

**Stevenson, Todd**

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**From:** Whitney Kummerow [whitney\_kummerow@hotmail.com]  
**Sent:** Sunday, April 19, 2009 11:25 PM  
**To:** Mandatory Recall Notices  
**Subject:** Comment

Attention: Office of the Secretary, Consumer Product Safety Commission,

Re: Section 15(i) NPR

I write to comment on an issue concerning the guidelines and requirements proposed in accordance with The Consumer Product Safety Improvement Act of 2008 (the “Act”) by the Consumer Product Safety Commission (the “Commission”).

The Act fails to define “significant retailer,” in the context of those vendors that have sold a recalled product. At 11885 of Section 15(i) of the Notice of Proposed Rulemaking (the “NPR”), the Commission set forth several factors to determine when a retailer is, in fact, significant. These factors result in a Commission definition of “significant retailer” that includes exclusive retailers, importers, regional/nationally prominent retailers, those who sold a “significant number” of recalled units, and any other retailer that identifying inclusion would be in the public interest.

Based on Skidmore v. Swift & Co.,<sup>i[1]</sup> the Commission generally receives some deference based on its experience and expertise in the subject matter, over which they are granted authority by the organic Congressional statute. The Act clearly grants the Commission the authority to assist “in the development of safety standards addressing the risk of injury identified in such notice,” following publication of a notice of proposed rulemaking.<sup>ii[2]</sup>

To help the public minimize the risk of injuries and maximize the effect of recalls, why does the Commission not demand all recalled-product retailers be identified and revealed to the public? I expect the Commission made reasonable determinations in setting forth parameters for the “significant retailer” definition, however, further transparency is desired.

With recent technological innovations, particularly in inventory tracking (i.e. radio-frequency identification (RFID) usage), it should be easier than ever to determine all retailers. The Act and accompanying legislative history<sup>iii</sup>[3] express Congressional desires to reauthorize and modernize the Commission. What better way to update than bring recalls fully using technological developments and holding the manufacturing industry to such progressive standards? Perhaps Congress should eliminate “significant” all together when referring to retailers, and make no qualifications when it comes to protecting consumers.

Thank you for your time and consideration of this comment. I can be reached at the following addresses:

[whitney.m.kummerow@drexel.edu](mailto:whitney.m.kummerow@drexel.edu)

or

Whitney Kummerow  
4651 Umbria St. Fl. 2  
Philadelphia, PA 19127

Sincerely,

Whitney M. Kummerow

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<sup>i</sup>[1] 323 U.S. 134 (1944).

<sup>ii</sup>[2] 15 U.S.C. § 2054 (2008).

<sup>iii</sup>[3] H.R. 4040 (Aug. 14, 2008), available at <http://www.cpsc.gov/cpsia.Pdf>.

**Stevenson, Todd**

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**From:** Shane Eaton [eaton.shane@gmail.com]  
**Sent:** Sunday, April 19, 2009 11:43 PM  
**To:** Mandatory Recall Notices  
**Subject:** Comment  
**Attachments:** CommentNPR.docx

Please see attached.

r/ Shane Eaton

**BEFORE THE  
CONSUMER PRODUCT SAFETY COMMISSION**

**Comments of Concerned Mothers on Notice of Proposed Rulemaking Proposed  
§1115.27(1)**

The following comments are submitted on behalf of the public interest group “Concerned Mothers” in response to the March 20, 2009 Notice of Proposed Rulemaking (the “NOPR”) issued by the Consumer Product Safety Commission (the “Commission”) soliciting comments on its proposed guidelines and requirements for recall notices ordered by the commission and implemented through the Consumer Product Safety Improvement Act of 2008 (“CPSIA”, Pub. L. 110- 314).

**Introduction**

Concerned Mothers (“CM”) is group of mothers raising young children throughout the United States that share a public interest in protecting children from hazardous products. Members in our group recognize that young parents have a demanding role of attending to their children’s needs and are often unable to keep abreast of news regarding product recalls through the media. Our mission is to provide our members with accurate information regarding children’s products, and to advocate for strict safety standards for products being sold in our markets that come into our homes which is easily accessible. This group was formed in response to the overwhelming amount of juvenile products recalled under the assumption that products coming into the U.S. market were highly regulated, but that were primarily manufactured in and imported from China.

**Proposed §1115.24 – Applicability – Extend to Voluntary Recalls**

CM advocates the Commission’s specified guidelines and recall notices which are ordered by the Commission or the US District Court. The additional recall regulations give the



Shane Eaton  
Comment on NOPR

public and CM greater confidence in the safety of the products we purchase. However we are concerned with this rulemaking being applicable only to *mandatory* recall notices and not *voluntary* recall notices that result from corrective action settlement agreements with Commission staff. While this standard of applicability is consistent with 15(i) of the CSPA, CM advocates that these same requirements are extended to voluntary recalls. The proposed rule states that these requirements will serve as a guideline for voluntary recalls, but that a separate rulemaking would need to be issued. While CM understands less stringent requirements will serve as an incentive for some businesses, our concern is that specific toy manufacturers will circumvent these procedures while we continue to purchase their products for our children. CM fears that manufacturers will not receive the same level of scrutiny in the interest of safety. The information required by the recall guidelines is a valuable source for our group and we ask that you reconsider including *voluntary* recalls to fall under the same regulations and guidelines.

**“Significant Retailer” – Ambiguous Term**

Our group of mothers is concerned with protecting our young children and wants to protect them from exposure to hazardous products. The statute requires identification of manufacturers and “significant retailers.” CM serves as the main source of information for group members regarding recalls. Specifically, listing which “significant retailers” have been selling products subject to recall. A clearer definition of how “significant retailers” would be identified would allow our members to determine whether or not they purchased a recalled product. When products are recalled voluntarily, mothers struggle to find what remedies, if any, are available to our group. The information required by the recall guidelines is a valuable source for our group and we ask that you reconsider including voluntary recalls to fall under the same regulations and guidelines.

**The Regulatory Flexibility Act – Should Not Be Applicable to Children’s Products**

Prioritizing risks to children in this rulemaking should be paramount. While CPSIA will better enable manufacturers, importers, distributors and retailers of consumer products to prepare and plan for consumer compliance, consumers are still left with several uncertainties. For example, small businesses may claim an economic hardship under the proposed rulemaking. Under the Regulatory Flexibility Act “RFA”, some businesses are allowed an additional year before being subject to rigorous certification in children’s products that do not meet lead limits. CM asks that you consider not allowing these small entities to be able to conduct a voluntary recall if the end result means that consumers are unable to receive adequate information regarding the product’s potential damaging affects, current injury and death statistics, and remedial measures being taken to stop the hazard. It is unconscionable to allow any marketer to sell dangerous toys to unsuspecting consumers. CM asks that you make it mandatory that lead content information and potential damaging effects be printed on each toy.

**§115.27(k) – Approximate Price or Price Range of Product in Recall Notice – Not Adequate**

Our group wants to maximize specific information in a recall notice to make a recalled product as easily identifiable as possible. While the approximate price range may help the consumer better identify a product and make us aware of proper refund, prices may vary. Therefore, we ask that you consider making price range specific to geographic location.

**Conclusion**

There is nothing more important than protecting children. As much as this NOPR promulgates that goal, there is still opportunity to improve the rulemaking before it is published. The proposed guidelines required by the Commission give a greater comfort to the public in

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product safety, but leave areas of vulnerability. We hope you will consider these comments in working towards the protection and betterment of our children's lives.

DATE: April 19<sup>th</sup>, 2009

TO:

Marc Schoem, Deputy Director, Office of  
Compliance and Field Operations,  
Consumer Product Safety Commission,  
4330 East West Highway,  
Bethesda, MD 20814

FROM: Ed Grattan

RE: Comment on Proposed Regulations Concerning Guidelines and Requirements for  
Mandatory Recall Notices-- 16 CFR Part 1115

To whom it may concern,

**In General.** The Commission's proposed guidelines and notice requirements add value to the overall regulatory structure. The following proposals aid in preventing harm to a broader sects of individuals and they inform the consumer as to the types of hazards involved with manufactured products: 1) 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. And 2) Proposed s 1115.27(f)(1) through (f)(2) would provide greater detail as to what the description must include; for example, the description must include the product defect, fault, failure, flaw, and/or problem giving rise to the recall. However, some of the proposed requirements and guidelines unnecessarily increase recall costs and require the advertisement of information outside the purpose of the recall. The two proposed regulations at issue are listed as follows: 1) 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. 2) Proposed 1115.27(l) would require the recall notice to state the number and describe any injuries and deaths associated with the product, state the ages of any individuals injured or killed and the

dates or range of dates on which the Commission received information about the injuries or deaths.

**Positive Proposals.** Proposal 1115.26(c) which provides recalls in various languages is a necessary element in such notices for today's global economy and integrated societies. It is important for manufacturers to understand that their products are disbursed not in just the United States but across the globe and to various non- English speaking groups within the United States. It is a necessary requirement that all individuals have a reasonable opportunity to be notified of safety issues without having to overcome language barriers. Having recalls in other languages allows for greater transparency for recalls across the globe and within integrated societies which will increase consumer safety.

Proposal 1115.27(f)(1) through (f)(2) gives a description of the defect, fault, failure, flaw, or problem. This description increases consumer safety because the consumer will not act or use the product negligently and will know how to act around a hazardous product in the event there is a recall. Sometimes consumers may continue to use a product despite the fact it is recalled and giving this type of information will increase safety. For example, if a particular seat belt was improperly installed in a vehicle, the consumer may continue to use the vehicle, but may avoid sitting in the seat with a defective seat belt so in the event there is a crash the consumer may be properly protected. Although these proposals add value to the statutory regulation scheme, there are, however, some provisions that may be more detrimental to the manufacturer and provide no value to consumers.

**Negative Proposals.** Proposal 1115.26(a)(4), a guideline, requiring direct recalls, adds an unnecessary financial burden to manufacturers (those that actually produce the product). It is the

duty of manufacturers to ensure the safety and quality of their products. However, there are times when manufactures fail to live up to safety and quality requirements. In times that products do not live up to safety and quality standards, duties of the entities listed as manufacturers should be separated and each should have a defined responsibility in the event of a recall. Those manufactures that are responsible for producing a product should continue to be responsible for broad dissemination of information regarding recalls through media channels, website postings, etc., to the extent that they issue a public notice that can be reasonably found by a product distributor. Those manufacturers that produce products should not be responsible for directly contacting consumers/purchasers due to the fact that producers are less likely to have contact information for consumers because they play a lesser role in product distribution. The duty of contacting customers directly should be left in the hands of those entities, defined in the manufacturer's definition, that distribute products. This is more appropriate because these entities are more likely to have contact information that would be necessary to inform customers of outstanding issues regarding a product. The purpose of giving product distributors the duty of directly contacting customers is based upon the belief that they are more likely to have the contact information of customers. Product distributors are more likely to have contact information of customers due to their personal interactions and relations with customers on a daily basis.

