UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

Date: JUL 13 2009

TO : The Commission

FROM : Todd A. Stevenson, Director,
Office of the Secretary

SUBJECT : Guidelines and Requirements for Mandatory Recall Notices: Notice of Proposed Rulemaking
Published in the *Federal Register* March 20, 2009
Comments due by April 20, 2009

COMMENT	DATE	SIGNED BY	AFFILIATION
1	4/13/09	Masafumi HASHIZUME Deputy Director International Textile Trade Office Ministry of Economy, Trade & Industry	METI of Japan
2	4/15/09	Joshua Kauffman	jdk49@drexal.edu
3	4/16/09	Andrew Joseph Hodlofski	5939 Houghton Street Philadelphia, PA 19128
4	4/17/09	Patrick J. Egan	patrickjosephegan@gmail.com
5	4/17/09	Jeffrey R. Stacey	Drexel University Earle Mack School of Law 3320 Market Street Philadelphia, PA
	4/18/09	Haley J. Conard	627 Forest Road Wayne, PA 19087

COMMENT	DATE	SIGNED BY	AFFILIATION
7	4/18/09	Tanisha Moore	tnm23@drexel.edu
8	4/18/09	Eli Levine Juris Doctorate candidate June 2010	Drexel University Earle Mack School of Law
9	4/18/09	Patrick Horan	ph87@drexel.edu
10	4/18/09	Kristina Smith	kls360@gmail.com
11	4/18/09	Talia Offord	to44@drexel.edu
12	4/19/09	Joseph Spirito	josephspirito@yahoo.com
13	4/19/09	Patrick Doran	patrickdoran01@gmail.com
14	4/19/09	Raina Goods	rsg46@drexal.edu
15	4/19/09	Jennifer Hermansky	Jah44@drexel.edu
16	4/19/09	Jacquelyn Kline	570 W. Dekalb Pike King of Prussia
17	4/19/09	Whitney Kummerow	4651 Umbria St. Fl.2 Philadelphia, PA 19127
18	4/19/09	Shane Eaton	eaton.shane@gmail.com
19	4/19/09	Ed Grattan	ejg36@drexel.edu
20	4/19/09	Lonn Selbst	1500 Chestnut St., Apt. 5F Philadelphia, PA 19102
21	4/20/09	Wayne Morris Vice President Division Services	Association of Home Appliance Manufacturers 1111 19th Street, Suite 402 Washington, DC 20036
22	4/20/09	Jane E. Wishneff Regulatory Counsel & Director of International Affairs	Consumer Specialty Products Association

COMMENT	DATE	SIGNED BY	AFFILIATION
23	4/20/09	Brynn Gentile	Drexel University Earle Mack School of Law
24	4/20/09	Kevin Burke President & CEO	American Apparel & Footwear Association 1601 North Kent Street Suite 1200 Arlington, VA 22209
25	4/20/09	Carter Keithley President	Toy Industry Association Inc. 115 Broadway, Suite 400 New York, NY 10010
26	4/20/09	Pamela Hill	311 E Shawmont Avenue Philadelphia, PA 19128
27	4/20/09	Ethan Jones	ej64@drexel.edu
28	4/20/09	Ushma N. Domadia	Drexel University Earle Mack School of Law
29	4/20/09	Alexander Sioutis	alexander.sioutis@gmail.com
30	4/20/09	Coleen McIntyre	mcintyre.colleen@gmail.com
31	4/20/09	William Willen Counsel for American Honda	American Honda Motor Co. Inc. 1919 Torrance Boulevard MS: 5002C-10A Torrance, CA 90501-2746
		Annamarie Daley Counsel for Arctic Cat Inc.	Robins, Kaplan, Miller & Ciresi LLP 2800 LaSalle Plaza Minneapolis, MN 55402
		Michael A. Wiegard Counsel for Kawasaki	Eckert Seamans Cherin & Mellot 1747 Pennsylvania Avenue 12th Floor Washington, DC 20006

COMMENT	DATE	SIGNED BY	AFFILIATION
31 cont'd.	4/20/09	David P. Murray Counsel for Yamaha Motor Corporation USA	Willkie Farr & Gallagher LLP 1875 K Street, NW Washington, DC 20006
		John B. Walsh Counsel for American Suzuki	American Suzuki Motor Corporation 3251 Imperial Highway Brea, CA 92821
		Yves St. Arnaud Counsel for Bombardier	Bombardier Recreational Products Inc. 726 Saint-Joseph Street Valcourt, Quebec, Canada
		Mary McConnell Counsel for Polaris	Polaris Industries Inc. 2100 Highway 55 Medina, MN 55340-9770
32	4/20/09	James Gillis	P.O. Box 13515 Philadelphia, PA 19101
33	4/20/09	Steve Pfister Senior Vice President Government Relations	National Retail Federation Liberty Place 325 7th St., NW. Suite 1100 Washington, DC 20004
34	4/20/09	Michael J. Connolly	3925 Walnut St. Apt. 1015 Philadelphia, PA 19104
35	4/20/09	Patrick Rhine	patrickrhine@mac.com
36	4/20/09	John L. Dougherty	JLDougherty@gmail.com
37	4/20/09	Matthew Sherlock	sherlock.matthew@gmail.com
38	4/20/09	Jaimee Moore	jaimeel.moore@gmail.com
39	4/20/09	Tara Ann Rabenold	Tar28@drexel.edu
40	4/20/09	David C. Gannone	dcg32@drexel.edu

COMMENT	DATE	SIGNED BY	AFFILIATION
41	4/20/09	Anthony H. Chwastyk	233 Southview Drive Delran, NJ 08075
42	4/21/09	Nancy Cowles Executive Director	Kids In Danger
		Rachel Weintraub Director of Product Safety and Senior Counsel	Consumer Federation of America
		Janell Mayo Duncan Senior Counsel	Consumers Union
		Donald L. Mays Senior Director of Product Safety	Consumers Union
		Diana Zuckerman, PhD President	National Research Center for Women & Families
		David Arkush Director, Congress Watch	Public Citizen
		Ed Meirzwinski Federal Consumer Program Director	U.S. Public Interest Research Group
		Elizabeth Hitchcock Public Health Advocate	U.S. Public Interest Research Group
43	4/21/09	Briana Elzey	Drexel University Earle Mack School of Law
44	4/21/09	Robert Waller, Jr., CAE President	Juvenile Products Manufacturers Association Inc. 15000 Commerce Parkway Suite C Mt. Laurel, NJ 08054

/

Stevenson, Todd

From: 橋爪優文 [hashizume-masafumi@meti.go.jp]
Sent: Monday, April 13, 2009 4:13 AM
To: Mandatory Recall Notices
Attachments: Comments from Japanese textile industry.doc

Dear Mr/Ms. secretary of CPSC

Regarding guideline and requirements of CPSIA, I send comments of Japan's textile industry. Please find attached file.

To facilitate enforcement of CPSIA, Japan hopes that CPSC will consider to reflect the comments to the guideline and requirements.

Best regards,

Masafumi HASHIZUME, METI of JAPAN

Masafumi HASHIZUME

Deputy Director
International Textile Trade Office,
Ministry of Economy,Trade & Industry

E-mail:hashizume-masafumi@meti.go.jp

Section 15(i) NPR.

Japanese textile industry's comments for guidelines and requirements for CPSIA

1. According to the answer of Question 6 on the "Guide to the Consumer Product Safety Improvement Act (CPSIA) for Small Business, Resellers, Crafters and Charities", it implies that testing shall require each product models, not product lots. Testing for each lots of same product model shall be avoided, so that distribution cost will increase. Regarding the certification of testing result of same product model, Japanese textile industry requests that its copy should be acceptable.

2. According to table-B on "Guide to the Consumer Product Safety Improvement Act (CPSIA) for Small Businesses, Resellers, Crafters and Charities", it implies that regarding children's clothes, materials which are actually regulated are neither fabrics nor yarn, are attachments such as buttons and slide fasteners, etc.

   Consequently, Japan's textile industry requests that the distribution and import of children's clothes should be accepted without the certification of testing result of the children's clothes whole, only with the attachments' certification or its copy.

2

Stevenson, Todd

From: Joshua Kauffman [jdk49@drexel.edu]
Sent: Wednesday, April 15, 2009 4:46 PM
To: Mandatory Recall Notices
Subject: Comment on the Proposed Guidelines and Requirements for Mandatory Recall Notices
Attachments: Comment.doc

Attached is a comment on the Proposed Guidelines and Requirements for Mandatory Recall Notices, published March 20, 2009.

PROPOSED GUIDELINES AND REQUIREMENTS FOR MANDATORY RECALL NOTICES COMMENT

The Consumer Product Safety Commission's Proposed Guidelines and Requirements for Mandatory Recall Notices published on March 20, 2009, will be an effective and useful tool to protect consumers. The requirements imposed on the manufacturers, retailers, and distributors are not burdensome and will help assure consumers' safety. However, there are ways to improve both the Notice of the proposed rule to eliminate potential future problems, and to improve the rule itself to eliminate a possible loophole.

The requirements of proposed section 1115.27, which lay out the specific information that must be contained in a mandatory recall notice, will prove beneficial to the consumer. The specificity required by this section reflects the importance placed on consumers' safety- to have this information disseminated in a number of different ways will assist consumers in identifying exactly which products are unsafe. In addition, having such specific information about the products will ensure that consumers know if they purchased the product in question. The requirements listed are thoughtful and will be effective.

