important applications at defense nuclear facilities. Beginning in the early 1990s, the Defense Nuclear Facilities Safety Board (Board) observed increasing use of quantitative risk assessment techniques by DOE. This increased use was not viewed by the Board as objectionable in itself; the Board's concern was that DOE was using quantitative risk assessment methods without having in place a clear policy and set of procedures to govern the application of these methods at facilities that perform work ranging from assembly and disassembly of nuclear weapons to nuclear waste processing and storage operations. For this reason, the Board wrote to the Secretary of Energy on April 5, 2004, and made the following observation:

"[T]he Board has reviewed the DOE's use of risk management tools at defense nuclear facilities. This review revealed that DOE and its contractors have employed risk assessment in a variety of activities, including the development of documented safety analyses and facility-level decision making. The level of formality of these assessments varies over a wide range. The Board's review also revealed that DOE does not have mechanisms (such as standards or guides) to control the use of risk management tools nor does it have an internal organization assigned to maintain cognizance and ensure the adequacy and consistency of risk assessments. Finally, the Board's review showed that other Federal agencies involved in similar high-risk activities (e.g., National Aeronautics and Space Administration, U.S. Nuclear Regulatory Commission) have, to varying degrees, formalized the use of quantitative risk assessment in their operations and decision-making activities. These agencies have relevant standards and defined organizational elements, procedures, and processes for the development and use of risk management tools."

On this basis, the Board requested that the Secretary "brief the Board within 60 days of receipt of this letter as to DOE's ongoing and planned programs and policies for assessing, prioritizing, and managing risk."

The Board's initial concerns on this issue have been reiterated in letters dated November 23, 2005, and May 16, 2007. In the Board's 2006 Annual Report to Congress, the section on Risk Assessment Methodologies noted "the slow pace of its development," and the 2008 report noted that "all progress [has come] to a halt." The Board's most recent annual report stated that "a time when governments, financial institutions and industries worldwide are expediting the implementation of enterprise-wide risk governance programs, DOE's slow pace for developing a policy is of serious concern."

DOE's most recent correspondence on this issue, dated January 9, 2007, outlined plans

<sup>3</sup> NASA's policies and methods can be found at <http://www.hq.nasa.gov/office/codeq/risk/index.htm>.