Another issue is Proposal 1115.27(l), which requires recalls to report death statistics in their notices. Reporting death statistics is outside the purpose of a recall. A recall's general purpose is to notify dangers to consumers/purchasers and inform consumers/purchasers how to avoid such possible dangers posed by a product or consumer good. The reporting of death statistics cannot be seen as pertinent information that will protect consumers/purchasers.

Reporting such a statistic may have an adverse affect on retailers and producers. The advertisement of such statistics may create a stigma for those retailers or producers that will affect the consumption of their products/goods. This may be unfair in the sense that they may not only face legal liability for injuries and deaths but, they may be further punished in the eyes of the public by the consumer's decision to avoid purchasing products from stigmatized manufacturers.

**Closing Thoughts on Regulations and Agency's Authority.** Overall, the new proposals further the underlying statutory scheme in protecting consumers from hazardous products. The new amendments proposed by the Consumer Product Safety Commission appear to be within the agency's authority under the Consumer Product Safety Improvement Act of 2008 which calls for the establishment of guidelines and requirements by the Consumer Product Safety Commission to further the safety of the consumer.

**Stevenson, Todd**

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**From:** Edward Grattan [ejg36@drexel.edu]  
**Sent:** Sunday, April 19, 2009 11:44 PM  
**To:** Mandatory Recall Notices  
**Subject:** Comments for 16 CFR Part 1115  
**Attachments:** Final NPR.doc

Please see attached materials

Ed Grattan



Lonn Selbst  
1500 Chestnut St., Apt. 5F  
Philadelphia, PA 19102

4/19/09

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

Dear Consumer Product Safety Commission,

This comment is in response to the proposed rule setting forth guidelines and requirements for mandatory recall notices, 16 CFR Part 1115. I am writing this comment as a concerned citizen that generally agrees with the majority of these guidelines and requirements. First, I would like to point out that I believe this proposal is within the Consumer Product Safety Commission's authority, pursuant to Pub. Law. 110-314. Section 214 of the Consumer Product Safety Improvement Act of 2008, titled "Enhanced Recall Authority" clearly broadens the CPSC's rulemaking capabilities. Thus, it is apparent from the text of the law, that Congress has authorized the CPSC to promulgate the proposed rule change. Additionally, I am confident that the rule change will result in supplying the marketplace with substantially more information on product recalls through enhanced mandatory recall notices. This is consistent with the goals of the Consumer Product Safety Improvement Act. Nevertheless, I have some critiques and feedback that I would suggest the CPSC to consider.

I am slightly concerned that the costs these guidelines and requirements may have on both small and large businesses could be substantial. Businesses will be expected to undergo the arduous task of maintaining detailed records over all of their products. This

will certainly increase business expenditures. Any requirements calling for redundant recordkeeping should be minimized whenever possible. One example of such a requirement, 16 CFR 1115.27(k), would require recall notices to “state the approximate retail price or price range of the product.” Such an obligation would force a diligent retailer to exhaust significant resources saving pricing information on every product that the retailer sells. Additionally, a product sold on sale would provide a further complication. Products sold at substantial discounts could create confusion among consumers. Such information could end up having an adverse effect on clarifying the product that is to be recalled.

Another example of an unnecessary cost to retailers or manufacturers would be the requirement of a photograph of the recalled product under 16 CFR 1115.27(c). This would compel retailers and manufacturers to photograph every single product sold or made and retain such photos on file for an undefined period of time. This cost, as well as the costs of sending the photograph in each recall notice directly, is excessive. If thorough and accurate information regarding the product were properly conveyed, there would presumably be no need for such photographs. Perhaps, the CPSC should merely retain discretion as to when photographs need to be included, with the CPSC exercising this discretion only when a written description of the recalled product is insufficient. While, the Consumer Product Safety Improvement Act has specifically required such photographs, Section 214(i)(2) of this Act gives the Commission discretion to determine that the item is “unnecessary or inappropriate under the circumstances.”

Furthermore, I am troubled that guideline 16 CFR 1115.26(b)(2) could have the effect of creating an incentive for businesses to avoid obtaining contact information from

its customers. By providing that “when firms have contact information they should issue direct recall notices”, businesses may avoid the increased costs of sending direct recall notices by simply opting to be ignorant as to their customers contact information. While, I understand this is a guideline and aspirational, a slight change to the definition of “direct contact information” under this section may better effectuate the intent of Congress. Currently, direct contact information is defined under this section as “including, but is not limited to, name and address, and electronic mail address.” Perhaps, the CPSC could limit direct contact information to simply the name and electronic mail address, which would cut down the costs of the retailer or manufacturer having to mail direct recall notices to every individual consumer that they have contact information for. By limiting direct recall notices to electronic mail, businesses could avoid the unnecessary costs associated with using United States mail to notify its consumers.

Another guideline I found to be problematic is section 1115.26(c). This guideline enables the CPSC or a court to have discretion over whether recall notices be written in languages in addition to English. Why not simply mandate that every recall notice must be required to be in Spanish as well as English? Considering that there are over 34 million people in the United States who speak primarily Spanish at home (according to the U.S. Census bureau), it would make sense to require all recall notices to be in both languages. The CPSC should still retain this provision to apply to all languages other than Spanish. This will not result in a significant increase in costs to retailers and manufacturers. Also, such a requirement will be more efficient than having the Commission constantly make this determination on a case-by-case basis upon reviewing

the recall notice. Such a bright line rule provides transparency for retailers and manufacturers.

Notwithstanding the suggestions above, I believe that the guidelines and requirements for mandatory recall notices proposal is extremely sound. I particularly found 1115.27(a), requiring that recall notices include the word “recall” in the heading and text to be beneficial as this is certainly an attention grabber. This requirement, and all the others not mentioned in this comment, helps to achieve Congress’ aim in protecting the general public from product hazards.

Thank you very much for your attention to this matter.

Sincerely,

Lonn Selbst

**Stevenson, Todd**

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**From:** Lonn Selbst [lms075@gmail.com]  
**Sent:** Sunday, April 19, 2009 11:53 PM  
**To:** Mandatory Recall Notices  
**Subject:** Comment on proposed rule  
**Attachments:** Comment on CPSC.doc

To whom it may concern,

Please find attached my comment as a concerned citizen regarding the guidelines and requirements for recall notices. Please let me know if you have any questions.

Thank you very much,  
Lonn Selbst



1111 19th Street NW • Suite 402 • Washington, DC 20036  
t 202.872.5955 f 202.872.9354 www.aham.org

April 20, 2009

Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Re: Section 15 (i) NPR

Dear Mr. Stevenson:

We thank you for the opportunity to comment on the March 20, 2009, Federal Register Notice regarding 16 CFR Part 1115 on Mandatory Recall Notification (“Notice of Proposed Rulemaking”).

The Consumer Product Safety Commission (“Commission” or “CPSC”) invited comments on 16 CFR Part 1115 of the Consumer Product Safety Act and Section 214 of the Consumer Product Safety Improvement Act (“CPSIA”), which directs the Commission to issue a regulation on mandatory recall notification. The Association of Home Appliance Manufacturers (“AHAM”) is the trade association representing the manufacturers of major, portable, and floor care appliances that sell consumer products in the United States market. We commend the CPSC for soliciting comments regarding mandatory recall notification.

**General Comments:**

AHAM believes that CPSC should issue clarifications of the requirements for mandatory corrective action (recall) notification. But § 214 of the CPSIA provides sufficient detail for most of the elements of a mandatory recall notification; the requirements proposed by the Notice of Proposed Rulemaking provide unnecessary extensions and detail. The purpose of recall notification is to provide the consumer the information *necessary* to identify the specific product being recalled, to understand the hazard the recall notice identifies, and to understand the available remedy. In many cases a shorter recall notification would likely be easier for consumers to read and follow and thus, may be more beneficial than a more detailed recall notification.

## **Specific Comments:**

### **I. Applicability of Proposed Section 1115.24**

In the Notice of Proposed Rulemaking, the Commission states that “[u]nless and until the Commission issues a rule containing requirements for voluntary recall notices, the proposed [mandatory recall notification] rule would serve as a guide” for such voluntary recall notices. AHAM urges the Commission to consider that there are significant differences between mandatory and voluntary recalls and we counsel against using the mandatory recall notification rules as a guide for voluntary recall notifications. For example, in the case of a voluntary recall, the CPSC staff and the firm may have more time and a positive atmosphere and working relationship to review and agree on the specifics of the recall notification and the recall itself. This is beneficial because it allows the firm and the Commission staff to craft a recall notification that will most effectively inform consumers about the recalled product and the remedy available. Accordingly, it is unnecessary to identify requirements for voluntary recall notifications that are as specific or the same as that proposed for mandatory recall notifications.

In addition, effectively imposing the mandatory requirements on voluntary recalls may have the effect of discouraging voluntary recalls. The willingness of manufacturers to come forward and conduct voluntary recalls is driven in part by the prospect of avoiding the burdens of mandatory recalls. If the CPSC ultimately has to conduct more mandatory recalls as a result, there could be a further drain on its already scarce resources.

Therefore, AHAM does not agree that the proposed rules regarding mandatory recall notifications should be applied to voluntary recalls until or unless the Commission engages in a rulemaking regarding voluntary notices.

### **II. Proposed Section 1115.27**

Proposed § 1115.27 identifies a variety of requirements for mandatory recall notifications. AHAM believes that this section adds additional complexity beyond what is necessary for an effective recall.

Per CPSIA § 214, the purpose of recall notifications is to provide the consumer with the information *necessary* to identify the specific product being recalled, to understand the hazard the recall notice identifies, and to understand the available remedy. If a recall notice requires too much detail, it is possible the consumer will not be able to locate the relevant information in the notification and reduce the recall effectiveness. By providing too much (unnecessary) detail, a recall notification may obfuscate the very information it is designed to clearly convey to consumers.