Exhaustive Listing of Requirements

There are three issues within this Notice that may be potential pitfalls, and thus require some form of adaptation. First, the Notice does not list all the requirements of proposed section 1115.27. The Notice states that the new recall notices will be required to lay out information required by section 1115.27, as well as "other information that the Commission or a court deems appropriate." The Notice should state what type of other information the Commission may require. Notice is a key component of rulemaking. An aggrieved party may later argue that a requirement is placed on them that is burdensome and was not contemplated in the Notice. This

was the case in *Connecticut Light and Power Co. v. Nuclear Regulatory Commission.* The plaintiff claimed that the lack of a technical basis for the rule constituted a lack of notice under the APA. The court reluctantly ruled the agency's Notice was appropriate. This Notice should make clear that section 1115.27 is as exhaustive a list as can be contemplated at this time, and that other requirements will be included as the situations demand. Perhaps there is no way to adequately warn potential aggrieved parties to an extent that would insulate the Commission, but at the very least the Notice should clearly state that any future requirements imposed but not currently listed will be based on the fair assessment of the situation.

Expanded Purpose and Reasoning

Secondly, I believe that the Notice's purpose and reasoning is somewhat lacking and can be expounded upon. Courts defer to the agency's reasoning and motivation when analyzing a rule. The rulemaking purpose in *City of West Chicago v. Nuclear Regulatory Commission* was given complete deference by the court. Here, the proposed rule is supplemented with short bits of reasoning throughout the Notice, and one short "Basis for the Proposed Rule" section. That section points out that the rule is predicated upon the staffs' many years of experience, agency expertise, and general safety motivations. However, this section is devoid of specific examples or data to illustrate exactly what the problem is and how the proposed rule is solving the problem. The Notice should include specific rationalizations for why certain requirements will be effective.

Extension of these Provisions to Include Voluntary Recalls

The last issue is not a critique of form; rather, it is a way to eliminate a glaring loophole in the proposal. I believe this to be the most important change that must be acted upon. This rule should be extended to include voluntary recalls. Proposed section 1115.24 states that the "proposed rule would apply only to mandatory recall notices, i.e. recall notices issues pursuant to an order of the Commission... [or] of a U.S. district court." The rule exempts voluntary recalls. This rule proposes a series of requirements to make recalls safer, and as such, should require the same type of dissemination of information in all recall cases, not just mandatory ones. In fact, the Notice states a number of times the importance of these requirements to consumers. The requirements imposed by the proposed rule are not unnecessarily burdensome. Any company should have the information required by this rule readily available. As a matter of policy, this is a safety rule designed to protect consumers. Why not protect all consumers, rather than only those who bought products ordered recalled by the Commission or a court?

In a related point, coverage of all recall types would assure that a company could not simply announce a voluntary recall on the eve of a court-ordered recall, thus avoiding all the requirements of this rule. This seems like a very large and very obvious loophole. Products' safety issues take time to manifest themselves on a large market scale. Recalls do not come out of nowhere- the company usually knows that a recall is possible well in advance of its announcement. If companies do now want to take the steps required by the rule, a voluntary recall is a simple solution. Consumers' safety should not be compromised by omitting voluntary recalls.

The proposed recall requirements will serve to protect consumers by helping them identify the products that are being recalled, and the justifications for the recall. The

requirements proposed in section 1115.27 are not overly burdensome on the manufacturers, retailers, or distributors. The Notice itself does contain some problems, but with a handful of minor adjustments, will eliminate future potential pitfalls and assume a glaring loophole is closed.

Andrew Joseph Hodlofski

5939 Houghton Street • Philadelphia, Pennsylvania 19128 • 267-978-8153 •
hodlofski@yahoo.com

Consumer Product Safety Commission
4330 East West Highway
Room 502
Bethesda, Maryland 20814

16 April 2009

Secretary of Consumer Product Safety:

These comments are submitted individually and as a private citizen concerned with the timely dissemination of appropriate recall information of dangerous or hazardous products. They are in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") proposed new guidelines for "recall notices", titled, "Guidelines and Requirements for Mandatory Recall Notices," in 16 CFR §§1115 as required by Consumer Product Safety Improvement Act of 2008 ("CPSIA").

As proposed, §1115.27(i) does not allow for adequate dissemination of recall information to end-user consumers.

As currently proposed by the CPSC, §1115.25(i) requires only "significant retailers" of recalled consumer products take part in the dissemination of recall information and notices to end-user consumers. The definition of "significant retailers" includes exclusive retailers, importers, nationwide and regionally-located retailers, and retailers whose identification is "in the public interest." This leaves retailers who sell

small numbers of consumer products and may have a limited number or retail outlets out of the recall chain. These retailers might be described as "mom and pop" stores. While these retailers individually may be without regional or national impact, in the aggregate, they are responsible for hundreds of thousands of consumer product sales throughout the United States and are therefore potentially expose hundreds of thousands of consumers and their families to dangerous or hazardous products.

Suggested change to §1115.27

The definition of "significant retailer" should be changed to include an additional category defined as "single or limited situs retailer" who "sold, or held for purposes of sale or distribution in commerce the recalled consumer product." If defined in this way, §1115.27 would include the small mom and pop stores and family owned stores that play an important role in the lives of many American consumers.

It is important that §1115.27(i) define "significant retailer" in a manner which ensures the safety of all consumers, not just those who make their purchases at large chain stores or regional stores. Requiring that these smaller scale retailers participate in the dissemination of recall information to consumers will not only improve consumer safety in areas where larger scale retailers do not exist, it may actually encourage consumers to make purchases at small retailers by ensuring that they will be provided with important consumer safety information.

Burden on small businesses will be minimal.

As indicated in CPSC proposed rule 16 CFR §1115 supplementary information §f, §1115 only applies to mandatory recalls ordered by the Commission, not to voluntary recalls or recalls which derive from litigation settlement. The Commission further indicates at §f that mandatory recalls ordered by the CPSC are rare extremely rare. Small retailers would not frequently be required to comply with the notification requirements of §1115 because there simply are not many mandatory recalls. However, when those recalls do occur, it is critical that small retailers help disseminate what may be potentially lifesaving information to consumers in a timely and easy to digest manner.

Disseminating information to consumers may be accomplished in a variety of ways by these small retailers, the simplest being a posting of the recall notice at the entrance and exits to their stores. For those small retailers who maintain customer email lists it may be suggested that they send a mass email to their customers on file providing the recall information.

Proposed §1115.2 notification requirements will provide specific information to consumers to prevent panic and facilitate individual decision making.

The proposed requirement of §1115.2 that recall notices transmitted to consumers contain specific numbers and descriptions of injuries as well as ages of individuals injured or killed will provide consumers with real information that they can use to make

decisions which will impact the safety of themselves and their families. It is important that the CPSC enact this proposed rule requiring descriptions of the specific injuries caused by the recalled consumer product and the ages of those affected. In some cases, this will ensure that consumers are aware of the real danger posed by the product, encouraging them to take it out of service. In other cases, where the product is being mandatorily recalled before large scale serious injury or death has occurred, it may keep consumers from panicking, while still convincing them of the serious injury which could occur.

Conclusion

For the reasons stated herein, the CPSC should alter the proposed §1115.27(i) definition of "significant retailer" to include "single or limited situs retailers" – i.e. mom and pop or family stores. The impact on these retailers will be minimal, but the benefit to consumers in the case of a mandatory recall will be substantial. Furthermore, the CPSC should maintain the §1115.2 requirement that recall notices provide specific descriptions of types of injuries and the ages of those injured or killed by the recalled product.

Respectfully submitted,

Andrew J. Hodlofski

Stevenson, Todd

From: Andrew Joseph Hodlofski [hodlofski@yahoo.com]
Sent: Thursday, April 16, 2009 1:47 AM
To: Mandatory Recall Notices
Subject: Section 15(i) NPR Comments
Attachments: Section 15(i) NPR Comments.docx

Please find attached comments to section 15(1) NPR.

Thank you,
Andrew Hodlofski

Stevenson, Todd

/

From: Patrick Egan [patrickjosephegan@gmail.com]
Sent: Friday, April 17, 2009 9:30 AM
To: Mandatory Recall Notices
Subject: Comment Regarding Mandatory Recall Notices 74 FR 11883

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Dear Sir or Madam:

I am writing today to comment on the proposed Guidelines and Requirements for Mandatory Recall Notices found at 74 FR 11883. I am a current law student and have been asked by one of my professors to comment on this proposal as part of my Administrative Law coursework. I appreciate the opportunity to engage in the rulemaking process and thank you for your consideration.

The goal of the proposed guidelines and requirements is commendable; it is necessary and proper that the public be informed of potentially dangerous products and that the information shared with them be clear, complete, and somewhat uniform. I do have some concerns about the potential effects on small businesses, especially small importers, and the lack of specificity in some of the proposed provisions. My concerns are as follows.

1115.27(a) Requiring the Word "Recall" in the Heading and Text of a Notice

Requiring the word "recall" in the heading and text of the notice may be misleading to consumers and unnecessarily harmful to the character of a product, manufacturer, importer, or retailer.

A "recall" is commonly understood to mean that a product is being recalled from the market due to some major deficiency. This is not always the case and characterizing a warning to the public that may not include the need to pull a product from the market as a "recall" may mislead the public in thinking that the potential risk is worse than it actually is and may furthermore harm the reputation of a product, importer, retailer, or manufacturer unnecessarily.

Proposed section 1115.27(d) requires a clear and concise statement of the action(s) being taken concerning the product. It would be both more accurate and informative to the public to have the notice reflect the action being taken rather than blanketing every action as a "recall" when that term may be inaccurate as it is commonly understood as well as harmful to the reputation of the firm taking the action.

In the least a notice may be characterized by both the word "recall" as well as the "action taken" in the title and text of the notice so that the consumer can quickly discern that there is a potential problem with a product as well as the nature of the action being taken. This approach may avoid unnecessary panic that the word "recall" alone might cause the public while still advancing the CPSC's goal of increasing the likelihood that the notice will be read.

1115.27(g) Clarification that the Definition of "Manufacturer"

Includes "Importer"; 1115.27(2), (5) Characterizing an Importer as a "Significant Retailer" and Characterizing a Retailer as Such if Deemed to be in the Public Interest

Characterizing an importer as a "manufacturer" is inaccurate and functions in such a way that retailers who may have been beyond the intended scope of the statute will be identified to their possible detriment.

