



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814**

The contents of this document will be discussed at the Commission Meeting (Briefing) scheduled for Wednesday, September 25, 2013.

This document has been electronically approved and signed.

DATE: September 18, 2013

THIS MATTER IS NOT SCHEDULE FOR A BALLOT VOTE

A DECISIONAL MEETING FOR THIS MATTER IS SCHEDULED ON: October 23, 2013

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Kenneth R. Hinson, Executive Director

FROM: Patricia M. Pollitzer, Assistant General Counsel
Andrew J. Kameros, Attorney, OGC

SUBJECT: Proposed Interpretive Rule: Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices

Staff is forwarding to the Commission a briefing package recommending that the Commission propose an interpretive rule that would:

- 1) set forth principles and guidelines for the content and form of voluntary recall notices that are issued as part of corrective action plans, and
- 2) add to the provisions describing the possible contents of corrective action plans negotiated under 16 C.F.R. § 1115.20(a) a reference to compliance program-related requirements, which may be included in corrective action plans when appropriate.

The Office of the General Counsel has drafted a notice of proposed rulemaking (NPR) for the Commission's consideration.

Please indicate your vote on the following options:

- I. Approve publication of the attached NPR in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the draft NPR in the *Federal Register*, with changes.
(Please specify.)

(Signature)

(Date)

III. Do not approve publication of the draft NPR in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft *Federal Register* Proposed Rule: Voluntary Remedial Actions and Guidelines
for Voluntary Recall Notices

DRAFT 9-18-13

Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

CPSC Docket No. CPSC-2013- _____

Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this document, the Consumer Product Safety Commission (Commission, CPSC, or we) proposes an interpretive rule to set forth principles and guidelines for the content and form of voluntary recall notices that firms provide as part of corrective action plans under Section 15 of the Consumer Product Safety Act (CPSA). The Commission has issued regulations interpreting the requirements of section 15 of the CPSA. 16 CFR part 1115. The existing regulations provide for notice to the public of the corrective action that a firm agrees to undertake. The regulations, however, do not provide any guidance regarding the information that should be included in a recall notice issued as part of a corrective action plan agreement. The proposed rule would provide principles and guidelines for voluntary recall notices. The proposed rule also would provide that, when appropriate, a corrective action plan negotiated under 16 CFR 1115.20(a) may include compliance program-related requirements.

DATES: Submit comments by [**INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Comments, identified by Docket No. CPSC-2013-_____, may be submitted electronically or in writing:

DRAFT 9-18-13

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission is no longer directly accepting comments submitted by electronic mail (e-mail), except through www.regulations.gov. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number, CPSC 2013-____, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Howard Tarnoff, Project Manager, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: htarnoff@cpsc.gov.

DRAFT 9-18-13

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, 122 Stat. 3016 (2008) (CPSIA), amended the CPSA to strengthen the CPSC's authority to recall products and to notify the public effectively about the scope of a recall and available remedies.

Section 214 of the CPSIA required the Commission to establish guidelines and requirements for mandatory recall notices ordered by the Commission or by a United States District Court under the CPSA. Section 214 also required that a recall notice include certain specific information, unless the Commission determines otherwise. 15 U.S.C. 2064(i). This information includes, but is not limited to, descriptions of the product, hazard, injuries, deaths, actions being taken, and remedy; identification of the manufacturer and retailers; identification of relevant dates; and any other information the Commission deems appropriate.

Although Section 214 applies only to mandatory recalls, the House Committee considering the legislation explicitly expressed an expectation that similar information would be provided, as applicable and to the greatest extent possible, in the notices issued in voluntary recalls. H.R. Rep. No. 110-501 at 40 (2008) (House Report). Congress thus contemplated that the substance of voluntary recall notices would parallel that of mandatory recall notices as prescribed by the statute. Whether a product hazard is addressed in the context of a mandatory recall or a voluntary recall, the need to inform and encourage affected consumers to act is similar.