For example:

- CPSIA § 214 (c)(i)(2)(D) states that a mandatory recall must include, “A description of the substantial product hazard and the reasons for the action.” Yet, in proposed § 1115.27 (f)(1)-(2), the CPSC proposes that the mandatory recall notification must also “include: (1) The product defect, fault, failure, flaw, and/or problem giving rise to the recall; and (2) The type of hazard or risk, including, by way of example only, burn, fall, choking, laceration, entrapment, and/or death.” AHAM believes these additional requirements go beyond what CPSIA § 214(c)(i)(2)(D) requires. In addition to diffusing the necessary recall notification information as far as consumers are concerned, this additional and superfluous information may not be feasible for firms to accurately provide to consumers, and thus may be more misleading than informative. At the time of a recall, and especially in a mandatory recall situation, all of these levels of defect, fault, flaw or problem simply may not be known to the firm issuing the recall.
- Section 214 (c)(i)(2) (E) of the CPSIA states that the notice shall include merely “an identification of the manufacturers and significant retailers of the product.” But, in § 1115.27 (h) of the proposed rule, the CPSC indicates that a mandatory recall notice must identify “each manufacturer (including importer) of the product and the country of manufacture. Under the definition in section 3(a)(11) of the CPSA (15 U.S.C. 2052(a)(11)), a manufacturer means ‘any person who manufactures or imports a consumer product.’ If a product has been manufactured outside of the U.S., a recall notice must identify the foreign manufacturer and the U.S. importer. A recall notice must identify the manufacturer by stating the manufacturer’s legal name and the city and state of its headquarters, or, if a foreign manufacturer, the city and country of its headquarters.” Although it could have a benefit to the CPSC for compliance purposes, it is not necessary or useful to provide such additional information to consumers in recall notices in all cases. In particular, AHAM questions the value of providing the manufacturer’s legal name and headquarters city and state/country location. A consumer likely has little to no use for this information. In most cases the consumer obtains a product from a retailer, not directly from an importer. Thus, rather than adding to the clarity and usefulness of a mandatory recall notification, this data could confuse the consumer or make it more difficult to obtain the truly necessary recall and product information. Furthermore, this requirement seems to only serve the purpose of identifying and segregating imported products from those that are domestically produced.

Similarly, in proposed § 1115.27 (i), the CPSC states that the mandatory recall notice shall identify a significant retailer “by stating the retailer’s commonly known trade name. Under the definition in section 3(a)(13) of the CPSA (15 U.S.C. 2052(a)(13)), a retailer means ‘a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.’ A product’s retailer is ‘significant’ if, upon the Commission’s information and belief, and in the sole discretion of the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or in the sole discretion of a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), any one or more of the circumstances set forth below is present (the Commission may require manufacturers (including importers), retailers, and distributors to provide information relating to these circumstances): (1) The retailer was the exclusive retailer of the product; (2) The retailer was an importer of the product; (3) The retailer has stores nationwide or regionally-located; (4) The retailer sold, or held for purposes of sale or



distribution in commerce, a significant number of the total manufactured, imported, or distributed units of the product; or (5) Identification of the retailer is in the public interest.” AHAM again questions the value in such an expansive list of descriptions for each and every significant retailer of a recalled product. Such painstaking identification will increase the length of the recall notification in such a way as to make it difficult for the consumer to locate the information they actually need. It may also delay the recall itself.

In addition, the CPSC did not define “regionally-located” or “significant number of the total manufactured, imported or distributed units of the product.” This ambiguity could result in disparity in retailer reporting in mandatory recall notices which, ultimately, could confuse consumers. Also, the standards for identifying “significant” retailers in § 1115.27(i) are somewhat vague and it appears there are penalties for incorrect identification. In order to avoid non-compliance, some firms would simply resort to including every known retailer in the notice that is posted for the consumer. This would do consumers little good in that they would receive a huge list of retailers as part of the recall notification, as some firms sell to hundreds, if not thousands, of retailers and distributors.

- Section 214(c)(i)(2)(F) of the CPSIA states that a mandatory recall notification should include “The dates between which the product was manufactured and sold.” In proposed § 1115.27(j), the CPSC has proposed that a mandatory recall notice “...must state the month and year in which the manufacture of the product began and ended, and the month and year in which the retail sales of the product began and ended. These dates must be included for each make and model of the product.” AHAM believes that the proposed regulation is, again, too expansive. Section 214(c)(i)(2)(F)’s objective would seem to be to identify the dates that the consumer was able to obtain the product in order to help consumers figure out whether or not they possess the recalled product. Manufacturers date code products by the date of manufacture, not date of sale. Manufacturers often do not know the exact date that the product first appeared on the retail store shelves. Providing the consumer with more than the dates of manufacture will likely cause confusion, and may require recall of more products than necessary. Telling the consumer the date of sale is “approximately” from (for example) April 15 to November 15 may not provide important information and may result in consumers returning units that are outside the recall range. The current method of citing the manufacturing dates by date code, or date of sale (if that is known instead) has been very successful and has rarely resulted in the need to expand a recall.

### **III. Effective Date of The Proposed Regulation**

The Notice of Proposed Rulemaking states that the final regulation would become effective on the date of publication rather than the usual 30 days after publication of the final rule. Although it is true, as the Commission states, that the “statutory requirements for the content of mandatory recall notices are already in effect,” as discussed above, the CPSC’s proposed rule imposes requirements above and beyond those required by the CPSIA. Should those requirements go into effect, it is important for firms to have notice of the additional requirements. There may be mandatory recall notifications already prepared, and without notice those recall notices may need to be redone or restructured, which could cause unavoidable delay in publishing the mandatory recall notification.

## Stevenson, Todd

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**From:** Morris, Wayne [WMorris@AHAM.org]  
**Sent:** Friday, April 17, 2009 6:40 PM  
**To:** Mandatory Recall Notices; Stevenson, Todd  
**Cc:** Mullan, John; Falvey, Cheryl; Schoem, Marc; Samuels, Chuck  
**Subject:** AHAM Comments on the Mandatory Recall Notification NPR, Section 15(i) NPR  
**Attachments:** AHAM Comments Mandatory Recall Notification.pdf

Attn: Office of the Secretary

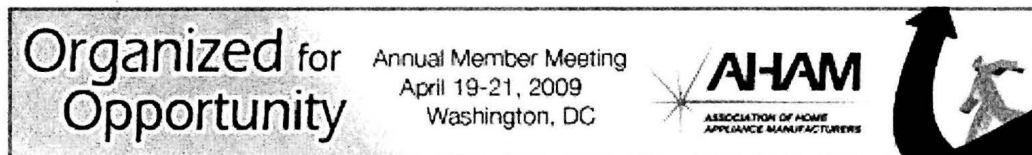
Enclosed are the comments of the Association of Home Appliance Manufacturers on the Proposed Rulemaking regarding Mandatory Recall Notifications.

Thank you for the opportunity to comment on this important rule.

If you have questions, you may reach me or Charles A. Samuels, [casamuels@mintz.com](mailto:casamuels@mintz.com)

Best regards,

**Wayne Morris**  
**Vice President, Division Services**  
1111 19th St. NW, Suite 402, Washington, DC 20036  
t 202.872.5955 ext313 f 202.872.9354 e [wmorris@aham.org](mailto:wmorris@aham.org)  
[www.aham.org](http://www.aham.org)



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April 20, 2009

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

***Re: Section 15(i) NPR***

To Whom It May Concern:

The Consumer Specialty Products Association (CSPA) supports the important mission of the Consumer Product Safety Commission ("Commission") to protect the public from unreasonable risk of injury through both mandatory and voluntary recall notices. We do, however, have some concerns with the draft guidelines and requirements for recall notices the Commission published in its proposed rulemaking on March 20, 2009.

CSPA is the premier trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of approximately \$80 billion annually in the U.S. of hundreds of familiar consumer products that help household, institutional and industrial customers create cleaner and healthier environments. Our products include disinfectants that kill germs in homes, hospitals and restaurants; candles, fragrances and air fresheners that eliminate odors; pest management products for home and garden; cleaning products for use throughout the home; products used to protect and improve the performance and appearance of automobiles; and a host of other products used everyday. Through its product stewardship program Product Care<sup>SM</sup>, scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products. For more information, please visit [www.cspa.org](http://www.cspa.org).

**Applicability to Voluntary Recalls**

The proposed rule states that "[u]nless 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." There are significant differences between mandatory and voluntary recalls, such that using the mandatory recall notification requirements as a guide for voluntary recall notifications would not be appropriate. Voluntary recalls are handled differently from mandatory recalls, often allowing more time for the Commission and the recalling firm to review and agree to the specifics of the recall notification, as well as the recall itself. Accordingly,

requiring the same level of detail as proposed in the rule for mandatory recall notices may not be necessary or helpful to consumers in voluntary recalls. While the Commission may wish to develop guidelines that outline the useful elements of a voluntary recall notification, the final elements of each recall notification should be specific to each particular voluntary recall. Additionally, imposing the proposed mandatory requirements on voluntary recalls could have the effect of discouraging voluntary recalls. The willingness of manufacturers to come forward and conduct voluntary recalls is driven in part by the prospect of avoiding the burdens of mandatory recalls. As such, CSPA recommends separate guidelines be developed for voluntary recall notices.

### **Identification of Foreign Manufacturer**

Section 1115.27(h) states that "[a] recall notice must identify each manufacturer (including importer) of the product and the country of manufacture." The name of a foreign manufacturer should be protected as confidential business information (CBI). If necessary, the identities of such manufacturers can be provided to the Commission confidentially, in documents marked "Trade Secret", provided that such documents are covered by the federal Trade Secrets Act 18 U.S.C. 1905 and the relevant section of FOIA (Freedom of Information Act) 5 U.S.C. 552(b)(4).

It is important to note that Section 214 of the Consumer Product Safety Improvement Act (CPSIA), which requires the Commission to establish these recall guidelines and requirements, does not require disclosure of the foreign manufacturer. Specifically, Section 214(c) requires the recall notice to include: "(E) An identification of the manufacturers and significant retailers of the product..." Proposed Section 1115.27 (h) of the recall guidelines requires the identification of each manufacturer (including importer). And "[i]f a product has been manufactured outside of the U.S., a recall notice must identify the foreign manufacturer and the U.S. importer..." But since the definition of manufacturer under the Consumer Product Safety Act (CPSA) is "any person who manufactures or imports a consumer product" [emphasis added], the act does not require the identification of foreign third party manufacturers, but rather either the manufacturer or the importer. The guidelines, therefore, should not require such information.

Regardless of whether the act requires disclosure of foreign manufacturers in a recall notice, this information is not necessary for ensuring effective recalls, or otherwise protecting public health and safety. Protection of the consumer through the most successful recalls is the true goal behind recalls. With that said, one could argue that disclosing both the recalling firm and the foreign manufacturer might be confusing for consumers, especially for determining which company the recall product needs to be sent for repair or which to contact for other remedies.

Recall notices must be appropriately constructed to ensure that consumer pay attention to them, and take the required action. The disclosure of foreign manufacturers does not serve that goal, and would require the surrender of CBI without a corresponding increase in public health and safety.

### **Identification of Significant Retailers**

CSPA requests that the Commission provide more guidance on what constitutes a “significant retailer” under Section 1115.27(i) of the proposed guidelines. Specifically, the guidelines do not provide a definition for “regionally-located retailer” or a “significant number of the total manufactured, imported or distributed units of the product.” To comply with these recall guidelines, some firms would simply resort to including every known retailer to the Commission. This abundance of information will do consumers little good in that they would receive a huge list of retailers as part of the recall notification, as some firms sell to hundreds, if not thousands of retailers.