While identifying the source of a potentially harmful or defective product is of great importance in assisting the public in determining whether or not they have purchased that product, some consideration must be given to the effects such identification may have on the good name of a small business. Many small businesses in the United States import products bought in other countries. While it may be true that large retailers and manufacturers have considerable resources to investigate the quality of the products they purchase to resell to the American public, this is not commonly true of small business owners.
The statute clearly intends to identify manufacturers in an effort to assist the public in determining whether or not they have purchased a product that was made by the identified manufacturer. An importer, and certainly small businesses which import products, may not have the same control over the quality of the products imported as a manufacturer of that product. To identify a small business as a "manufacturer" of a product it imported is inaccurate and may lead the public to hold the importer responsible for a defective product that a small business does not have the means to identify as such. This could in effect place blame where is blame is not rightly due and harm the reputation of small businesses. Furthermore, the identification of such a small business which will likely not assist the public in determining whether they purchased the product in question to the extent that the identification of the true manufacturer would.

For similar reasons, characterizing an importer as a "significant retailer" could harm small business without furthering the goal of assisting the public in determining whether or not they have purchased the product in question. A small business which sells some imported goods does not have the resources that larger, more significant retailers do with which to investigate the quality of the products it imports. The stated reason for characterizing a retailer as "significant" is that identification of the significant retailer will allow the public to know that if they did not shop at that retailer, they are unlikely to have the product in question. Indentifying a small business that is not the sole retailer for a given imported product, will not assist in that endeavor. Therefore it is not useful to the public to have a small business importer identified, but could be potentially harmful to the small business.

Finally, a provision that allows the CPSC to characterize any retailer as significant if it is found to be in the public interest to identify that retailer is too vague and possibly beyond the authority granted by the CPSIA. In essence 1115.27(i)(5) says that a retailer is significant if the CPSC says it is significant and wants to identify the retailer for reasons of public policy. The CPSIA allows for the identification of manufacturers and significant retailers with the goal of assisting the public in determining whether or not they have purchased the product in question. If Congress had wished that any retailer be identified whenever it was deemed within the public interest to do so, they need not have limited such identification to manufacturers and significant retailers alone. Characterizing as "significant" any retailer that the CPSC wishes to identify under the guise of public interest is beyond the scope of what Congress intended.

Small businesses which import products, but are not the sole importer or retailer of that product, should be excluded from any provision that allows them to be characterized as a "manufacturer" or "significant retailer" for purposes of identification in recall notices and the factors used to determine which retailers qualify as "significant" for purposes of identification should be clear and within the scope intended by Congress.

1115.29(c) Commission Approval

Section 1115.29(c) rightly requires that any recall notice must first be approved in writing by the CPSC before any firm may disseminate that notice. However, no time limit is set for the approval process.

In the interest of informing the public about the potential dangers inherent in a product in a timely manner, the CPSC should adopt a time limit within which a proposed recall notice must be approved. Failure to approve or reject for revision any recall notice submitted to the CPSC within this time frame should allow a retailer to begin dissemination of the notice so as to inform the public of potential dangers as quickly as possible.

Thank you for the opportunity to comment on the proposed guidelines and requirements for mandatory recall notices and for your continued efforts to protect the public from potentially harmful products.

Sincerely,

Patrick J. Egan

Stevenson, Todd

From: Jeffrey Stacey [jrstac@gmail.com]
Sent: Friday, April 17, 2009 3:42 PM
To: Mandatory Recall Notices
Subject: Comment on Mandatory Recall Notices
Attachments: Comment_on_74_FR11883.doc

Note: I've attached a .doc file of the comment if that would be preferable.

Jeffrey R. Stacey

Drexel University

Earle Mack School of Law

3320 Market Street

Philadelphia, Pennsylvania

Office of the Secretary

Consumer Product Safety Commission

4330 East West Highway, Room 502

Bethesda, Maryland 20814

RE: Guidelines and Requirements for Mandatory Recall Notices

Dear Commissioner,

This is in response to the Notice of Proposed Rulemaking released by the Consumer Product Safety Commission ("Commission") on Friday, March 20, 2009.

As the proposed rules indicate, the Commission is aware that we live in an increasingly connected, wireless, and paperless society. Immense loads of information can be dispensed instantly to millions of individuals, and that

information can be processed and acted upon within seconds. It is with this in mind that I address the proposed rules set forth by the Commission regarding Mandatory Recall Notices.

In general, the fast and free flow of information is a net benefit to the nation's consumers. Information regarding product recalls can be dispensed quickly, at little cost, and can potentially save consumer's lives. However, this speed comes with a price; companies that inadvertently produce faulty products may be swiftly brought to bankruptcy in the blink of an eye. In my opinion, the proposed rules should better address the potentiality of such events with a few safeguards.

First, proposed § 1115.27(e), which requires in all Mandatory Recall Notices a statement of number of product units, should not be a necessary component to a Mandatory Recall if doing so would overwhelm the average consumer. In the event that the product in question is abnormally small and large quantities of the product were made and placed in commerce, there is a large, inestimable negative potential effect on the producer. "Other entities" disseminating the recall information, like the media, or consumer protection advocacy groups, may overemphasize the *amount* of products being recalled over the actual threat of harm to the public. While the Commission recognizes that these organizations, as well as "public interest groups, trade associations, other State, local and federal government agencies," have historically played a "significant role" in the dissemination of recall notices, this "role" may also have a profound negative impact on the public's perception of a particular firm. Additionally, I have a hard time discerning exactly how reading this particular piece of information would help a consumer. While I concede that a consumer can measure the magnitude of a recall with absolute numbers, that consumer will still need context in which to place that number. The requirement that a recall notice state the number of product units in all cases may, through the process just outlined above, frustrate the purpose of helping consumers to "Understand the product's *actual* or potential hazards." *See* 16 C.F.R. §1115.23(b)(2)(Emphasis added).

Second, proposed 16 C.F.R. § 1115.27(g) states that a recall notice must identify the firm by "stating the firm's legal name and commonly known trade name." This is related to the above concern in that not requiring a commonly known trade name can save some of the value created by the firm and retained, in some instances, by shareholder investments. Public censure of a firm can have many negative effects, but only requiring a parent-company name or the legal name of the firm can soften some of the blows. Especially when the economy is slow, this proposed requirement may result in a firm spending large amounts of capital on unforeseen public relations expenses, resulting in losses to investors and a public perception of diminished value for the firm. Perhaps if the proposed rule was rewritten to require a commonly known trade name only if the product being recalled was only known under that name, that would result in less of a penalty to otherwise responsible firms.

Lastly, proposed 16 C.F.R. § 1115.27(l) requires that a recall notice contain "a clear and concise summary description of all incidents (including, but not limited to, property damage), injuries, and deaths *associated with the product conditions or circumstances giving rise to the recall.*" (Emphasis added). The proposed rule, while labeled as "essentially a statement of policy," should provide more definition as to what "product conditions or circumstances" can give rise to an injury or death related to the product. *See* 16 C.F.R. § 1115.27(l). This area of the proposed rule deserves the most scrutiny. After all, who is not familiar with a concerned parent that will call for a complete boycott of a firm's products because of the product's potential to harm children? If an injury or death *can* be attributed to a product, but only speculatively, there is room in these proposed rules for the Commission to require that the injury or death be attributed to the product on the recall notice. The potential negative effects on producers here are self-evident; even if a producer did not make a faulty product that resulted in injury or death, it may still be held up to public scorn for these purposes under these rules.

Without a doubt, a holistic view of the proposed rules evidences that the Commission is striving to offer consumers a remarkable level of protection in the form of Mandatory Recall Notices. That commitment is commendable. Yet, the proposed rules must also be viewed in light of our current realities. We are increasingly interconnected. Information flows freely, and fast. If that information is imperfect, firms may suffer disastrous consequences leaving the public to clean up the mess in their wake.

Respectfully submitted,

Jeffrey R. Stacey

--
Jeffrey Stacey

Jeffrey R. Stacey
Drexel University
Earle Mack School of Law
3320 Market Street
Philadelphia, Pennsylvania

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, Maryland 20814

RE: Guidelines and Requirements for Mandatory Recall Notices

Dear Commissioner,

This is in response to the Notice of Proposed Rulemaking released by the Consumer Product Safety Commission ("Commission") on Friday, March 20, 2009.

As the proposed rules indicate, the Commission is aware that we live in an increasingly connected, wireless, and paperless society. Immense loads of information can be dispensed instantly to millions of individuals, and that information can be processed and acted upon within seconds. It is with this in mind that I address the proposed rules set forth by the Commission regarding Mandatory Recall Notices.

In general, the fast and free flow of information is a net benefit to the nation's consumers. Information regarding product recalls can be dispensed quickly, at little cost, and can potentially save consumer's lives. However, this speed comes with a price; companies that inadvertently produce faulty products may be swiftly brought to bankruptcy in the blink of an eye. In my opinion, the proposed rules should better address the potentiality of such events with a few safeguards.

First, proposed § 1115.27(e), which requires in all Mandatory Recall Notices a statement of number of product units, should not be a necessary component to a Mandatory Recall if doing so would overwhelm the average consumer. In the event that the product in question is abnormally small and large quantities of the product were made and placed in commerce, there is a large, inestimable negative potential effect on the producer. "Other entities" disseminating the recall information, like the media, or consumer protection advocacy groups, may overemphasize the *amount* of products being recalled over the actual threat of harm to the public. While the Commission recognizes that these organizations, as well as "public interest groups, trade associations, other State, local and federal government agencies," have historically played a "significant role" in the dissemination of recall notices, this "role" may also have a profound negative impact on the public's perception of a particular firm. Additionally, I have a hard time discerning exactly how reading this particular piece of information would help a consumer. While I concede that a consumer can measure the magnitude of a recall with absolute numbers, that consumer will still need context in which to place that number. The requirement that a recall notice state the number of product units in all cases may, through the process just outlined above, frustrate the purpose of helping consumers to "Understand the product's *actual* or potential hazards." *See* 16 C.F.R. §1115.23(b)(2)(Emphasis added).