DRAFT 9-18-13

As required by Section 214(c) of the CPSIA, the Commission promulgated a final rule setting forth requirements and guidelines for mandatory recall notices. 75 Fed. Reg. 3355 (Jan. 21, 2010). That rule does not address voluntary recall notices related to corrective action agreements with Commission staff.

Although no mandatory recall notices have been announced since issuance of the mandatory recall notice rule in January 2010, the CPSC has worked cooperatively with regulated companies on more than 1,000 voluntary corrective action programs and the associated recall notices.

Commission regulations provide that “the Commission will attempt to protect the public from substantial product hazards by seeking . . . voluntary remedies,” including “corrective action plans.” 16 CFR 1115.20. The regulation states: “[c]orrective actions shall include, as appropriate: . . . (xi) An agreement that the Commission may publicize the terms of the plan to the extent necessary to inform the public of the nature and extent of the alleged substantial product hazard and of the actions being undertaken to correct the alleged hazard presented.” The corrective action plan regulations do not address the form or content of the notice issued by the Commission as a component of a corrective action plan.

II. Basis for Proposed Rule

The proposed rule effectuates congressional intent that voluntary recall notices would contain information similar to that required for mandatory recall notices (see H.R. Rep. No. 110-501 at 40 (2008)) and is based upon many years of Commission experience with recalls and recall effectiveness. The proposal also is based on related agency expertise and on the information contained in agency recall guidance materials, including

DRAFT 9-18-13

the Recall Handbook (<http://www.cpsc.gov/PageFiles/106141/8002.pdf>) and the requirements and guidelines for mandatory recall notices (16 CFR part 1115, subpart C).

The Commission believes that an interpretive rule setting forth the Commission's principles and guidelines regarding the content of voluntary recall notices will result in: (1) greater efficiencies during recall negotiations, (2) greater predictability for the regulated community in working with the agency to develop voluntary recall notice content, and (3) timelier issuance of recall announcements to the public.

In addition, the proposed rule reflects technological advances. The tools available to improve recall effectiveness through broader dissemination of important recall information have expanded significantly in recent years. The Commission believes that specific reference to these tools should be included in a voluntary recall notice rule. For example, firms and the Commission now have access to various social media resources, such as a blog, Twitter, YouTube, a widget, mobile phone application, and Flickr, which can be used to increase the number of consumers who respond to safety information.

Negotiated corrective actions give Commission staff the opportunity to tailor remedies to a particular situation and the associated health and safety risks presented. The proposed rule would include language that would permit, in appropriate situations and at staff's discretion, staff to pursue compliance program requirements in the course of negotiating corrective action plans. The proposed rule contemplates that if appropriate, a corresponding reference to compliance program requirements may be included in the related voluntary recall notice. Inclusion of compliance program requirements as an element of voluntary corrective action plans would echo compliance program requirements incorporated as part of recent civil penalty settlement agreements.

DRAFT 9-18-13

III. Description of the Proposed Rule

In general, the proposed rule would establish a new subpart D, titled, “Principles and Guidelines for Voluntary Recall Notices,” in part 1115 of title 16 of the Code of Federal Regulations and would add a new paragraph to 16 CFR 1115.20.

1. Proposed § 1115.20(a)(1)(xv) – Compliance Programs

Proposed 1115.20(a)(1)(xv) would add compliance program-related requirements as possible components of a corrective action plan. Under certain circumstances, such compliance program-related requirements, in staff’s discretion, may be proposed as appropriate elements of a voluntary corrective action plan. Such circumstances might include, but are not limited to: multiple previous recalls and/or violations of CPSC requirements over a relatively short period of time; failure to timely report substantial product hazards on previous occasions; or evidence of insufficient or ineffectual procedures and controls for preventing the manufacturing, importation, and/or distribution of dangerously defective or violative products.