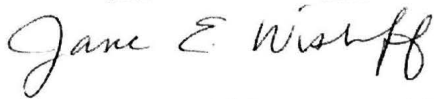
### **Effective Date**

The final regulation would become effective on the date of publication rather than the usual 30 days after publication of the final rule. While we understand the Commission’s reasoning that the proposed rule reflects a statement of policy (and therefore is eligible for an earlier effective date) and that the statutory requirements for the content of mandatory recall notices are already in effect, the proposed rule imposes requirements above and beyond those required by the CPSIA. Should those requirements go into effect, it is important for firms to have notice of the additional requirements. In some cases, mandatory recall notifications may already be prepared, and without sufficient and reasonable notice those recall notices may need to be redone, which could delay publishing the mandatory recall notification.

### **Conclusion**

Once again, we appreciate the Commission’s solicitation of stakeholder comments on this very important issue. If you have any questions regarding these comments, please do not hesitate to contact me at 202-833-7303 or [jwishneff@cspa.org](mailto:jwishneff@cspa.org).

Sincerely,



Jane E. Wishneff  
Regulatory Counsel & Director of International Affairs

**Stevenson, Todd**

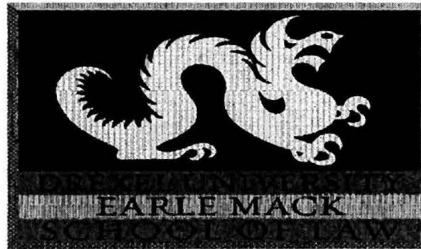
---

**From:** Jane Wishneff [jwishneff@cspa.org]  
**Sent:** Sunday, April 19, 2009 3:33 PM  
**To:** Mandatory Recall Notices  
**Cc:** Jane Wishneff; Brigid Klein; Gretchen Schaefer  
**Subject:** Section 15(i) NPR  
**Attachments:** CSPA\_Comments\_on\_Recall\_Guidelines.pdf

Please find attached comments from the Consumer Specialty Products Association (CSPA) regarding the Notice of proposed rulemaking on Guidelines and Requirements for Mandatory Recall Notices issued by the Consumer Product Safety Commission on March 20, 2009.

Thank you,

Jane Wishneff



From: Brynn Gentile  
Earle Mack School of Law, Drexel University

Sent: April 20, 2009

To: Office of the Secretary, Consumer Product Safety Commission

Subject: Notice of Proposed Rule and Request for Comments as to:  
"Guidelines and Requirements for Mandatory Recall Notice of  
Proposed Rulemaking (16 CFR Part 1115)

These are the comments of Ms. Brynn Gentile, a second-year law student at the Earle Mack School of Law at Drexel University in Philadelphia, Pa. This comment is in response to my participation in an Administration Law course.

In summary, the Consumer Product Safety Improvement Act of 2008 requires the United States Consumer Product Safety Commission to establish, by rule, guidelines and requirements for recall notices ordered by the Commission or by a United States District Court under the Consumer Product Safety Act. These comments are on the proposal that would establish the guidelines and requirements to satisfy the Act's requirements.

I support the proposed rule as published for comment.

In particular:

1. Although it would seem obvious, it is important that proposed §1115.26(b)(2) makes it mandatory to use any and all contact information when issuing direct recall notices. It may seem adequate to some to merely disseminate a direct recall notice into the 'general public.' This assumption is incorrect because there is no such thing as a 'general public,' and there is no way to guarantee the recall notice would be read by everyone who purchased that product. By using contact information, the chances will greatly increase that all purchasers are notified, and greatly reduce the risk of potential lawsuits by consumers who the recall did not reach.



2. We live in a very diverse world, and although English has become a 'universal language' it is not the primary language of everyone who lives in this country. It can probably be shown that a majority of people have at least a working knowledge of the English language, but some may still predominately use their 'natural' language. That is why proposed §1115.26(c) is an extremely important addition to the rule. In certain areas of this country, if a recall is issued strictly in English, many purchasers will not understand. As a result, even a properly disseminated recall will not be effective. That a recall may be required to be in a language in addition to English will greatly circumvent this obstacle.
3. Proposed §1115.27(f)'s clarification is vital to the success of the recall notice. As stated, the objective of a recall includes locating the recalled products, removing the recalled products from the distribution chain and from consumers, and communicating information to the public about the recalled product and the remedy offered to consumers. With this in mind, you can see why this proposed amendment would be vital. By specifying that the description of the product must enable consumers to identify the risks of the potential injury or death associated with the product, and that it must identify the problems giving rise to the recall and the type of hazard or risk at issue, this section makes the 'margin of error' for consumers much slimmer. With this kind of broad and in-dept description, consumers will be hard pressed not to recognize that they bought the recalled product and what they should do with the recalled product. The clarification of the process the consumers should follow will also be helpful in the chaotic time of product recall.
4. Including the price is another simple way to reach the goal of a recall notice. Some of these requirements may seem superfluous, but there is no reason to withhold information that will help make the recall notice successful.

Exception:

1. A negative aspect of this proposed rule would be the inclusion of proposed §1115.27(1) that makes it necessary to state the number and describe any injuries and deaths associated with the product. Including the number is not so much an issue as stating the details of the injuries and deaths. I believe that this may cause unnecessary hysteria among consumers. Some of the injuries incurred because of the recalled product may not be severe, and in this case, the Commission may get an influx of unrelated calls, preventing them from dealing with 'actual' problems. Including the descriptions may cause an unnecessary 'boy who cried wolf' situation.

**Conclusion**

Given the above considerations, among others, I support the adoption of the proposed rule change as written, with the one stated exception. I thank the Commissioner for this opportunity to comment.



**Stevenson, Todd**

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**From:** Brynn Gentile [brynn.gentile@gmail.com]  
**Sent:** Sunday, April 19, 2009 9:03 PM  
**To:** Mandatory Recall Notices  
**Subject:** Comment on Guidelines and Requirements for Mandatory Recall Notices: Notice of  
Proposed Rulemaking  
**Attachments:** Comment

Comment Attached.



24

April 20, 2009

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

Dear Mr. Stevenson:

I am writing on behalf of the American Apparel & Footwear Association (AAFA) – the national trade association representing the apparel and footwear industry – regarding the Consumer Product Safety Commission’s (CPSC) Notice of Proposed Rulemaking on Guidelines and Requirements for Mandatory Recall Notices under Section 214 of the Consumer Product Safety Improvement Act (CPSIA).

Section 214 states that the CPSC must establish guidelines for required information to be included in a mandatory recall notice. The information in the recall notice is meant to be helpful for a consumer in identifying the product, hazard, and remedy associated with the recall (these goals are also laid out in Proposed 16 C.F.R. § 1115.23 Purpose). However, as it stands, the proposed rulemaking goes far beyond the requirements and intent of Section 214.

### **Proposed § 1115.23 Purpose**

Section 214 of the CPSIA specifies the guidelines for any notice required under section 12, 15(c) or 15(d) of the Consumer Product Safety Act (CPSA) that would be helpful *for consumers* in the event of a mandatory recall. However, the CPSC’s proposed rule goes further and states the recall notices should benefit “other persons” as well. While we agree that other persons have an interest in product recalls, the content of the recall notice should still fall within the stated objectives of Section 214: identifying the product associated with the recall, understanding the product’s actual or potential hazard and the understanding the remedy associated with the recall. We therefore recommend the CPSC not include extraneous information in recall notices since this information, while under the justification that it might be beneficial to “other persons,” could potentially be harmful to businesses. Such information could be confidential or misinterpreted should it be taken out of context. Moreover, such other information might obscure the critical information needed in a recall, making it difficult for consumers to properly digest a recall notice and/or correctly identify recalled products.

### **Proposed § 1115.24 Applicability**

The proposed rule does not make a clear enough distinction between a mandatory recall and voluntary recall. While the notice asserts, “The proposed rule would not contain requirements for recalls and recall notices that are voluntary and result from corrective action settlement agreements with Commission staff,” it goes further to state, “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.” We disagree strongly with the latter statement.

Using the mandatory recall notice proposed rule as guidelines for a voluntary recall could be a disincentive for companies to report product defects. Back in 1995, the CPSC initiated a “Fast Track” pilot program to promote quicker recalls and “to reduce any disincentive to companies that want to report and undertake corrective action, but fear the consequences of a staff preliminary determination.”<sup>1</sup> The fast track program was successful<sup>2</sup> because companies were given the flexibility to initiate their own corrective action plans that were, by rule, acceptable to CPSC staff. The CPSC should continue to foster this cooperation wherever possible and only use the procedures outlined in the proposed notice when a mandatory recall is absolutely necessary.

### **Proposed § 1115.27 Recall Notice Content Requirements**

We strongly disagree with the CPSC’s determination to require the foreign manufacturer be identified in the case of products manufactured outside the U.S. Disclosing foreign manufacturer information does not provide the consumer information significant to Section 214’s stated requirements of identifying the product, hazard and remedy. Furthermore, the identity of a company’s foreign manufacturer is business confidential and could cause significant harm to a company. We strongly recommend that the proposed rule adopt the definition of “manufacturer” as described in section 3 [15 U.S.C. § 2052] of the CPSA.

Thank you for your consideration in the above comments. If you have any questions, please contact Rebecca Mond ([rmond@apparel and footwear.org](mailto:rmond@apparel and footwear.org)) with our staff.

Sincerely,



Kevin Burke  
President and CEO

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<sup>1</sup> “Conditions Under Which the Staff Will Refrain From Making Preliminary Hazard Determinations.” Federal Register Vol. 62, No. 142. July 24, 1997 page 3982.

<sup>2</sup> “During its first six months, companies participating in the program initiated 57 corrective action plans that affected approximately 3.5 million products. By the end of the pilot program’s extension, companies had initiated 140 recalls of approximately 12.9 million products.” *Id.*

## Stevenson, Todd

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**From:** Rebecca Mond [rmond@apparelandfootwear.org]  
**Sent:** Tuesday, April 21, 2009 1:48 PM  
**To:** Stevenson, Todd  
**Cc:** Falvey, Cheryl; Steve Lamar  
**Subject:** Mandatory Recall Comments  
**Attachments:** Mandatory Recall Comments 4.20.09.doc

**Importance:** High

Todd,

Please see attached AAFA's comments on the Notice of Proposed Rulemaking on Guidelines and Requirements for Mandatory Recall Notices under Section 214 of the Consumer Product Safety Improvement Act (CPSIA).