Second, proposed 16 C.F.R. § 1115.27(g) states that a recall notice must identify the firm by "stating the firm's legal name and commonly known trade name." This is related to the above concern in that not requiring a commonly known trade name can save some of the value created by the firm and retained, in some instances, by shareholder investments.

Public censure of a firm can have many negative effects, but only requiring a parent-company name or the legal name of the firm can soften some of the blows. Especially when the economy is slow, this proposed requirement may result in a firm spending large amounts of capital on unforeseen public relations expenses, resulting in losses to investors and a public perception of diminished value for the firm. Perhaps if the proposed rule was rewritten to require a commonly known trade name only if the product being recalled was only known under that name, that would result in less of a penalty to otherwise responsible firms.

Lastly, proposed 16 C.F.R. § 1115.27(l) requires that a recall notice contain "a clear and concise summary description of all incidents (including, but not limited to, property damage), injuries, and deaths *associated with the product conditions or circumstances giving rise to the recall.*" (Emphasis added). The proposed rule, while labeled as "essentially a statement of policy," should provide more definition as to what "product conditions or circumstances" can give rise to an injury or death related to the product. *See* 16 C.F.R. § 1115.27(l). This area of the proposed rule deserves the most scrutiny. After all, who is not familiar with a concerned parent that will call for a complete boycott of a firm's products because of the product's potential to harm children? If an injury or death *can* be attributed to a product, but only speculatively, there is room in these proposed rules for the Commission to require that the injury or death be attributed to the product on the recall notice. The potential negative effects on producers here are self-evident; even if a producer did not make a faulty product that resulted in injury or death, it may still be held up to public scorn for these purposes under these rules.

Without a doubt, a holistic view of the proposed rules evidences that the Commission is striving to offer consumers a remarkable level of protection in the form of Mandatory Recall Notices. That commitment is commendable. Yet, the proposed rules must also be viewed in light of our current realities. We are increasingly interconnected. Information flows freely, and fast. If that information is imperfect, firms may suffer disastrous consequences leaving the public to clean up the mess in their wake.

Respectfully submitted,

Jeffrey R. Stacey

6

April 18, 2009

Haley J. Conard
627 Forest Road
Wayne, PA 19087

Consumer Product Safety Commission
Office of the Secretary, Room 502
4330 East West Highway
Bethesda, MD 20814

Comment on Section 15(i) NPR: Guidelines and Requirements for Mandatory Recall Notices

To Whom It May Concern:

Several product manufacturers in my community are affected by the recently-enacted requirements of the Consumer Product Safety Improvement Act (CPSIA) of 2008, specifically the Requirements for Recall Notices mandated by 15 U.S.C. §2064(i). On behalf of these manufacturers, I submit this comment on the March 20, 2009 Notice of Proposed Rulemaking titled "Guidelines and Requirements for Mandatory Recall Notices."

The CPSIA requires a party subject to a recall notice under the Consumer Product Safety Act (CPSA) to include in its recall notice "[t]he number and a description of any injuries or deaths associated with the product . . . ." 15 U.S.C. 2064(i)(2)(G). Proposed Rule § 1115.27(l) follows this requirement to the letter, repeating this precise statutory language. This is problematic because a manufacturer, according to the plain language of both the CPSIA and the Proposed Rule, will likely read this to require that ALL injuries or deaths associated with the product must be disclosed in the recall notice, despite the possible presence of other causes of injury, such as gross negligence or use contrary to warning labels. The statutory language "associated with the product" is very broad, as is fitting when Congress has entrusted the CPSC to promulgate more detailed rules administering the CPSIA. However, instead of parroting the same broad language in its Proposed Rule, the CPSC should clarify whether a manufacturer must include any death or injury associated with the product, however tangentially, that was substantially due to either gross negligence or use of the product in a way contrary to its warning label.

I propose that a manufacturer should not be required to include injuries or deaths associated with the product where it has been determined that the user was grossly negligent or clearly used the product contrary to a warning label. An example of such an incident might be someone who injures himself or someone else by engaging in horseplay with a chainsaw which did not have its safety guard installed as per the warning included with the product. Such an injury is "associated with the product," but is substantially due to the user's negligence and failure to abide by safety warnings, and not due to an inherent "unreasonable risk of injury associated with consumer products" from which the CPSA seeks to protect the public. *See* 15 U.S.C. § 2051(a)(3) ("Congressional findings and declaration of purpose").

Such an alteration to the Proposed Rule would protect manufacturers from the heightened fears of the public regarding their product that would result if a recall notice had to list all injuries and deaths associated with the product. Listing all incidents, whether specifically due to a defect or inherent risk from the product itself or to some culpability of the user, will communicate a false sense of danger to the public. A given product may not be nearly as dangerous as it will appear when every injury or death, even if substantially due to negligence or misuse, must appear in the notice. The spread of such artificially increased alarm regarding a product will be financially detrimental to many manufacturers. This detriment is especially probable due to CPSC's allowance in Proposed Rule § 1115.26(b)(i)-(v) for recall notices to be communicated through various forms of mass media. Recall notices through radio, TV, etc. have the potential to reach far beyond members of the public who have actually purchased the product, and may discourage people from ever buying other products from that manufacturer, all due to the artificially heightened sense of danger.

The CPSC has been given specific authority from Congress in the CPSIA to require manufacturers to include "[o]ther information the Commission deems appropriate" in recall notices. 15 U.S.C. 2064(i)(2)(I). Thus, Congress has "explicitly left a gap for [the CPSC] to fill . . . ." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984). Under the *Chevron* test, Congress has not spoken specifically to the issue raised in this comment, but has made provision for the CPSC to clarify the information that must be included in recall notices. Therefore, should the CPSC clarify or amend their Rule as I will propose, they should receive *Chevron* deference, and their interpretation will be respected as that of the agency administering the CPSIA.

I propose one of two solutions. Proposed Rule § 1115.27(l) should be amended to add a subsection (1) indicating either:

(1) A recall notice need not include descriptions of those injuries or deaths associated with the product that have been determined, in a court, official investigatory, or other proceeding, to have been substantially caused by the user's gross negligence or use contrary to a properly affixed warning label meeting the requirements for such labels under the CPSA.

OR

(1) When any of the described injuries or deaths associated with the product have been determined, in a court, official investigatory, or other proceeding, to have been substantially caused by the user's gross negligence or use contrary to a properly affixed warning label meeting the requirements for such labels under the CPSA, the recall notice may explain these factors in more detail in order to clarify to the consumer the extent of the actual danger stemming from the product itself, independent of any user negligence or contrary use.

I appreciate the opportunity to comment on this Proposed Rule.

Sincerely,

Haley J. Conard

Stevenson, Todd

From: Haley Conard [haleyconard@gmail.com]
Sent: Saturday, April 18, 2009 1:15 PM
To: Mandatory Recall Notices
Subject: Fwd: Comment "Section 15(i) NPR"
Attachments: CommentSection15(i)NPR.doc

My apologies--here is the attached comment.

To Whom it May Concern,

Please find attached a comment on the March 20, 2009 NPR regarding Guidelines and Requirements for Mandatory Recall Notices.

Sincerely,

Haley J. Conard

Stevenson, Todd

From: Tanisha Moore [tnm23@drexel.edu]
Sent: Saturday, April 18, 2009 3:15 PM
To: Mandatory Recall Notices
Subject: "Section 15(i) NPR"

April 18, 2009

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Re: Proposed "Guidelines and Requirements for Mandatory Recall Notices: Notice of Proposed Rulemaking" (16 CFR Part 1115)

This comment is regarding the Notice of Proposed Rulemaking 16 CFR Part 1115. Overall, I find that the above NPR is on point with further effectuating Congress's goal of protecting consumers from unreasonably dangerous products. I agree that manufacturers, retailers, and distributors should all be responsible for issuing the recall notices because all enjoy the benefit from selling the products (profits). Thus, they should be accountable to the consumer when a product turns out to be dangerous.

Furthermore, I believe that it is important to specify the content and form of the recall notices. This increases uniformity and consumer awareness because oftentimes people are not even aware that a product is being recalled. Or, if they are sent a recall notice they discard it because they are not sure what it is. As a consumer, I have thrown out countless recall notices because I mistakenly thought they were junk mail, extended warranty solicitations, or advertisements. Thus, a recall notice should: 1) allow the consumer to quickly identify that it is a recall notice and 2) be reader-friendly.

Comment #1: Direct Recall Notices
16 CFR §1115.26(4)(b)(2)

From personal experience, I agree that direct recall notices are the most effective form of a recall notice. However, according to the supplementary information, due to the lack of specific contact information, most recall notices are disseminated to broad audiences.

One way to mitigate the fact that firms often lack the consumer's specific contact information may be request that firms who electronically notify its consumers to request consumer involvement. For instance, most people today communicate through some form of electronic communication whether it is via email, text, instant messaging, twitter, Facebook, etc. As such, consumers may be able to play a role in relaying recall notices directly to other consumers of the product.

For example, a electronic direct recall notice sent to an identified consumer could contain a message stating something along the lines of "please forward this recall notice to anyone who you know is a user/consumer of this product." I think people are likely to open and read a message from a person who is familiar to them.

Comment #2: Making Recall Content More User Friendly
16 CFR §1115.27 Recall notice content requirements

The content requirements contained in Subpart C are very comprehensive. A consumer can never have too much information. However, I would like to make a few suggestions regarding the formatting of the content requirements. Most consumers are often very busy and do not have extra time to read lengthy recall notices at a single sitting. Therefore, recall notices should be required to list the most important information first.