2. Proposed § 1115.30 – Purpose

Proposed § 1115.30 would describe the purpose for a new subpart D, “Principles and Guidelines for Voluntary Recall Notices,” which is to see that every voluntary recall notice helps consumers and other affected persons identify the product to which a recall notice pertains, understand the actual or potential hazards presented by the product, understand the remedies available to consumers concerning the product, and take appropriate action in response to the notice. The proposed rule would provide principles concerning the content and form of voluntary recall notices and guidelines concerning the

DRAFT 9-18-13

expected content of all such recall notices, drafted by Commission staff and the recalling firm.

3. Proposed § 1115.31 – Applicability

Proposed § 1115.31 would explain that the principles and guidelines in subpart D apply to manufacturers (including importers), retailers, and distributors of consumer products.

4. Proposed § 1115.32 – Definitions

Proposed § 1115.32 would define certain terms used in subpart D. The proposed definitions in this section are based on staff's experience with recalls under section 15. This section would define "electronic medium" to encompass the various methods of communicating recall information electronically and would define "voluntary recall notice" as the means of notifying consumers and others of the voluntary remedial actions applicable to a consumer product. Additionally, proposed § 1115.32 would state that the definitions in section 3 of the CPSA (15 U.S.C. 2052) apply.

5. Proposed § 1115.33– Voluntary Recall Notice Principles

Proposed § 1115.33 would provide general principles and describe the Commission's policies pertaining to recall notices. The proposed principles are similar to the guidelines for mandatory recall notices codified at 16 CFR 1115.26, with certain exceptions. In general, proposed § 1115.33(a) would state principles that are important for recall notices to be effective. For example, proposed § 1115.33(a)(1) would state that a recall notice should provide information that enables consumers and other affected persons to identify the recalled product and take appropriate action.

DRAFT 9-18-13

Proposed § 1115.33(a)(2) through (a)(5) would state the purpose of a voluntary recall notice, provide guidance on the form of the voluntary recall notice, and set forth the principal forms of notice. Proposed § 1115.33(a)(2) is similar to 16 CFR 1115.26(a)(2), but would reference the Associated Press (AP) Stylebook as the guide for the language and format of voluntary recall notices. CPSC staff has used the AP Stylebook for decades to develop the template used for the drafting of recall press releases. Staff's experience is that most media outlets are familiar with or use the rules set forth in the AP Stylebook within their own media organization. Thus, media organizations are more likely to disseminate information contained in a press release that comports with the AP Stylebook. Proposed § 1115.33(a)(5) is similar to 16 CFR 1115.26(a)(5) but specifically identifies a press release, recall alert, and in-store poster as the preferred means of disseminating recall information to broad audiences.

Proposed § 1115.33(b)(1) is similar to 16 CFR 1115.26(b)(1) but would include "electronic" and "electronic medium" as general forms for a voluntary recall notice and would identify additional specific forms of, and means for, communicating a voluntary recall notice as acceptable, such as radio news release; video news release; b-roll package; YouTube; Instagram, or Vine video; and social media sites, such as Facebook, Google+, Twitter, Pinterest, Tumblr, Flickr, and blogs, as examples. Guidance from the Office of Management and Budget calls for agencies to format public communications for mobile platforms, such as smartphones, tablets, and similar devices. The reference to "electronic" and "electronic medium" forms of the press release is intended to promote the use of communications using digital and mobile platforms. In addition, this section seeks to reflect the common practice in recent years for CPSC staff to request that

DRAFT 9-18-13

recalling firms use their own social media platforms to communicate directly with customers about voluntary recalls. This low-cost mechanism of informing customers is designed to enhance the likelihood that customers will learn about the recall and pursue the remedy offered and that these firms use video and other electronic media for this purpose.

Proposed § 1115.33(b)(2) is similar to 16 CFR 1115.26(b)(2) and would recognize that a direct recall notice is the most effective form of a recall notice. The proposed rule would state that when firms have contact information for consumers, or when contact information is reasonably obtainable, firms should issue direct recall notices. Proposed § 1115.33(b)(2) includes “electronic medium” and “hard copy” as possible forms of direct voluntary recall notice.