Thanks and regards,

Rebecca Mond  
Government Relations Representative  
American Apparel & Footwear Association  
1601 North Kent Street  
Suite 1200  
Arlington, VA 22209  
[www.apparelandfootwear.org](http://www.apparelandfootwear.org)  
[RMond@apparelandfootwear.org](mailto:RMond@apparelandfootwear.org)  
703-797-9038



25

April 20, 2009

Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: NOTICE OF PROPOSED RULEMAKING (NPR): CPSIA SECTION 214  
GUIDELINES AND REQUIREMENTS FOR MANDATORY RECALL NOTICES**

Dear Mr. Stevenson:

We appreciate the opportunity to comment on the March 20, 2009, Federal Register Notice regarding 16 CFR Part 1115 on Mandatory Recall Notification ("NPR"). The Consumer Product Safety Commission ("Commission" or "CPSC") invited comments on 16 CFR Part 1115 of the Consumer Product Safety Act and Section 214 of the Consumer Product Safety Improvement Act ("CPSIA"), which directs the Commission to issue a regulation on "mandatory" recall notification. In response to the request of the Commission's staff, the Toy Industry Association Inc. ("TIA") submits the following comments. TIA hopes that these comments will assist the Commission in effectively implementing regulations which impact TIA's more than 500 members. TIA has previously submitted extensive comments on a variety of CPSIA issues. These comments are providing our views on the requirements of section 214 of the CPSIA, and address approaches that could be applied to particular notices. TIA reserves the right to supplement or amend its comments as appropriate.

**General Comments**

TIA believes that CPSC should issue clarifications of the requirements for mandatory corrective action notification. However, § 214 of the CPSIA provides sufficient detail for most of the elements of a mandatory recall notification without a need for some of the additional requirements proposed in the NPR. The purpose of recall notification is to provide the consumer the information *necessary* to identify the specific product being recalled, the nature of the "recall", to understand the hazard the recall notice identifies, and to understand the available remedy, if any. In many cases a shorter recall notification would likely be easier for consumers to read and follow and thus, may be more beneficial than a more detailed recall notification.

**1. An age range and date range should be sufficient compliance with the recall notice requirements.**

Section 1115.27(l) of the Proposed Rules states that a "*recall notice must state the ages of all persons injured and killed.*" Providing specific ages of persons who may have been injured or



Toy Industry Association, Inc.

[www.toyassociation.org](http://www.toyassociation.org)

died as a result of a product defect provides information that is unnecessary for a consumer to be able to evaluate the relative risk of a product. Where there are a large number of incidents, providing the ages of all persons involved in a product incident might be distracting for the reader and detract from the recall message. It should be sufficient to describe the injured parties by an age range (e.g., 3 to 5 years) or as, “children,” “adults,” “infants” to adequately communicate the types of injuries reporting without providing superfluous information.

The requirement that information pertaining to the *“dates on which the Commission received information about such injuries or death,”* similarly, supplies information that is irrelevant to the message of the recall notice and irrelevant to a consumer’s determination as to whether or not it would be appropriate to participate in the recall. Alternatively, stating such information by means of a “range of dates” as in the proposed rule would be preferable, however, stating such information even more broadly, such as “prior to the time of this announcement” would provide information regarding the extent of the injuries reported without including irrelevant information.

In addition, in many instances information pertaining to injuries and incidents that occur on particular dates is information that has been supplied by the recalling firm that can be considered confidential material submitted to the Staff under Section 15(b). Including this information in a recall notice would undermine the confidentiality of this information afforded under Section 6(b) and otherwise.

Finally, the proposed Rule requires the publication of the number of injuries, without defining what an injury is. It is suggested that the term injury be defined, for example, to include injuries which required medical treatment and to exclude, for example, minor “injuries” such as superficial scrapes and bruises. In this manner, reports of “injuries” will be consistent in all recall notices.

2. **The proposed Rule’s requirement that a retailer be considered a “significant retailer” and, thus be named in the Recall Notice if the retailer sold a “significant number” of the total products or if the retailer has “stores nationwide” or is “regionally located” will force most major retailers to be included in almost all recall notices.**

The proposed Rule appropriately requires a retailer’s name to be included in a recall notice where the retailer was the exclusive retailer of the product or where the retailer was the importer of the product. The portion of the proposed Rule that requires a retailer to be named in a recall notice, where the retailer sold a “significant number” of the products or has “stores nationwide” may result in small number of national retailers being named on virtually every recall notice, thus, diluting the importance of this information.



Under the proposed Rule, larger retailers in general, will be considered to have sold a “significant number” of the recalled products simply by virtue of the fact that they have sold more products, overall. A retailer that generally sells a larger number of products than its competitors, by definition would sell a large numbers of products that were subject to any recall.

To avoid having large, nationwide retailers named in every recall notice, it is suggested that the language of the proposed Rule be changed to require that a retailer’s name be included in the recall notice if:

“[T]he retailer sold, or held for purpose of sale, or distribution commerce, a *majority* ~~significant number~~ of the total manufactured, imported or distributed units of the product.”

If a retailer, for example, sold a majority of the recalled products, and thus, sold more than all other retailers combined, it would be appropriate to consider that retailer to be a “significant retailer” whose name should appear on the recall notice, as the majority of consumers who purchased the product would have purchased it at such retailer. In that case, identifying the retailer in the recall notice would, in fact, assist consumers.

The staff’s current practice for products sold throughout the United States, both at large retailers and at small retailers is to include in the recall notice a statement to the effect that the product is “sold at department and retail stores nationwide.” This practice provides accurate information that would not be misunderstood. If the names of the largest retailers were singled out in each of these cases, simply because they sold more products, overall, than other retailers did, this could mislead consumers into thinking that the products purchased elsewhere would not be affected.

3. **The proposed Rule’s requirement that “all product units manufactured, imported and/or distributed in commerce be included the recall notice may be create misleading information in a recall notice and goes beyond the scope of the requirements of the CPSIA.**

Section 214 of the CPSIA requires that the Commission establish guidelines for mandatory recall notices that include “the number of units of the product with respect to which the action is being taken.” The proposed Rule states:

“A recall notice must state the approximate number of product units covered by the recall, including all product units manufactured, reported and/or distributed in Commerce.”

This portion of the Rule has the potential to be interpreted to mean products that were never sold to any distributor or retailer and, thus, are not required to be “recalled” or even products that





have been manufactured, that are still in the manufacturer's hands, but have not yet been imported into the United States, and which will never be imported into the United States, still must be included in the number "number of units covered by the recall". Products that remain in the hands of the importer or the manufacturer, which have never been sold or distributed, are not products that are subject to recall action and these products should not be included in the number of products included in the recall notice.

Under CPSIA Section 214, the stated purpose of the recall notice is to provide information, "that the Commission determines would be helpful to consumers in:

- (A) identifying the specific product that is subject to such an order;
- (B) understand the hazard that has been identified with such product (including information regarding incidents or injuries known to have occurred involving such product); and
- (C) understanding what remedy, if any, is available to a consumer who has purchased the product.

Since the statute and proposed rule states that the purpose of the recall notice is to assist *consumers* to identify the product, to understand the hazard and to understand the remedy available to *consumers*, including the numbers products that by definition have never been in the hands of consumers would be inappropriate in a recall notice. Proposed § 1115.27 identifies a variety of requirements for mandatory recall notifications which adds complexity beyond what is necessary for an effective recall. Per CPSIA § 214, the requirement under CPSIA is information *necessary* to identify the specific product being recalled, to understand the hazard the recall notice identifies, and to understand the available remedy. If a recall notice requires confusing information, the consumer may not be able to locate the relevant information needed. Unnecessary detail may obfuscate the very information it is designed to clearly convey to consumers. Also, products that are still in the hands of a manufacturer or importer, that have never been sold or distributed in commerce, are, by definition, not in the hands of consumers. To include products that are still in the hands of a manufacturer or importer in the total numbers of products described in a recall notice may distort the actual number of products that are subject to the recall.

#### **4. Identification of foreign manufacturers may disclose proprietary and confidential Information**

Section 214(c)(2)(E) of the CPSIA states that the recall notice must provide:

*"An identification of the manufacturers and significant retailers of the product."*





Section 1115.27(h) of the proposed Rule states that:

*“If a product has been manufactured outside the U.S., a recall notice must identify the foreign manufacturer and the U.S. importer. A recall notice must identify the manufacturer by stating the manufacturer’s legal name and the city and state of its headquarters or, if a foreign manufacturer, city and country of its headquarters.”*

Many companies consider the identity of its foreign suppliers of consumer goods to be proprietary, confidential information that it does not disclose to competitors. Requiring the name of a foreign manufacturer to be included in the recall notice, further, may unfairly suggest fault on the part of foreign manufacturer or supplier, where the product defect to be corrected to be considered a design issue, as opposed to a manufacturing issue. The staff’s current practice and the existing CPSC regulations, which treat an importer as a “manufacturer” for the purpose of the CPSA, would avoid disclosure of proprietary information in naming a foreign manufacturer or a supplier, which may have had no responsibility for the defect for which the recall was conducted. The Commission’s current practice of including the country of manufacture of the product in the recall notices is adequate and complies with mandate of Section 214 of the CPSIA.

It is possible, on the other hand, that it was the intention of the proposed Rule to require that, in the case of a domestic manufacturer, the manufacturer’s legal name and the city and state of its headquarters must be identified, and, alternatively, in the case of a foreign manufacturer, only the city and country of its headquarters must be identified. The language of the proposed Rule has an ambiguity that would allow it to be interpreted in this manner.

If it was intended that, where there is a U.S. Importer and foreign manufacturer, only the city and country of the foreign manufacturer should appear in the recall notice, similar to the way a the manufacturer’s identity is required to be disclosed in a Certificates of Conformity, then the language of the proposed Rule could be clarified to state as follows:

*“A recall notice must identify a domestic manufacturer by stating the manufacturer’s legal name and the city and state of its headquarters, or, if a foreign manufacturer by stating the city and country of its headquarters.*

We believe this is consistent with the reasonable interpretation afforded under the underlying CPSA.<sup>1</sup>

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<sup>1</sup> Section 214 (c)(i)(2) (E) of the CPSIA states that the notice shall include merely “an identification of the manufacturers and significant retailers of the product.” But, in §1115.27 (h) of the proposed rule, the CPSC indicates that a mandatory recall notice must identify “each manufacturer (including importer) of the product and the country of manufacture. Under the definition in



**Toy Industry Association, Inc.**

[www.toyassociation.org](http://www.toyassociation.org)

With any newly imposed requirements, prior to the time they go into effect, it is important for firms to have adequate advanced notice of such additional requirements. We encourage the Commission to provide adequate advanced notice of any change in Notice requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Carter Keithley". The signature is fluid and cursive, with the first name "Carter" and last name "Keithley" clearly distinguishable.

Carter Keithley,  
President  
Toy Industry Association, Inc

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section 3(a)(11) of the CPSA (15 U.S.C. 2052(a)(11)), a manufacturer means 'any person who manufactures or imports a consumer product.'

## Stevenson, Todd

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**From:** Desmond, Edward [edesmond@toyassociation.org]  
**Sent:** Monday, April 20, 2009 5:50 PM  
**To:** CPSC-OS; Wolfson, Scott; Falvey, Cheryl; Little, Barbara; Smith, Timothy; Mullan, John  
**Cc:** Keithley, Carter; Lawrence, Joan; Locker, Frederick  
**Subject:** TIA Comments on Section 214 Mandatory Recall Notices  
**Attachments:** TIA Section 214 Guidelines and Requirement for Mandatory Recall Notices.pdf

Good afternoon,

Attached please find the comments by the Toy Industry Association regarding mandatory recall notices. We appreciate your consideration of our views and are happy to add further clarification if you deem it necessary.