For example, the picture of the product should be the first thing a consumer sees after the words "RECALL." Next, the recall notice should list the most important points in descending order such as: description of product hazard, type of hazard or risk (i.e. death), identification of retailers, etc. This prevents the important information from being buried and overlooked by the busy consumer who may not have the time to read the full recall notice in one sitting. Lastly, something that should be considered is require that the contents we written in a manner that increases readability, such as bulleted phrases instead of lengthy paragraphs. This will improve the readability of the recall notices.

Conclusion
Overall, I agree with the proposed rule. It is well written and very comprehensive.

Sincerely,

T. Moore

8

Stevenson, Todd

From: Eli Levine [elislevine@gmail.com]
Sent: Saturday, April 18, 2009 5:03 PM
To: Mandatory Recall Notices
Cc: NEILWISE@camden.rutgers.edu
Subject: Mandatory Recall Notice comment
Attachments: admin_comment.docx

Please find attached my comment on the proposed rules of mandatory recall notices. Thank you.

Eli Levine
Juris Doctorate candidate June 2010
Earle Mack School of Law, Drexel University

Please accept the following in response to the Consumer Product Safety Commission's request for comments regarding their *Guidelines and Requirements for Mandatory Recall Notices : Notice of Proposed Rulemaking.*

General Comment

The proposed rules are consistent with the statutory authority and purpose of the CPSIA as well as the canons of fairness and equity that serve as the foundation of American democracy. The rules that would be enacted by this proposal are aimed at achieving greater specificity and efficiency while improving the overall effectiveness of recall notices. Implementation of the proposed rules not only achieve these goals, but the proposed rules also serve as indispensible components of the type of transparency essential to promoting a fully informed marketplace, itself an integral characteristic of a fully-functioning capitalistic society. Proposed rulemaking, within any context, carries with it inherent concerns over the limitations it will impose on the process currently in place. The analysis necessary to properly assess the value of the proposed rules must focus on the benefit the changes advance offset by any restrictions they promulgate, essentially any proposed rule needs to carry with it a positive absolute value to be viable. Reviewing the rule proposals for mandatory recall notices under this approach, it is decidedly apparent that a net benefit is achieved by these rules. The most legitimate concern is the cost associated with the incorporation of the rules, especially the burden it could impose on smaller businesses. While smaller businesses do articulate a valid concern, the proposed rules more represent administrative protocols (for example, 1115.27(e) requires stating the approximate number of units covered by the recall,

including all product units manufactured, imported, and/or distributed in commerce; 1115.27(f) requires identifying the risks of potential injury or death associated with the product, and identifying the problem giving rise to the recall and the type of hazard or risk at issue) than any imposition that would require significant expenditures of time or money. More importantly, the basis of the dissemination of recall notices from those entity's required to make these disclosures is not expanded in any manner that exceeds the current scope embodied by the CPSIA, that is, the proposed rules do not add to when these entities are required to make recall notices but instead merely alters the information required to be in the recall notices. Characterizing the proposed rules from a benefit vs. burden analysis, the proposed rules offer a Pareto Improvement to the marketplace, allowing fuller and more accurate disclosures to reach those who should have the information. In effect, the rule proposals represent consumer intuitive initiatives, the *sine qua non* of an efficient market.

Specific Comment

Proposed rule 1115.27(c) requires disclosure of information that describes the product being recalled such as the product's color, and identifying tags or labels. This additional notice requirement serves the purpose of making identification of a recalled product more efficient without imposing too high a burden on the entity required to make the disclosure, as this information is readily available and easily accessible by the party making the disclosure. Proposed rule 1115.26(a)(4) would recognize that a direct recall notice is the most effective form of a recall notice, and proposed rule 1115.26(b)(2) would state that when firms have contact information they should issue direct recall

notices. Both of these proposed rules are aimed at informing those entities that are most likely in need of the information. While direct mailing may seem to entail great costs, especially if there is a long list of addresses, it is completely in-line with the essence of the CPSIA and is also representative of the canon of equity that permeates American legislative and judicial responsibilities, that being the notion that if a benefit is derived, in fairness, any costs associated with the acquisition of that benefit should also be borne. Also, the proposal of directly mailing those who are known to have had an intimate connection with the product being recalled is correctly placed on the party who has this information, as they are the cheapest cost avoider and the appropriate entity to bear these costs.

Conclusion

It is my opinion that the proposed rules in the Consumer Product Safety Commission's *Guidelines and Requirements for Mandatory Recall Notices : Notice of Proposed Rulemaking* are appropriate and consistent with the statutory authority and purpose of the CPSIA.

Sincerely,

Eli Levine
Juris Doctorate candidate June 2010
Earle Mack School of Law, Drexel University

Section 15 (i) NPR

Comment

Patrick Horan

April 18, 2009

Defective products have been a very real issue in recent times, most visibly children's toys being manufactured in China containing lead paint, and therefore, achieving effective management of these situations could protect many from the dangers related to defective or harmful products. The Notice of Proposed Rulemaking relating to Section 15(i), or enhanced recall authority, appears to be an effective rule which reflects the organic statute it is derived from, protects the public from the harm of defective products requiring recall, and gives accurate guidance to manufacturers and retailers of the recalled products. The organic statute, *The Consumer Product Safety Improvement Act of 2008*, requires "Not later than 180 days after the date of enactment of the Consumer Product Safety Improvement Act of 2008, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required under an order under subsection (c) or (d) of this section or under section 12. Such guidelines shall include any information that the Commission determines would be helpful to consumers in..." and continued by leaving guidance in various topic areas. The Consumer Product Safety Commission effectively applied this guidance when promulgating these proposed rules. However, there are a few areas, affecting both consumers and manufacturers or retailers that I would like to bring to light by commenting on.

The first area of concern, as I have viewed it, affects consumers. The direct recall notice requirements, a1115.26(b)(2), require that a "direct recall notice should be used for each

consumer for whom a firm has direct contact information. Direct contact information includes, but is not limited to, name and address, and electronic mail address. Forms of direct recall notice include, but are not limited to, United States mail, electronic mail, and telephone calls." The rule however stops short of requiring which forms of contact are acceptable. I propose that a firm should be required to contact an individual by every possible means available to the firm. By this I mean that a firm should have to email an individual if that information is available, also United States mail the individual if a mailing address is available, and call an individual if a phone number is available. The consumer is at risk here, and stopping short of exhausting all avenues of contact would continue that risk.

The second area of concern that I would like to address relates to the definition of significant retailer. I am concerned with the ambiguity of the final factor set out in the definition of significant retailer, and how this ambiguity affects manufacturers and retailers. S1115.27(i)(5) states that a firm must be identified as a significant retailer if "[i]dentification of the retailer is in the public interest." Even though I agree with the character of this factor, which I would define as protecting the consumer over worrying about exact guidelines, I feel that the lack of clear guideline makes it difficult for the manufacturers and retailers to properly report the significant retailer. In the end, I am not sure that this vague factor would really have much of a negative impact on the process of reporting, but I feel that there could have been more of an effort by those who drafted the rule to define what was a "public interest" rather than using it as a catch-all. These types of "public interest" and "public policy" catch-all's are seen in various places throughout the law, mostly to protect from the unknown, but I would argue that they more accurately achieve confusion on the part of those trying to apply the law rather than protecting from society from the unforeseen.

The third and final area which I would like to comment on relates to both parties. This is a general statement about the level of information which is now required by these increased reporting standards. In reading the proposed rule, I was quite surprised that these standards were not required prior to this rule in reporting recalls. All of the information listed in the rule appears to be readily available to any semi-sophisticated firm which would be affected. The protection that could arise from just disseminating this information to the interested parties far outweighs the added work for the reporting firms. These standards appear to be fair to the affected manufacturers and retailers, and likely to result in an increase in recall information which, when properly received, could protect many consumers.

Stevenson, Todd

From: Patrick Horan [ph87@drexel.edu]
Sent: Sunday, April 19, 2009 4:07 PM
To: Mandatory Recall Notices
Subject: Section 15(i) NPR
Attachments: Section 15 (i) NPR.docx

Stevenson, Todd

From: Kristina Smith [kls360@gmail.com]
Sent: Saturday, April 18, 2009 5:14 PM
To: Mandatory Recall Notices
Subject: Section 15(i) NPR

Caption: Section 15(i) NPR

Comment Submitted by: Kristina Smith

Proposed Subpart C of §1115 is generally consistent with the statutory authority and purpose. It thoroughly establishes the guidelines and requirements for recall notices ordered by the Commission or by a United States District Court under the Consumer Product Safety Act. While most of the proposal fulfills that purpose, there are a few sections that could be more effective in their execution:

Proposed §1115.24 – Applicability

In the applicability description, the proposal states that the proposed rule "would not contain requirements for recalls and recall notices that are voluntary…Unless and until the Commission issues a rule containing requirements for voluntary recall notices, the proposed rule would serve as a guide for voluntary recall notices" (Section D(2)). The proposed rule thoroughly lays out the information required for mandatory recall notices and would apply well to voluntary recall notices. Mandating the application of the proposed rule to voluntary recall notices would create uniformity in the process and take away some of the flexibility that manufacturers have in deciding what information to provide to consumers. Uniformity in all recall notices would protect the public from product hazards by clearly identifying the pertinent information that consumers need about recalled products. Taking away manufacturer discretion in deciding what information to provide in a voluntary recall would guarantee that consumers get consistent information from manufacturers. Furthermore, providing the media and other interested parties with uniform information on all product recalls would enable them to more easily communicate about recalls to the public as a whole.