Because firms often lack specific contact information, most recall notices are disseminated to broad audiences. In contrast, a direct recall notice, is sent directly to specific, identifiable consumers of the recalled product. In most instances, these consumers are the purchasers of the recalled product. In other instances, the purchasers may have given the product to other consumers, as a gift, for example. In the latter case, if the purchaser received the recall notice, the purchaser will generally know to whom the purchaser gave the product and could contact the recipient about the recall notice. In either case, the persons exposed to the product and its hazard will be more likely to receive a direct recall notice than a broadly disseminated recall notice. The proposed rule reflects the Commission’s expectation that firms will take reasonable steps to obtain direct customer contact information from third parties for purposes of issuing direct

DRAFT 9-18-13

voluntary recall notices, rather than rely solely on information contained in the firm's own records.

Proposed § 1115.33(b)(3) is similar to 16 CFR 1115.26(b)(3) and would discuss website recall notices, stating that recall notices should be posted on the website's first entry point. The recall notices should be clear, prominent, and interactive, allowing consumers and others to obtain recall information and request a remedy.

Proposed § 1115.33(c) is similar to 16 CFR 1115.26(c) and would provide that the recall notice (including the press release, call center scripts, in-store posters and social media communications) should be in languages in addition to English, whenever appropriate, to adequately inform the public of a product recall. The proposed rule recognizes that a language in addition to English may be necessary to communicate information regarding defective or violative products when factors such as product labeling and marketing location indicate that a significant number of individuals who could potentially be affected by the recall do not speak or read English. The proposed rule provides that the Commission's Spanish translation of a press release should be used on a recalling firm's website and other agreed-upon locations.

6. Proposed § 1115.34 – Voluntary Recall Notice Content Guidelines

Proposed § 1115.34 is similar to 16 CFR 1115.27 and would set forth guidelines for the content of voluntary recall notices. The objectives of a recall include 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. A voluntary recall notice should motivate firms and

DRAFT 9-18-13

media to publicize the recall information widely, and the notice should motivate consumers to act on the recall for the sake of safety.

Proposed § 1115.34(a) would provide that a voluntary recall notice should include the word “recall” in the heading and text. For many years, the Commission staff’s Recall Handbook has directed firms to use the term “recall” in the heading and text. The word “recall” draws media and consumer attention to the notice and to the information contained in the notice. In addition, use of the term “recall” draws attention to the notice more effectively than omitting the term or using an alternative term. A recall notice must be read to be effective. Drawing attention to the notice through the use of the word “recall” increases the likelihood that the notice will be read and will help effectuate the purposes of the CPSA and Consumer Product Safety Improvement Act.

Proposed § 1115.34(b) is similar to 16 CFR 1115.27(b) and would provide that the voluntary recall notice contain the date of the notice’s release, issuance, posting, or publication.

Proposed § 1115.34(c) sets forth the content for voluntary recall notice headlines and does not correspond to any provision in 16 CFR 1115.27. A protocol for drafting voluntary recall notice headlines will support the Commission’s efforts to achieve fairness, accuracy, and newsworthiness of recall press releases.

Overseas firms will sometimes engage an entity with U.S.-based operations to manage the logistics of a recall; that entity should be identified in the Remedy section of the voluntary recall notice as the entity to be contacted by the consumer to obtain the remedy. The headline should include the name of the U.S.-based entity responsible for effectuating the recall remedy for consumers, reflecting staff’s goal of issuing a voluntary

DRAFT 9-18-13

recall notice that will provide consumers with clear and consistent information regarding the manner in which to pursue the recall remedy.

In unique cases, it may be appropriate for the headline to identify the U.S.-based entity that is managing the logistics of the recall, as well as specify the name of the overseas manufacturer. In other unique cases, such as when the overseas manufacturer is directly handling all elements of the corrective action plan, it may be appropriate for the headline to identify only the overseas manufacturer of the recalled product. These cases are the exception and not the rule.