If any questions arise, please do not hesitate to contact me. Thank you.

Ed

Ed Desmond  
Executive Vice President, External Affairs  
Toy Industry Association  
1025 F St., N.W., 10th Floor  
Washington, D.C. 20004  
T: 202-857-9608  
F: 202-775-7253  
E: [edesmond@toyassociation.org](mailto:edesmond@toyassociation.org)

[mandatoryrecallnotices@cpsc.gov](mailto:mandatoryrecallnotices@cpsc.gov).

Re: Section 15(i) NPR

The above-named section of Consumer Product Safety regulations, drafted to effectuate Section 214 of the Consumer Product Safety Improvement Act of 2008, is a sensible and appropriately specific regulation which will further the goals of the Act in helping manufacturers, retailers, distributors, and most importantly consumers, in “identifying the product, hazard, and remedy associated with a recall.” 15 U.S.C. 2064. I have concerns about the provision for actual notice, but concede that it reflects the Commission’s expertise and likely is fiscally necessary. Standardizing the information that must be included in a mandatory recall, and making the requirements as specific as possible, is particularly appropriate given that producers of these products have not acted to inform consumers and retailers of hazards of their products in the past, and are financially motivated to minimize the effects of a recall (a precursory cite reference search of Westlaw for 2064 (c and d) reveals that many companies are sued because they did not disclose unfavorable safety information about their products to the Commission to avoid just these remedies), so could reasonably be expected to draft recall notices in a manner that is more in keeping with their financial incentives than the best interests of consumers. Due process is assured by the requirement from Section (c)(1) that mandatory recall notices will only be ordered by the agency after opportunity for a hearing, where the Commission must determine that the product presents a substantial product hazard and notification is necessary to protect the public, or that the product is a imminently hazardous

consumer product (and therefore it can be assumed that notification is necessary to protect the public).

The content required of mandatory recall notices is reasonably calculated to not only disseminate information about dangers to the public and manufacturers and retailers of products, but also to increase their motivation to comply with or take advantage of recall procedures. The inclusion of information regarding injuries and deaths, including the number of people hurt and what damage was done to them, is specifically designed to motivate consumers to take the recall seriously and comply with its directions to rectify the problem. Although the age of victims may have less of a motivational value, it does serve to put caregivers on notice if dependents like children or the elderly are at particular risk. In the wisdom of motivating by both stick and carrot, a requirement that notices specify the remedies available is also included. My concern about this provision relates not to the proposed regulation but the Commissions history of approval of recalls that do not include replacement, repair or refund of the purchase price. *See Mahoney v. US Consumer Product Safety Commission*, 2004 WL 2201239 (E.D. Pa. 2004). I would encourage the Commission to consider that approving remedies that do not compensate consumers decreases the motivation of consumers to comply with recall instructions, since they are essentially left with the choice of continuing to use the defective product or paying twice for a product to fulfill its function.

Including specifics identifying the product and where it may have been purchased by both industry and common names is smart- it tries to cover as many consumers as possible, since many will remember some but not all of the information about a product they purchased (for example, they may know the common name of the product and possibly where they bought it, but may not know the model number unless it is printed on the product itself because they

threw out the box and can't find the instruction book). The requirement that a picture be included not only has the benefit of drawing the eye to notices, but also serves as a manner of quick and easy identification for consumers who may be skimming multiple consumer notices. Although the requirement that "recall" be used in the title and text of the notice is designed for a similar purpose, the word may be only marginally effective in media displaying large numbers of similarly-labeled recall notices in a list.

Likely the most contentious of these regulations is the requirement that actual notice need be given only to those consumers of which the company itself has knowledge of name and address or electronic mail address, even if this information could be obtained by the company by accessing contact information kept by retailers. *Federal Procedure, Lawyers Edition*, ch. 16, Consumer Product Safety, Levin, J. and Oakes, K. 7 Fed. Proc., L. Ed. § 16:51. Clearly, to require companies to do so would be expensive, but would also likely be considerably more effective given that modern consumers often skim headlines online rather than flipping through a newspaper and fast forward through parts of newscasts that they do not find interesting, unlike consumers in the past who could reasonably be expected to be exposed to notices publicized by the media. As available media has exploded, so has the ability and motivation of consumers to filter out that which is not interesting or important to them. If it has not done so, the Commission should consider increasing the number of products for which a company must collect consumer contact information based on the severity and frequency of the risk a defect could cause.

The Commission's authority over the final form and content of recall notices is wise, reflecting both the Commission's expertise and a respect for the overburdening of the judicial

system which would be caused by allowing companies to publish notices approved only by themselves.

In summary, although I might wish provisions for actual notice cover a broader class of products, the proposed regulation is reasonably calculated to effect its purpose and reflects a sound balance between the requirements of public safety and those of companies, and thus overall economic development.

Pamela Hill

311 E Shawmont Ave

Philadelphia, PA 19128

[pehill76@hotmail.com](mailto:pehill76@hotmail.com)

267-971-7006

**Stevenson, Todd**

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**From:** Pam Hill [pehill76@hotmail.com]  
**Sent:** Monday, April 20, 2009 9:57 AM  
**To:** Mandatory Recall Notices  
**Subject:** Section 15(i) NPR  
**Attachments:** Admin comment on proposed regulation.docx

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**Stevenson, Todd**

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**From:** Ethan Jones [ej64@drexel.edu]  
**Sent:** Monday, April 20, 2009 1:27 PM  
**To:** Mandatory Recall Notices  
**Subject:** "Section 15(i) NPR"  
**Attachments:** Section 15(i) NPR COMMENT.doc

Monday, April 19, 2009

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

To Whom It May Concern:

In regards to the proposed Guidelines and Requirements for Mandatory Recall Notices, 74 FR 11883, I am writing to applaud the CPSC for providing more detailed and specific guidelines that, once implemented, should further the goal of keeping the public informed about and safe from potentially dangerous products on the market. I am also writing to comment on aspects of the Proposed Rule that I feel would benefit from further attention.

In general, I agree with the proposed guidelines and requirements, and the manner in by which they are to be implemented. Under section 15 of the CPSA, the CPSC's authority to recall products was broadened. With this increased authority, the requirement that the CPSC implement a rule clearly defining the recall notice elements within 180 days of the statute's passage seems to me an especially important aspect. In addition to the clarification of the recall notice elements, as required, the statute also provides a number of valuable recall notice principles that illustrate the spirit of the improvements. The Proposed Rule appears to be consistent with the statute, the authority, and the purpose. The proposed elements and principles serve the public well – I believe that keeping the parties as informed as possible is definitely the best way to keep the public as safe as possible.

Nevertheless, I have a concern about the vagueness with which some notice principles are provided. Under proposed section 26(c), the rule provides the CPSC authority to require a notice of recall to be issued in languages other than English when it is considered by the Commission or a court to be "necessary and appropriate" to protect the public.

First, I would like to see greater specificity as to what constitutes "necessary and appropriate" that other languages should be included in a recall scenario. I would hope that the criteria is not especially high to trigger an other language notice, as it seems highly unlikely that a commercial product available on the market would not be purchased or used by non-English speakers who deserve to have as much protection from potentially dangerous products as English speakers, especially considering the rapidly changing demographics of U.S. society. For example, the Modern Language Association Language Map, using data from Census 2000, indicates that while slightly over 80% of the United States speaks English, nearly 20% are speakers of other languages. Considering that it may be unrealistic to expect recall notices to be translated into all possible languages, it is definitely worth noting that of the 19.39% of languages other than English, 62% of this grouping are Spanish speakers. In other words, 12.03% of the population, approximately 32,252,890 people, speaks

Spanish. This number suggests that any product recall notice that is released in English, should be simultaneously released in a Spanish language translation as well, without having to wait for the Commission or a court to determine whether it is “necessary and appropriate” to provide notice in languages other than English.

Secondly, as mentioned, to provide recall notices in all possible languages currently spoken in the United States is unrealistic and untenable. On the other hand, it is not unreasonable to anticipate the inevitability of future product recalls and to plan “other languages” notices accordingly. While almost certainly beyond the scope of the current proposals, one suggestion would be to prepare a database of generic or form notices written in the documented most spoken languages in the United States (Spanish, Chinese, Tagalog, French, Vietnamese, German, Korean, Russian, Italian, Arabic, and Portugues), into which specific recall information could be easily and efficiently entered as needed at the time of an actual recall, thus helping achieve the CPSC’s goal of increasing the reach of its notice and the likelihood that the notice will be read, without placing an undue and additional burden at the time of an actual recall.

I appreciate the opportunity and venue to make my comment and to express my support for the CPSC’s continued efforts to improve the system and make the produces we all consume safer for everyone.

Sincerely,

Ethan E. Jones

Monday, April 19, 2009

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

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Ethan E. Jones

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<sup>1</sup> [http://www.mla.org/cgi-shl/docstudio/docs.pl?map\\_data\\_results](http://www.mla.org/cgi-shl/docstudio/docs.pl?map_data_results)

**From:** Ushma Domadia [ushma.domadia@gmail.com]  
**Sent:** Monday, April 20, 2009 2:23 PM  
**To:** Mandatory Recall Notices; NEILWISE@camden.rutgers.edu  
**Subject:** Comment on Section 15(i) NPR  
**Attachments:** Comment on Proposed Rule.doc

**RE: Notice of Proposed Rulemaking, subpart C, titled, "Guidelines and Requirements for Mandatory Recall Notices," in part 1115 of title 16 of the Code of Federal Regulations**  
please note: the attached .doc file is copy of the following message

Dear Sir or Madam;

I, Ushma Domadia, appreciate this opportunity to present my comments on the notice of proposed rulemaking entitled "Guidelines and Requirements for Mandatory Recall Notices," published in the Federal Register on March 20, 2009.

Congress passed the Consumer Product Safety Act (CPSA) to protect the public "against unreasonable risks of injuries associated with consumer products." This law and the creation of the Consumer Protection Safety Commission (CPSC) effectively standardized safety regulations imposed on manufacturers to common federal sets of standards. The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the CPSC to set forth standardized rules and guidelines governing the recall notices of products and their dissemination to consumers. Proposed subpart C, titled, "Guidelines and Requirements for Mandatory Recall Notices," covers many of the guidelines needed to ensure public safety, yet there are a few improvements that should be made to distinguish various degrees of risk, and to improve clarity of the recall message.