Proposed §1115.26 (c) – Languages in addition to English

The proposed rule provides that "where the Commission or a court deems it to be necessary or appropriate, the Commission may direct that the recall notice be in languages in addition to English" (Section D(4)). Although leaving this up to the Commission or a court's discretion is a good idea, it may beneficial to add a few parameters within the language of the proposal dictating when producing recall notices in other languages is mandatory. For instance, if the product is one that the labeling is primarily in a language other than English. Another example is if the instructions that come with a product are written in multiple languages. By creating a few areas that mandate additional languages, it will cut down on the administrative burden while continuing to protect consumers.

Proposed §1115.27(f) – Description of the Substantial Product Hazard v. §1115.27(l) – Description of Incidents, Injuries, and Deaths

Section §1115.27(f) describes the product hazard, while §1115.27(l) dictates that all results of the product hazard be listed in the recall notice. Part l seems more like a subpart of Part f, instead of its own section. Providing this information is a very good idea, but providing it together may increase cohesiveness and impact.

Proposed §1115.27 (i) – "Significant Retailer"

The proposed definitions for a significant retailer in §1115.27(i) are excellent. The list is very comprehensive and easy to follow. Under the definitions provided, most retailers would fit into the category of significant retailer. This is beneficial because it will help guarantee that consumers are made aware of recalled products through the outlet from which they bought the product.

//

Stevenson, Todd

From: Talia [to44@drexel.edu]
Sent: Saturday, April 18, 2009 8:49 PM
To: Mandatory Recall Notices
Subject: Section 15 (i) Comment
Attachments: Comment Section 15 i.docx

Effectively, I have submitted 3 different comment documents. Please feel free to delete all previous comments from 'Talia Offord.' This document captures all of my comments.

Thank you,

Talia.

16 CFR Part 1115 Section 15 (i)

Comments

Please find three suggestions to Section 15 (i) below. Overall, Section 15 (i) is well written and well reasoned. Thank you for the opportunity to comment.

Comment 1

Based on the Administrative Procedure Act ("APA"), it is recommended that the Commission include access to the information and data that the agency used to create this NPR. The underlying statute does not appear to give the public a meaningful opportunity to comment on the NPR for the Guidelines and Requirements for Mandatory Recall Notices.

The APA § 553 (c) ("553") requires that agencies give "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." Courts have interpreted 553's requirement that interested parties be allowed to submit comments on proposed rules to require a "meaningful opportunity" to participate in the rulemaking process. These courts have interpreted meaningful opportunity as the public's opportunity to comment on not only the NPR, but any data or studies upon which the agency relied to create the NPR. Courts thus required agencies to also provide notice of any data or studies upon which the agency relied.

Notice improves the quality of agency rulemaking by insuring that the agency regulations will be tested by exposure to diverse public comment.[1] The notice-and-comment procedure assures that the public and the persons being regulated are given an opportunity to participate, provide information and suggest alternatives.[2] It thus gives interested parties an opportunity to participate in

[1] *Sprint Corp. v. F.C.C.*, 315 F.3d 369 (D.C. Cir. 2003).
[2] *Safari Aviation Inc. v. Garvey*, 300 F.3d 1144 (9th Cir. 2002).

the rulemaking through the submission of data, views, and arguments.[3] Notice also ensures fairness to affected parties[4] and provides a well-developed record that enhances the quality of judicial review.

Here, the provision at issue is Part C of the Supplementary Information section. Part C states:

> [t]his proposed rule has been written based upon, and with the benefit of, the Commission and Commission staff's many years of experience with recalls and recall effectiveness. The proposal is also based on related agency expertise and on information contained in agency recall guidance materials, including, but not limited to, the Recall Handbook.

It does not appear that the Commission has made the data upon which it relied in creating the NPR available to the public for comment. The "related agency expertise and information contained in agency recall guidance materials, including, but not limited to, the Recall Handbook," on which this NPR is based has not been provided here with the NPR for public comment.

Without such information, it is difficult to make an informed comment on the NPR. For example, Section 5[5] of the NPR states: "[f]or many years, the Commission staff's Recall Handbook has directed that [the term recall] should be used." Without the opportunity to review the Recall Handbook, the public is denied access to the text of the agency's reasoning and thus cannot be expected to make an informed assessment of the NPR. On the other hand though, the NPR does

---

[3] *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 98 S. Ct. 1197.

[4] *Sprint Corp. v. F.C.C.*, 315 F.3d 369 (D.C. Cir. 2003).

[5] Proposed § 1115.27, Recall Notice Content Requirements ("To those ends, the word "recall" draws media and consumer attention to the notice and to the information contained in the notice, and it does so more effectively than omitting the term or using an alternative term. A recall notice must be read to be effective, and drawing attention to the notice through the use of the word "recall" increases the likelihood that it will be read and, therefore, effectuates the purposes of the CPSA and CPSIA.")

not leave the public without a rational at all. The NPR does a good job of including the rationale for the use of the word "recall."[6]

To provide a meaningful opportunity to comment, the Commission should either provide the location of this data or should amend the NPR to include this data as an appendix or some other attachment to the NPR.

Meaningful notice, that is, notice with the opportunity to comment on the underlying information, will improve the quality of the Commission's rulemaking by insuring that the Commission's regulations will be tested by exposure to diverse public comment. Allowing public comment gives the Commission access to possible good ideas that they may not have been privy to but for the public comment process. This is especially important here since most of the data the Commission relies on seems to originate from internal documents. Allowing public comment on the underlying information assures that the public and the persons being regulated are given a meaningful opportunity to participate, provide information and suggest alternatives. Notice of the underlying information also ensures fairness to affected parties and provides a well-developed record that enhances the quality of judicial review.

Thus, it is strongly recommended that this NPR not be granted until the public has an opportunity to comment on the "related agency expertise and information contained in agency recall guidance materials, including, but not limited to, the Recall Handbook."

Comment 2

It is recommended that the NPR should clearly state the deference level that courts should use in the case of litigation. The APA requires that APA standards of judicial review will govern

unless the agency's enabling act contains a provision establishing a standard of review that differs from the APA standard.[7] Here,

Comment 3

It is recommended that the NPR include a section about the Freedom of Information Act ("FOIA"). The following is the recommended language to be included:

> The FOIA requires that agencies publish certain matter and allow public inspection, upon request, o f all other records unless the records sought fall within one of FOIA's exceptions.[8] Agency records are those records that are created or obtained by the agency in the course of doing the agency's work and in the control of the agency at the time of the FOIA request. The FOIA creates a legal claim when an agency wrongfully withholds agency records. The FOIA contains nine categories of exceptions to the requirement that agencies disclose their records. An agency, however, may voluntarily provide any of the records that the FOIA expressly exempts.

Thank you for the opportunity to comment.

---

[7] APA 706.
[8] APA 552.

12

Stevenson, Todd

From: Joseph Spirito [josephspirito@yahoo.com]
Sent: Sunday, April 19, 2009 10:41 AM
To: Mandatory Recall Notices
Subject: Proposed Rule 16 CFR 1115
Attachments: Comment on Proposed Rule 16 CFR 1115.doc

My name is Joseph Spirito. I have attached a comment for consideration on Proposed Rule 16 CFR 1115.

Thank you,

Joseph Spirito

To: Consumer Product Safety Commission

From: Joseph Spirito

Re: Proposed Rule 16 CFR Part 1115

This is a comment on the Proposed Rule 16 CFR Part 1115

In recent months the news has been full of stories about foreign products which pose a significant hazard to human health. The products range from foods stuff, to toys, to dry wall. Many of these products are innocuous products found in many American homes and pose a significant health risk. Additionally many of these products are imported from countries such as China, which do not have a strong track record of product safety or strong controls in place to prevent dangerous products from entering the market. Thus Proposed Rule 16 CFR Part 1115 is an excellent rule which the Commission should adopt to protect the safety of the American public when the dangers of such products come to light. There are, however, several areas where the proposed rule could be altered to make the process easier on the average consumer.

These defects are particularly apparent in the recent case of the dry wall installed in many newly constructed homes in Florida. Such a product which is ubiquitous in American homes, possesses a generic appearance, and is not easily traceable to its source highlight how difficult it can be for an average consumer to determine if they have the defective product. The dry wall case also illustrates how a product can be sent from a manufacturer to a wholesaler who then passes the product along further down the stream of commerce. Such travel down the stream can make it difficult or impossible for a

consumer to determine if they have a product from the retailer named in the notice. Given the danger of such a product and its ubiquity, the proposed rule should be amended to take such products into account and make it easier for the consumer to find out if they are indeed in possession of the product in question.

Several changes will allow for greater ease to the consumer. In particular, 1115.27(c), this part relates to the description of the product. The proposed rule does an excellent job in stating that the product description needs to be clear and concise, to allow the average consumer to determine whether they possess the dangerous product. However, there are many products, such as drywall, which may not be so readily identifiable. In the case of dry wall, this is because the product is a common one with a generic appearance and its use in a home makes it not readily visible or apparent.

The above problem can be cleared up with changes to 1115(i), which provides for identification of significant retailers of the product. This section identifies the retailer as "a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such a person to a consumer." This provision is very effective in identifying most products in the stream of commerce; however, it does not seem to take into account products, such as drywall, which are sold to a retailer, who then sells it to a contractor who then passes the product on to the consumer. Thus the question arises, who is the "retailer" for the purposes of the rule, the wholesaler such as Home Depot or the contractor. The proposed rule gives the Commission discretion to determine whether a retailer is significant, such discretion goes a long way toward ensuring the consumer is protected.

The problem is that the rule fails to account for the many small contractors who may have installed the product. The rule states that determining a retailer for the purposes of the rule the Commission will look to five factors, the factors provide good guidelines, however the rule should be amended to take into account such contractors. This is because the question arises, who is listed as the retailer, the contractor or the wholesaler? If it is the contractor, then the contractor would not likely meet the five factors listed to be a significant retailer. If it is the wholesaler, then the ultimate consumer would have no way of knowing if the product was installed in their home. This is not an easily cleared up problem, and it is so because of the nature of the product itself. However the rule should be amended to take into account such smaller actors. Or perhaps the recall notice should be sent to the contractor who would then be obliged to issue notice to the consumer under pain of penalty.