Proposed § 1115.34(d) is similar to 16 CFR 1115.27(c) and would provide that the voluntary recall notice should include a description of the product, including model name and number, SKU number, and the names of the product and other information needed to describe the product, such as the product's color, identifying tags, or labels. Proposed § 1115.34(d) also contains a paragraph describing the type and quality of photographs that should be provided by the recalling firm, if requested, for the product photographs to comport with the established standards for the size of photographs on the CPSC's website.

Proposed § 1115.34(e) is similar to 16 CFR 1115.27(d) and would provide that the voluntary recall notice should contain a clear and concise statement of the actions that a firm is taking concerning the product so that consumers and others are aware of, and understand, the firm's actions and the options that will be available to the consumer to address the defective or violative product.

Proposed § 1115.34(f) is similar to 16 CFR 1115.27(e) and would provide that the voluntary recall notice should state the approximate number of units covered by the

DRAFT 9-18-13

recall, including all product units manufactured, imported, and/or distributed in commerce. This information communicates to the consumer whether the product was widely produced and distributed or sold only in limited numbers.

Proposed § 1115.34(g) is similar to 16 CFR 1115.27(f) and would provide that the description of the substantial product hazard should allow consumers to recognize the risks of potential injury or death associated with the product, the problem giving rise to the recall, and the type of hazard or risk at issue (*e.g.*, burn, laceration). Proposed § 1115.34(g)(1) and (g)(2) are similar to 16 CFR 1115.27(g)(1) and (g)(2) and would specify what the description should include. For example, the description should include the product defect, fault, failure, flaw, and/or problem giving rise to the recall. Proposed § 1115.34(g)(3) does not have a corresponding provision in 16 CFR 1115.27. This proposed section provides that the description of the substantial product hazard should state that the hazard “can” occur in instances where there have been injuries and incidents associated with the product. Consistent with the AP Stylebook, the proposed rule states that the words “could,” “may,” or “potential” should not be used in the Hazard section of the release when there are documented incidents or injuries.

Proposed § 1115.34(h) is similar to 16 CFR 1115.27(g) and would state that the voluntary recall notice should identify the firm conducting the recall and also underscore the CPSA definition of the term “manufacturer” to include an importer.

Proposed § 1115.34(i) is similar to 16 CFR 1115.27(h) and addresses how the manufacturer should be identified (*e.g.*, legal name, location of headquarters, Web domain, or other reasonably accessible electronic medium).

DRAFT 9-18-13

Identifying “significant retailers” will help consumers determine whether the consumer might have the product. In the absence of a statutory definition, and based on experience with recalls, the Commission believes that a significant retailer can be determined on the basis of several factors, and proposed § 1115.34(j), which is similar to 16 CFR 1115.27(i), would describe those factors.

First, under proposed § 1115.34(j), a product’s retailer is significant if the retailer was the exclusive retailer of the product. Identifying an exclusive retailer can help consumers determine whether they have the product, based on whether they have shopped at that retailer.

Second, a product’s retailer is significant if the retailer was an importer of the product. As an importer, a retailer will typically have more information and greater access to information about a product than a retailer that was not an importer.

Third, a product’s retailer is significant if the retailer is a nationwide or regionally located retailer with multiple locations. Retailers with multiple locations nationwide or regionally are likely to have sold more units of the product or may have sold the product to more consumers than retailers without such multiple physical locations. Therefore, nationwide and regional retailers are likely to be more familiar to consumers than retailers that have only a limited physical presence.

Fourth, a retailer with a significant market presence, as measured by units sold or held for purposes of sale or distribution in commerce, also is a significant retailer. This category would include, for example, retailers who have a significant sales volume through Internet sales rather than sales at physical locations. A retailer that has sold, or held for purposes of sale or distribution, a significant number of the total manufactured,

DRAFT 9-18-13

imported, or distributed units of the product, will have sold the product to, and affected, more consumers than, a retailer who sold fewer units of the product.