**§1115.27(a) Terms.**

As an added safety measure, the recall notice must contain the words "Urgent" in the title prior to "recall" if the description of the substantial product hazard under 1115.27(f)(2) entails a significant risk of death or loss of limb. This seems intuitive as the simple message of "recall" may be given a higher priority if the consumer is aware that the product is posing a significant threat of death or physical impairment to themselves, or the recipient of the product. This added measure will create a more serious class of recalls, aiding consumers in taking immediate action to prevent any harm. There is a distinct difference in a recall due to faulty hardware in a child's playpen, versus a recall that poses a small risk of danger to a specific class of adults. Thus, severity of the danger should be differentiated and treated with higher importance. The added term "Urgent" will urge consumers to act, and aid retailers, manufacturers, and firms in their attempt to recall, stop sale, and prevent further distribution of the product into the commerce stream.

**§1115.27(i) Identification of significant retailers.**

The current rule states “A recall notice must identify each significant retailer of the product.” While it is understood that the list may be exhaustive, all retailers of the hazardous product should be identified in some location. As consumers may not be completely informed of the issue or situation surrounding the recall, they may be led to believe that if their specific retailer is not listed as a significant retailer, the recall does not pertain to them. Consumers are assumed to be of varying backgrounds and education levels, and with other additional information on the recall notices, it may be confusing to see only some and not all retailers and distributors of a specific product.

However, it is understood that listing every retailer could result in a long notice that may be completely ignored by a consumer due to sheer size. To balance the length of the recall notice with the clarity of information to respective consumers, the retailers should keep an additional document listing all known retailers. In addition, the posted recall notice could list the significant retailers, explicitly explaining that the list is only partial and contains only the largest retailers of the product. Additionally, consumers should be directed to CPSC’s website, [www.cpsc.gov](http://www.cpsc.gov), and the specific recall notice, where all retailers should be listed. This ensures the dissemination of information in a conducive manner that precludes the risk of misleading consumers, considers their attention span, and addresses the breadth and efficiency of the document.

The CPSC is entrusted with the responsibility of balancing the cost of meeting these standards with the intended gains in safety, promotion of public good and minimal disruptions to the economy. These comments concern foreseeable consequences. Therefore, if the Commission staff takes these comments into consideration, one, otherwise additional, harm may be prevented.

In conclusion, I applaud the CPSC for creating a set of guidelines to help firms, manufacturers, and retailers efficiently address product safety problems. These comments will only further the mission of reducing risk to consumers, protecting manufacturers, retailers, and firms from additional liability, and increasing consumer confidence in a system designed with their best interests. Thank you.

Respectfully submitted,

Ushma N. Domadia

2 L- Drexel University Earle Mack School of Law



Office of the Secretary

Consumer Product Safety Commission

Room 502

4330 East West Highway

Bethesda, Maryland 20814

**RE: Notice of Proposed Rulemaking, subpart C, titled, "Guidelines and Requirements for Mandatory Recall Notices," in part 1115 of title 16 of the Code of Federal Regulations.**

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Respectfully submitted,

Ushma N. Domadia

2 L- Drexel University Earle Mack School of Law

## Comment on Consumer Product Safety Improvement Act of 2008

The Consumer Product Safety Improvement Act (CPSIA) which was enacted in 2008, has provided many advantageous to every day consumers like myself. By providing guidelines that call for specific information about specific products being recalled, everyday consumers will have the best opportunity to receive word of a substantial product hazard and avoid unnecessary injury. Although this provides a great advantage to the general public, certain aspects of the CPSIA expand the scope of the Consumer Product Safety Commission considerably and could potentially cause harm to certain parties.

One part of the new proposed section 1115.26 that I believe helps tremendously in having consumers discover substantial product hazards and recalls is the direct recall notice. This step away from broad general recalls to the public will be more efficient and help get hazardous products out of people's hands quicker. In the past, the use of these general postings online or through press releases gained little attention and forced consumers to search recalls out. The direct recall notices will put more responsibility on product manufacturers as well as significant retailers to get the appropriate information about those who purchased their products and who would potentially be harmed by the faulty products.

Although the CPSIA has many advantageous, I believe certain aspects of the Act can be viewed as overbearing and extending past the authority of the Consumer Product Safety Commission. The CPSIA seems to overstretch as these new guidelines being

implemented would stretch to almost every business involved in the distribution of consumer products, not just those who manufacture or distribute. The guidelines of determining what a “significant retailer” is most troubling.

Under the definition in section 3(a)(13) of the CPSA (15 U.S.C. 2052(a)(13)), a retailer means "a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer." A product's retailer is "significant"

if, the retailer was the exclusive retailer of the product; the retailer was an importer of the product; the retailer has stores nationwide or regionally-located; the retailer sold, or held for purposes of sale or distribution in commerce, a significant number of the total manufactured, imported units of the product; or identification of the retailer is in the public interest.

A major discomfort with these guidelines is what constitutes a “significant retailer.” It appears from the aforementioned guidelines that almost no retailer would be classified as insignificant. It also encumbers almost every type of retailer who would come in contact with the product, whether it is a major chain or a local, small-scale business. Furthermore, it leaves the final determination of what may be significant to the Agency by incorporating “in the public interest” into the definition. What falls under public interest can be construed to include any and every business that has ever had contact with the product, and leaves the decision of what involves the public interest to be made solely by the Agency.

The proposed guidelines must also be in accordance with the Regulatory Flexibility Act (RFA). The RFA generally requires that agencies review proposed rules for potential economic impact on small businesses. I believe that the Commissions

interpretation of the proposed guidelines attempts to evade the RFA, but in fact falls square within it. The Commission states that the proposed rule making would have little effect on small business. However, if the interpretation of the aforementioned “significant retailer” were construed to include small business as we have mentioned before, the RFA would come into effect. If the RFA would come into effect, an analysis would have to be done on how small business would be affected by the proposed guidelines and would at the very least, provide evidence that the guidelines do or do not affect small business. If the analysis shows that there is a direct affect on small business, it therefore would prove that the proposed guidelines stretch past their intended mark of requiring only significant retailers and manufacturers to be responsible for recalls and that the underlying definition of a “significant retailer” is over-reaching.

Although it is true that the guidelines and requirements of the proposed order will come into play only in the context of an administratively adjudicated order to a specific party which is rare, it still leaves the door open for small business, which usually only have fractions of the amount of resources that major retailers have, to be enveloped in the proposed guidelines and cause significant damage to their business. Furthermore, the cost to correct a potentially harmful situation such as the one mentioned is minimal if the agency were to prepare and make available an initial regulatory flexibility analysis, which would describe the potential damages as well as identify impact-reducing alternatives. Once again, if there is no issue with the proposed guidelines affecting small business, it will show in the analysis and the guidelines can remain as they are.

Overall, I believe the CPSIA will help many consumers become aware of dangerous products. The proposed rule is consistent with the statutory authority granted

to it to protect citizens from harmful products. However, it must be careful not to expand the scope of the rule and harm those who are not directly responsible for the hazardous products.

Thank You,

Alexander Sioutis

**Stevenson, Todd**

---

**From:** Alexander Sioutis [alexander.sioutis@gmail.com]  
**Sent:** Monday, April 20, 2009 2:53 PM  
**To:** Mandatory Recall Notices  
**Subject:** Section 15(i) NPR  
**Attachments:** AdminSection15(i).doc

Please find attached an electronically written comment on Section 15(i) of the Consumer Product Safety Act.

Thank You,

Alexander Sioutis

**Stevenson, Todd**

---

**From:** Colleen McIntyre [mcintyre.colleen@gmail.com]  
**Sent:** Monday, April 20, 2009 4:25 PM  
**To:** Mandatory Recall Notices  
**Subject:** Section 15(i) NPR  
**Attachments:** Section 15(i) NPR.doc

The body of this email is also attached in a Word Doc.

To: Office of the Secretary, Consumer Product Safety Commission

Via email [mandatoryrecallnotices@cpsc.gov](mailto:mandatoryrecallnotices@cpsc.gov)

From: Colleen McIntyre

Via email [Mcintyre.colleen@gmail.com](mailto:Mcintyre.colleen@gmail.com)

**Re: Section 15(i) NPR**

In the March 20, 2009, 16 CFR Part 1115: Notice of proposed rulemaking, the U.S. Consumer Product Safety Commission (the “Commission”) generally succeeded in its efforts in setting out guidelines and requirements for recall notices for the purpose of protecting the public under the Consumer Product Safety Improvement Act of 2008 amendments to the Consumer Product Safety Act. However, there a few sections where the Commission did not go far enough to provide the protections Congress seeks. Congress sets out the purposes of the Consumer Product Safety Act in 15 USCA § 2051. The statute states, “The purposes of this chapter are to protect the public against unreasonable risks of injury associated with consumer products; to assist consumers in evaluating the comparative safety of consumer products; to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.” 15 USCA § 2051 (b)(1) – (4). The Commission fails to meet these goals in two sections of 16 CFR Part 1115



Notice of proposed rulemaking, specifically 16 CFR § 1115.26 (c) which addresses Language, and 16 CFR § 1115.24 which addresses Applicability.

## **Language**

Under the Consumer Product Safety Act, Substantial Product Hazard Section, “The Commission may require a notice described in paragraph (1) to be distributed to in a language other than English if the Commission determines that doing so is necessary to adequately protect the public.” 15 U.S.C. 2064 (c)(2). In response to this section the Commission proposed “Languages. Where the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), determines that it is necessary or appropriate to adequately inform and protect the public, a recall notice may be required to be in languages in addition to English.” 16 CFR § 1115.26 (c). Recognizing that the second most spoken language in the United States is Spanish, and according to the US Census Bureau, in 2007 Spanish was the primary language spoken at home by 34 million in the U.S. 5 years old and older<sup>[1]</sup>, it would be proper for the Commission to determine that all recalls be written in English and in Spanish in order to adequately inform and protect the public. The importance of the Spanish-speaking consumer base to manufactures is evidence by the fact that many manufactures now print labels and inserts in English and in Spanish, advertise in English and in Spanish, and even offer customer services in both languages. Requiring all recalls to be written in English and in Spanish would ensure that the growing Spanish-speaking consumer population in the United States was adequately notified of a substantial product hazard, and thus properly protected under the statute against unreasonable risks of injury associated with consumer products. 15 USCA § 2051 (b)(1). Requiring all recalls to be written in English and in Spanish would also assist Spanish-speaking consumers in evaluating the comparative safety of consumer products and it would develop uniform safety standards for consumer products and minimize conflicting State and local regulations. 15 USCA § 2051 (b)(2)- (3). Under this version, the Commission would

still have the ability to require any other additional languages besides English and Spanish where appropriate, for example if a product is targeted to a certain group speaking a language other than English or Spanish. Requiring all recalls to be written in English and in Spanish would not exceed the Commission's authority granted to it by the Statute because the action is necessary to adequately protect the public. If the Commission does not require all recall notices to be written in English and in Spanish, the Commission runs the risk of not protecting the 34 million (and growing) individuals who speak Spanish in this country from a substantial product hazard.