Another problem with the rule is also found in 1115(i). This section should be amended to include such smaller retailers in general. 1115(i)(3) accounts for national and regional retailers. It should be amended to clear up the term regional. Many retailers may have a purely one state presence and while they may not as states in 1115(i)(4) "distribute in commerce, a significant number of the total manufactured." This provision fails to account for such state-wide actors who may have a large market share of a small area. They could not be considered "regional" but local. The rule must reach such smaller and more local actors.

The argument against applying this to such small actors is the incredible negative impact they might experience. Indeed some small businesses could suffer greatly under a large scale recall. The threat to the average consumer outweighs such financial

considerations. The law values life and human safety over money and property, this rule must do the same.

All in all, the proposed rule is an excellent rule, which aims to give protection to the consumer. The rule provides for a clear and concise recall directed at the consumer, in this it succeeds. To be perfect however the law needs to reach deeper into the local level and to reach some products which might not have been reached by it in its proposed form.

Stevenson, Todd

From: Patrick Doran [patrickdoran01@gmail.com]
Sent: Sunday, April 19, 2009 11:26 AM
To: Mandatory Recall Notices
Subject: Section 15(i) NPR

To: Office of the Secretary, Consumer Product Safety Commission

From: Patrick Doran

To Whom it May Concern,

I appreciate the opportunity to comment on the Notice of Proposed Rulemaking issued by the Commission in compliance with Section 15(i) of the Consumer Products Safety Improvement Act.

I understand that the Congress has explicitly designated the U.S. Consumer Product Safety Commission to administer the CPSIA statute, and therefore the agency's experience and expertise is granted significant deference in interpreting provisions of the CPSIA statute. At the same time, it is imperative that the Commission's rules are reasonable and take the public's opinion into account.

My comments are as follows:

1. Required use of the word "recall" benefits public safety

I applaud the good sense of the Commission in adopting a rule stating that firms conducting recalls must use the word "**recall**" on their materials. I agree that the word recall "draws media and consumer attention to the notice and the information contained in the notice." This rule will prevent manipulation of language which

can dampen the perceived risk of harm from the dangerous product, and can also confuse consumers about the importance of the recall.

2. The firm administering the recall of a potentially hazardous product should be required to send standard mail Recall Announcements to potentially-effected consumers

The proposed rule lists several methods that a firm may use to contact purchasers of a potentially hazardous product. The language of 1115.26(b)(1) suggests that the Commission may order a firm to use a specific form to communicate with consumers. 1115.26(b)(2) ("Direct Recall Notice") suggests that email alone may be a sufficient means of communicating a recall. This could leave many unsuspecting consumers in serious danger from the hazardous product.

Email communication is an extremely inexpensive way to reach consumers. Email can be effective. Consumers, however, are bombarded each and every day with an avalanche of emails. Most of us ignore an email coming from an unknown source. It is likely, in my opinion, that an affected party would overlook or delete any email from a firm trying to contact them about a product recall. Americans have become numb to "urgent" or "important" email messages that are neither. A consumer may continue to use a dangerous product, ignorant of the recall, if the firm can satisfy the Commission's regulation by simply sending out emails. I implore the Commission to **require** standard mail announcement of recalls, and I strongly suggest requiring automated phone messages for consumers who have provided phone numbers to the retailer.

3. Section 1115.27(l) of the proposed rule should provide greater detail about reporting product-related injuries and deaths

15 U.S.C. § 2064(i)(2)(G) states that the recall notices "shall include...[t]he number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths." Proposed Section 1115.27(l) uses

language that is nearly identical to that in the statute, and directs firms to make "clear and concise summar[ies]" of this information. This portion of a recall notice is of vital importance to a consumer. This proposed rule provides too little additional guidance to firms, beyond that which already exists in the statute. Consumers wants to know what happens if **their** product malfunctions. People with no children may not fear the dangers of a product shown to be a choking hazard in infants, for example. While "clear and concise" summaries may generally be helpful to the consumer, this section of the recall notice should take particular care to explain the circumstances and the ages of **each** injured/killed person.

For instance, this rule, as written, could allow a firm to state "22 people between the age of 3 and 10 reported choking on the product." Suppose that 21 of 22 of these children were age 3, and one child was age 10. The data would suggest that anyone in the 3-10 age range is at risk of choking, but in reality it is far more likely that the choking hazard greatly diminishes after age 3. It would be more appropriate for the firm to state "21 children, age 3, choked on the product. One child age 10, choked on the product." Firms should be compelled by the Commission to provide the most detail possible without sacrificing clarity.

In conclusion, I believe that these proposed guidelines are a significant step in protecting the public from dangerous products, especially in an era when certain Chinese imports are proving to have dangerous materials, and so many children are afflicted with autism spectrum disorders stemming from mysterious sources. The Commission should make sure to hold manufacturers to account for their products, and not allow any deceptive practices to endanger the welfare of the American people.

Thank you,

Patrick Doran

Stevenson, Todd

From: raina.goods@gmail.com on behalf of Raina Goods [rsg46@drexel.edu]
Sent: Sunday, April 19, 2009 1:20 PM
To: Mandatory Recall Notices
Subject: Section 15(i) NPR

To whom it may concern:

I would like to take this opportunity to comment on Section 15(i) NPR.

Overall Section 15(i) NPR clearly outlines the requirements for mandatory recall notices.

Form of recall notices

I agree that direct recall notices are the most effective means of communicating recall notices to consumers because firms will be able to notify consumers whom they know have purchased the particular recalled product. The NPR provides that firms **should** use direct recall notices for each consumer for whom the firm has direct contact information. The regulation should be drafted to require firms to issue direct recall notices to each consumer for whom the firm has direct contact information. Under the current NPR, as drafted, it is unclear whether direct recall notice is required.

While direct recall notices are an effective method of notifying consumers, other means of notification should be used in conjunction with direct notice. Firms should be required to administer notification via several different means in an attempt to reach as many impacted consumers as possible. While the proposed rule states that "firms should consider the manner in which the product was advertised or marketed" when determining the form and content of the recall notice, it does not expressly state that a recall notice shall be administered in a manner similar to that which was used to advertise or market the product which is the subject of the recall. By issuing recall notices in manners similar to that used in advertising and marketing, firms will be likely to reach consumers impacted by the recall notice.

While the NPR provides guidelines for website recall notices concerning content, it does not specifically require firms to post recall notices on the firm's website. Any firm issuing a recall notice who has a website should be required to post a recall notice of its product on the homepage of the firm's website. The internet is an effective way of disseminating information and a great majority of people have access to the internet.

Descriptions of incidents, injuries, and death

The proposed rule states that the recall notice must state the ages of all persons injured and killed. I find this requirement to be somewhat burdensome and unnecessary. I recommend requiring firms to disclose the number of reported incidents and the age group of the injured person or persons. For example, if a particular product is being recalled because it has caused burns to toddlers, a statement indicating the number of reported incidents and the age group(s) of the individuals should suffice.

Final determination regarding form and content

Section 1115.29 of the NPR gives the rule great effect. By requiring firms to issue recall notices pursuant to the requirements of section 15(i) NPR despite whether or not the firm admits that a product is defective or potentially hazardous limits potential legal challenges to the applicability of the statute. This particular section of the NPR prevents firms from claiming that they do not have to issue a recall notice according to the requirements and guidelines of this NPR.

The NPR gives the CPSC a sufficient amount of discretion to ensure that the recall notice is informative and provides notice to potentially affected consumers. The NPR allows the Commission to determine the manner in which the recall notice is issued, the languages in which the notice should be provided, and the content of the recall notice.

Thank you for your time and consideration.

Sincerely,

Raina Goods

Stevenson, Todd

From: Jennifer Hermansky [jennifer.a.hermansky@drexel.edu]
Sent: Sunday, April 19, 2009 3:12 PM
To: Mandatory Recall Notices
Subject: Comments to NPR 74 FR 11883

April 19, 2009

Jennifer Hermansky
Jah44@drexel.edu

To the Consumer Product Safety Commission:

I am writing this comment in response to the agency's Notice of Proposed Rulemaking issued in the Federal Register on March 20, 2009. *74 FR 11883.*

I. Form of the Mandatory Recall Notice

The NPR indicates, "Proposed §1115.26(a)(4) would recognize that a direct recall notice is the most effective form of a recall notice," and "Proposed §1115.26(b)(2) would state that when firms have contact information they '*should*' issue direct recall notices." [Emphasis added.] *74 FR 11884.* The use of the word "should" in the NPR indicates that the Commission is not required to order the use of direct mail for recall notices if the firm has the contact information of the consumer, despite the Commission's recognition that direct mail is the most effective form of recall. The Commission should consider requiring firms to use direct mail if the firm has the contact information of the consumer, i.e. if a firm has direct mail information, the Commission *must* order the firm to issue the recall via direct mail.

Firms may have the direct mailing address, phone number, and/or email address of a consumer in connection with a "product registration" or as a result of an Internet purchase. As products are increasingly purchased on the Internet, firms regularly acquire and then use both mailing and email addresses of consumers for marketing purposes. Additionally, many businesses have the consumer's contact information through a "product registration" program that the firm administers, particularly if the product comes with an express warranty. If the business uses this information to inform the consumer of the warranty expiration, and any opportunity to renew the warranty, it should be required to use the direct mail program as a means for mandatory product recall to reach the maximum amount of consumers. Similarly, if it uses product registration and/or Internet sales as a way to mail additional marketing materials to consumers, such as catalogs, it should be required to use direct mail in a mandatory recall.

While it may be expensive for a firm to use a direct mail program for a mandatory recall, this should be balanced against the degree of harm in the product defect. If the Commission issues a mandatory recall because the product contains a defect that is likely to result in serious injury or death as defined in 16 CFR §1115.6(c), the firm should be required to issue direct mail recall notices if they have consumer data as a result of Internet purchases or a "product registration" or similar program. Thus, the Commission should consider using the term "must" as opposed to "should" to ensure the Commission uniformly orders the use of direct mail recalls.

The NPR also states "Proposed §1115.26(b)(1) would describe other possible forms of recall notices, including letters, electronic mail, and video news releases." *74 FR 11884.* The Commission should consider requiring mandatory email recall notices if the firm keeps email addresses of consumers who purchase their products

online, i.e. the Commission *must* order the firm to use email recall if the firm collects email addresses of consumers from in-store or on the Internet. Moreover, as distributors and retailers are increasingly involved in Internet sales, distributors and retailers should be required to supply the email addresses to the manufacturer of any consumers who purchased the product online.

Proposed §1115.26(b)(3) deals with web site recall notice. It states, "A Web site recall notice *should* be on a Web site's first entry point such as a home page, *should* be clear and prominent, and should be interactive by permitting consumers and other persons to obtain recall information and request a remedy directly on the Web site." *74 FR 11886*. The use of the word "should" indicates that the business may have some discretion about the placement of the recall on the website. Since visibility of the recall is of utmost importance to capture maximum audience attention, the Commission should consider revising the regulation so that "A web site recall notice *must* be on a website's first entry point such as a home page, *must* be clear and prominent, and *should* be interactive by permitting consumers and other persons to obtain recall information and request a remedy directly on the web site." While it may be difficult to implement a recall remedy directly on the website for some manufacturers, all manufacturers should be required to post it on the homepage for maximum visibility.

The NPR states "Proposed §1115.26(c) would provide that, where the Commission or a court deems it to be necessary or appropriate, the Commission may direct that the recall notice be in languages in addition to English." *74 FR 11886.* The Commission should consider including language in the final rule that it will "consider whether the firm used another language to market the product in deciding whether or not to require recall notice to be published in additional languages."

II. Recall Notice Content Requirements

Proposed §1115.27(g) dealing with "Identification of recalling firm" states, "A recall notice must identify the firm conducting the recall by stating the firm's legal name and commonly known trade name, and the city and state of its headquarters. The notice must state whether the recalling firm is a manufacturer (including importer), retailer, or distributor." *74 FR 11887*. The Commission should consider requiring the manufacturer's website address to be listed with the identification information, in addition to the name, trade name, and city and state of headquarters. This will advise consumers to go to the website, which under Proposed §1115.26(b)(3) would have mandatory recall information on the website's homepage.

Proposed 16 CFR §1115.27(l) states, "The description [of the injuries] must enable consumers and other persons to readily understand the nature and extent of the incidents and injuries. *A recall notice must state the ages of all persons injured and killed.* A recall notice must state the dates or range of dates on which the Commission received information about injuries and deaths." [Emphasis added]. *74 FR 11887*. The Commission should allow a firm to provide an age range of all the persons injured or killed by the product in a case with a substantial amount of reported injuries, as it allowed with the date range.

Respectfully submitted,
Jennifer Hermansky
Jah44@drexel.edu

16

Stevenson, Todd

From: Jacquelyn Kline [jaxkline@gmail.com]
Sent: Sunday, April 19, 2009 7:08 PM
To: Mandatory Recall Notices
Subject: Section 15(i) NPR
Attachments: Mandatory Recall Notice, Section 15(i) NPR Comment.doc

Please Note that I have attached my comment to the proposed Mandatory Recall Notice, Sec 15(i) as both the body of this email and as a 2003 word document. Thank you for your consideration.
~ Jackie Kline

Jacquelyn Kline
570 W. Dekalb Pike, Suite 502
King of Prussia
April 19, 2009

Mandatory Recall Notice Comment, Section 15(i) NPR
Consumer Product Safety Commission
4330 East West Highway, Bethesda, MD 20814

Dear Consumer Product Safety Commission:

I am writing in response to the Commission's notice of proposed rulemaking. I am writing this comment on behalf of third-party recipients of consumer products. Third-party consumers are not the initial purchaser of a product; rather, they have either been given the product as a gift, bought it as a resold item, or in some other way received the product without directly purchasing the product from the manufacturer, distributor, or retailer.

The Commission has done an excellent job of addressing the concerns of consumers and strengthening the Consumer Product Safety Act (CPSA). The proposed Mandatory Recall Notice content requirements are, in general, reasonable and necessary in order to give the consumer and the general public the best information about a recalled product.

The attached comment will address sections 1115.24, 1115.26, and 1115.27, which third-party consumers are particularly interested in having included in the final rule. This comment will also address a several concerns that third-party consumers have with proposed section 1115.24 and 1115.26(a)(4).

Sincerely,

Jacquelyn Kline

Comments On Proposed Amendment Subsection C To 16 C.F.R. §1115

Overall, the proposed rule appropriately addresses the goals of Consumer Product Safety Improvement Act of 2008 (CPSIA). As noted in the notice of proposed rule-making, the purpose of product recalls is to adequately inform and protect the public from hazards of certain products. Therefore, third-party consumers support the proposal for a new subsection C, which would clearly delineate the content and requirements for recall notices issued under section 15(c) and (d) of section 12 of the CPSA.

Proposed s 1115.24--Applicability

Third-party recipients agree that voluntary recalls should be governed under a separate rulemaking notice. However, in the interest of public safety, there should be some guidelines as to how voluntary recalls are noticed to the public. While the proposed rule should certainly only be seen as a guideline for what *information* should be included in voluntary recalls, third-party recipients desire a concrete method of notice for all recalls, regardless of the nature, in order to give consistency and best protect the public's interest.

Proposed s 1115.26--Guidelines and Policies

Third-party recipients are specifically interested in seeing a definition of "other persons" included within the final rule. As the Commission notes, recall notices are intended to be of benefit and importance to *all* consumers. However, there are numerous other categories of "persons" to whom recall notices would be of vital significance. The organizations mentioned in the proposed rulemaking offer a broader protection to consumers and society at large. These organizations may be more readily able to disseminate information about recalls and educate the public on the nature of the recalls and what that means for the public going forward.

Allowing the category of "other persons" to include government and non-governmental organizations, more completely addresses the goal of CPSA. These "other persons" may also be able to more effectively reach third-party recipients who did not directly purchase the product and may not have other viable means of being

contacted with recall information. Therefore, third-party purchasers believe this definition is an essential concept that must be part of any final rule, in order for the new subsection to be the most effective.

Proposed s 1115.26--Guidelines and Policies

However, third-party consumers are extremely concerned with the language of proposed §1115.26(a)(4). Third-party consumers disagree that the persons exposed to the product and its hazards will be more likely to receive a direct recall notice than a broadly-disseminated recall notice. Direct recall is not the most effective form of notice because third-party consumers are not the direct purchaser of the product. If direct recall notice becomes the preferred or only method of notice, these third-party consumers are unlikely to be reached.

First, it is unrealistic to believe that a purchaser will generally know to whom they have given a product and easily be able to contact that individual. It is impractical to believe that consumers will keep track of all their purchases and to whom and when they gave these purchases. Particularly, if the recall happens several years after the purchase, there is almost no likelihood that the original purchaser will remember buying that product and to whom they gave the product.

Second, many people have become third-party recipients by purchasing items as re-sales from newspaper advertisements, from second-hand stores, and from yard sales. More importantly, in recent years the number of people buying and selling products on internet sites such as eBay, Amazon, and Craigslist has increased. For example, since November 11, 2006, eBay has recorded 212 million buyers and sellers worldwide, with 128 million users in the United States alone. http://www.thebidfloor.com/ebay_statistics.htm#current_number_of_members. EBay further stated that, "More than 724,000 Americans report that eBay is their primary or secondary source of income. Another 1.5 million individuals say they supplement their income by selling on eBay, according to the July 2005 survey." http://www.thebidfloor.com/ebay_statistics.htm#current_number_of_members.

Due to the increase in these types of sales, it is unlikely that the direct purchaser will be able to find or contact individuals to whom they have sold recalled products. Recognizing that the current state of the

economy will likely increase third-party purchasers/consumers, this unique category of recipients are becoming a bigger percentage of consumers and need to be protected in order to effectively meet CPSA's goals. If direct recall notice is the only method of contacting purchasers, this large and unique group of consumers will be severely disadvantaged and without access to important recall notices.

Third, the public in general has an interest in knowing about recalled products. The public has its own, distinct interest in finding out what manufacturers, distributors, or retailers are having products recalled. Although an individual may not have purchased the actual recalled item, a person may choose not to purchase a specific brand because of their own concerns about the quality of a specific brand due to information gleaned from recall notices. In order to make these preference choices, the public must have access to information about recalled products. Direct recall notices only put specific consumers on notice, and would not allow the public at large to make their own choices of whether to purchase from a consumer who has had a recalled or several recalled products.

Therefore, third-party recipients believe that while direct recall notices may be beneficial to reaching some consumers, this should not be the only method used to announce a product recall. A final rule should ensure that for any recall, a general recall notice would also be required in order to reach the widest possible group of consumers.

Proposed s 1115.27--Recall Notice Content Requirements

Third-party recipients agree that "recall" should be a mandatory aspect of any recall notice. For the public's protection, this word is the term that is most likely to draw attention for consumers. The purpose of a recall notice is to publicize the recall information and allow consumers to take appropriate action. Third-party consumers believe that using the term "recall" is the only terminology that will effectively meet the goals and purposes of the CPSA .

Conclusion

On the whole, the Mandatory Recall Notice content requirements are essential in order to give the consumer and the general public the best information about a recalled product. Third-party recipients believe that if the concerns raised in this comment are addressed, the final Mandatory Recall Notice will more effectively protect the interest and concerns of all consumers, as consistent with CPSA.