### **Applicability**

Under the Consumer Product Safety Act, Substantial Hazards Section, "Not later than 180 days after August 14, 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 2061 of this title." 15 U.S.C. 2064 (i)(1). Based on 15 U.S.C. 2064 (i)(1), the proposed rule includes a section that states that the proposed rule is only applicable to mandatory recall notices, stating, "This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products as those terms are defined herein and in the CPSA." 16 CFR 1115.24. While the Commission is required to establish guidelines for information to be included in any mandatory recall pursuant 15 U.S.C. 2064 (i)(1), there is nothing in the statute that prohibits the Commission from establishing guidelines for voluntary recall notices. In fact, the Commission even recognizes that setting required guidelines for voluntary recall notices may happen in the future stating

If the Commission decides to extend the requirements to voluntary recalls, it would proceed with a separate rulemaking initiated by a separate notice of proposed rulemaking. 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.

16 CFR Part 1115 (D)(2).

This section suggests that the Commission views that the authority from the statute could extend to potential requirements for voluntary recalls. The Commission states that if it were to extend the requirements it would do so in a separate notice of proposed rulemaking, seemingly to distinguish mandatory and voluntary recalls. However, there is no reason why the Commission cannot extend the requirements to voluntary recalls in this notice of proposed rulemaking and still distinguish mandatory and voluntary recalls. In fact, extending the requirement to voluntary recalls would better serve the purpose of the Consumer Product Safety Act for numerous reasons.

The Commission states that in its proposed rule making it has stated principles that are important for recall notices to be effective. As such, there seems no reason then not to extend the requirements to voluntary recall notices, for these notices must be effective as well. Undoubtedly the public will not know the difference between a mandatory and a voluntary recall notice, however the public should be provided with the same information on both to fulfill the purposes of the statute. In order to protect the public against unreasonable risks of injury associated with consumer products, and to assist consumers in evaluating the comparative safety of consumer products, the consumers must have the description of the product, the description of substantial product hazard, the description of action being taken, the identification of significant retailers, the statement of number of product units, the identification of recalling firm, the identification of manufacturers, the identification of significant retailers, the dates of manufacture and sale, the price, the description of incidents, injuries, and deaths, and the description of remedy and all other information and methods of notifying the Commission has required in this proposed rule-making. The Commission has required this information and specific methods of notifying to ensure the safety of the consumer. There is no reason that just because the method is voluntary or part of a corrective settlement agreement, the public does not need this information. It would actually be harmful to not require other recall notices to have this information. If the public is used to seeing information on mandatory recall notices, for example the information on the description on incidents or injuries, and it is not provided for in a voluntary recall notice, the public may assume there were no such incident or injuries, which may not be the case. In order to protect consumer from substantial product hazard or

assist consumers in evaluating the safety of comparative products, the information on *all* recall notices must be standard and in accordance with 16 CFR Part 1115.

## **Conclusion**

In conclusion, the Committee generally succeeded its efforts in setting out guidelines and requirements for recall notices for the purpose of protecting the public in 16 CFR Part 1115: Notice of proposed rulemaking. However based on the foregoing, the Commission should use its authority to require the recall notices to written in English and Spanish, and extend the notice requirements to voluntary recall notices in addition to mandatory recall notices to better serve the purposes of the statute.

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<sup>i[1]</sup> “Selected Social Characteristics in the United States: 2007.” United State Census Bureau. Accessed 20 April 2009.  
[http://factfinder.census.gov/servlet/ADPTable?\\_bm=y&-geo\\_id=01000US&-qr\\_name=ACS\\_2007\\_1YR\\_G00\\_DP2&-context=adp&-ds\\_name=ACS\\_2007\\_1YR\\_G00\\_-tree\\_id=306&-lang=en&-redoLog=false&-format=](http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2007_1YR_G00_DP2&-context=adp&-ds_name=ACS_2007_1YR_G00_-tree_id=306&-lang=en&-redoLog=false&-format=).

To: Office of the Secretary, Consumer Product Safety Commission  
Via email [mandatoryrecallnotices@cpsc.gov](mailto:mandatoryrecallnotices@cpsc.gov)  
From: Colleen McIntyre  
Via email [Mcintyre.colleen@gmail.com](mailto:Mcintyre.colleen@gmail.com)

**Re: Section 15(i) NPR**

In the March 20, 2009, 16 CFR Part 1115: Notice of proposed rulemaking, the U.S. Consumer Product Safety Commission (the “Commission”) generally succeeded in its efforts in setting out guidelines and requirements for recall notices for the purpose of protecting the public under the Consumer Product Safety Improvement Act of 2008 amendments to the Consumer Product Safety Act. However, there a few sections where the Commission did not go far enough to provide the protections Congress seeks. Congress sets out the purposes of the Consumer Product Safety Act in 15 USCA § 2051. The statute states, “The purposes of this chapter are to protect the public against unreasonable risks of injury associated with consumer products; to assist consumers in evaluating the comparative safety of consumer products; to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.” 15 USCA § 2051 (b)(1) – (4). The Commission fails to meet these goals in two sections of 16 CFR Part 1115 Notice of proposed rulemaking, specifically 16 CFR § 1115.26 (c) which addresses Language, and 16 CFR § 1115.24 which addresses Applicability.

**Language**

Under the Consumer Product Safety Act, Substantial Product Hazard Section, “The Commission may require a notice described in paragraph (1) to be distributed to in

a language other than English if the Commission determines that doing so is necessary to adequately protect the public.” 15 U.S.C. 2064 (c)(2). In response to this section the Commission proposed “Languages. Where the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), determines that it is necessary or appropriate to adequately inform and protect the public, a recall notice may be required to be in languages in addition to English.” 16 CFR § 1115.26 (c).

Recognizing that the second most spoken language in the United States is Spanish, and according to the US Census Bureau, in 2007 Spanish was the primary language spoken at home by 34 million in the U.S. 5 years old and older<sup>1</sup>, it would be proper for the Commission to determine that all recalls be written in English and in Spanish in order to adequately inform and protect the public. The importance of the Spanish-speaking consumer base to manufactures is evidence by the fact that many manufactures now print labels and inserts in English and in Spanish, advertise in English and in Spanish, and even offer customer services in both languages. Requiring all recalls to be written in English and in Spanish would ensure that the growing Spanish-speaking consumer population in the United States was adequately notified of a substantial product hazard, and thus properly protected under the statute against unreasonable risks of injury associated with consumer products. 15 USCA § 2051 (b)(1). Requiring all recalls to be written in English and in Spanish would also assist Spanish-speaking consumers in evaluating the comparative safety of consumer products and it would develop uniform

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<sup>1</sup> “Selected Social Characteristics in the United States: 2007.” United State Census Bureau. Accessed 20 April 2009. [http://factfinder.census.gov/servlet/ADPTable?\\_bm=y&-geo\\_id=01000US&-qr\\_name=ACS\\_2007\\_1YR\\_G00\\_DP2&-context=adp&-ds\\_name=ACS\\_2007\\_1YR\\_G00\\_&-tree\\_id=306&-lang=en&-redoLog=false&-format=](http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2007_1YR_G00_DP2&-context=adp&-ds_name=ACS_2007_1YR_G00_&-tree_id=306&-lang=en&-redoLog=false&-format=)

safety standards for consumer products and minimize conflicting State and local regulations. 15 USCA § 2051 (b)(2)- (3). Under this version, the Commission would still have the ability to require any other additional languages besides English and Spanish where appropriate, for example if a product is targeted to a certain group speaking a language other than English or Spanish. Requiring all recalls to be written in English and in Spanish would not exceed the Commission's authority granted to it by the Statute because the action is necessary to adequately protect the public. If the Commission does not require all recall notices to be written in English and in Spanish, the Commission runs the risk of not protecting the 34 million (and growing) individuals who speak Spanish in this country from a substantial product hazard.

### **Applicability**

Under the Consumer Product Safety Act, Substantial Hazards Section, "Not later than 180 days after August 14, 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 2061 of this title." 15 U.S.C. 2064 (i)(1). Based on 15 U.S.C. 2064 (i)(1), the proposed rule includes a section that states that the proposed rule is only applicable to mandatory recall notices, stating, "This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products as those terms are defined herein and in the CPSA." 16 CFR 1115.24. While the Commission is required to establish guidelines for information to be included in any mandatory recall pursuant 15 U.S.C. 2064 (i)(1), there is nothing in the statute that prohibits the Commission from establishing guidelines for voluntary recall notices. In

fact, the Commission even recognizes that setting required guidelines for voluntary recall notices may happen in the future stating

If the Commission decides to extend the requirements to voluntary recalls, it would proceed with a separate rulemaking initiated by a separate notice of proposed rulemaking. 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.

16 CFR Part 1115 (D)(2).

This section suggests that the Commission views that the authority from the statute could extend to potential requirements for voluntary recalls. The Commission states that if it were to extend the requirements it would do so in a separate notice of proposed rulemaking, seemingly to distinguish mandatory and voluntary recalls. However, there is no reason why the Commission cannot extend the requirements to voluntary recalls in this notice of proposed rulemaking and still distinguish mandatory and voluntary recalls. In fact, extending the requirement to voluntary recalls would better serve the purpose of the Consumer Product Safety Act for numerous reasons.

The Commission states that in its proposed rule making it has stated principles that are important for recall notices to be effective. As such, there seems no reason then not to extend the requirements to voluntary recall notices, for these notices must be effective as well. Undoubtedly the public will not know the difference between a mandatory and a voluntary recall notice, however the public should be provided with the same information on both to fulfill the purposes of the statute. In order to protect the public against unreasonable risks of injury associated with consumer products, and to assist consumers in evaluating the comparative safety of consumer products, the consumers must have the description of the product, the description of substantial product hazard, the description of action being taken, the identification of significant retailers, the



statement of number of product units, the identification of recalling firm, the identification of manufacturers, the identification of significant retailers, the dates of manufacture and sale, the price, the description of incidents, injuries, and deaths, and the description of remedy and all other information and methods of notifying the Commission has required in this proposed rule-making. The Commission has required this information and specific methods of notifying to ensure the safety of the consumer. There is no reason that just because the method is voluntary or part of a corrective settlement agreement, the public does not need this information. It would actually be harmful to not require other recall notices to have this information. If the public is used to seeing information on mandatory recall notices, for example the information on the description on incidents or injuries, and it is not provided for in a voluntary recall notice, the public may assume there were no such incident or injuries, which may not be the case. In order to protect consumer from substantial product hazard or assist consumers in evaluating the safety of comparative products, the information on *all* recall notices must be standard and in accordance with 16 CFR Part 1115.

## **Conclusion**

In conclusion, the Committee generally succeeded its efforts in setting out guidelines and requirements for recall notices for the purpose of protecting the public in 16 CFR Part 1115: Notice of proposed rulemaking. However based on the foregoing, the Commission should use its authority to require the recall notices to written in English and Spanish, and extend the notice requirements to voluntary recall notices in addition to mandatory recall notices to better serve the purposes of the statute.