Fifth, a product's retailer is significant, if identification of the retailer is in the public interest. Recalls and products vary from one to the next; and identifying certain retailers who do not otherwise satisfy the categories described above, still may have public and consumer benefits. Deeming a retailer to be significant in the public interest reflects the flexibility needed to seek the best possible recall effectiveness under specific circumstances.

Proposed § 1115.34(k) is similar to 16 CFR 1115.27(j) and would provide that the voluntary recall notice should include a description of the region where the product was sold or held for purposes of sale or distribution in commerce to assist consumers in determining whether they have the product at issue.

Proposed § 1115.34(l) is similar to 16 CFR 1115.27(k) and would provide that the voluntary recall notice should 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 began and ended for each make and model of the product covered by the recall notice to assist consumers in determining whether they have the product at issue.

Proposed § 1115.34(m), which is similar to 16 CFR 1115.27(l), would provide that the voluntary recall notice should state the approximate price of the product or a price range. Price information will help consumers identify the product and inform them about refund remedies, as applicable.

Proposed § 1115.34(n), which is similar to 16 CFR 1115.27(m), addresses the description in the voluntary recall notice of all incidents, injuries, and deaths associated

DRAFT 9-18-13

with the product conditions or circumstances giving rise to the recall. The notice should provide the ages and states of residence of persons killed. This section also provides for prompt conveyance to the Commission of information relating to any product-related fatality or a significant number of additional product-related incidents that a firm receives after the initial recall notice. In addition, this section provides that the information should be reflected promptly in an update to the notice on the firm's website and the Commission's website.

Proposed § 1115.34(o), which is similar to 16 CFR 1115.27(n), would provide that the voluntary recall notice should provide a description of each remedy available to the consumer, the actions required of the consumer to obtain each remedy, and any information needed by the consumer to obtain each remedy. As reflected in this section, potential remedies include, but are not limited to: forwarding the product to the manufacturer, returning the product to the retailer, or scheduling an in-home repair. Proposed § 1115.34(o) also provides that where the listing of model names and model and/or serial numbers of a recalled product is extensive, complicated, or not conducive to inclusion in the voluntary recall notice, the notice should refer customers to the recalling firm's website or call center.

This proposed section would also provide that any changes to the process or nature of the remedy contemplated by the firm after the issuance of the voluntary recall notice should be communicated immediately to the Commission and reflected in an agreed-upon update to the notice on the firm's website and the CPSC's website. Updated remedy information also should be transmitted to consumers in a manner consistent with the communication of the initial voluntary recall notice.

DRAFT 9-18-13

Proposed § 1115.34(p) reflects inclusion in a voluntary recall notice of information regarding compliance program-related actions agreed to by the recalling firm as a component of its corrective action plan. This section does not correspond to any provision in 16 CFR 1115.27.

Proposed § 1115.34(q) is similar to 16 CFR 1115.27(o) and provides that the voluntary recall notice should contain any other information that the Commission and the recalling firm deem appropriate.

7. Proposed § 1115.35 – Multiple Products or Models

Proposed § 1115.35 is similar to 16 CFR 1115.28 and provides that the voluntary recall notice for each product or model covered by the recall notice comports with the guidelines set forth in this subpart.

IV. Administrative Procedure Act

The Administrative Procedure Act (APA) requires publication of a general notice of proposed rulemaking for most rules. 5 U.S.C. 553(b). However, this requirement does not apply to interpretive rules and general statements of policy. *Id.* 553(b)(A). This proposed rule would provide guidance about the content of voluntary recall notices, and amend 16 CFR 1115.20 of the Commission's existing interpretive rule regarding corrective action plans to provide that, where appropriate, a corrective action plan may include compliance program-related requirements. The proposed rule would not establish any mandatory requirements.

Because both corrective action plans and related voluntary recall notices require agency and firm consensus, notice and comment could provide valuable feedback to improve the efficacy and usefulness of the guidance to be contained in the rule. As

DRAFT 9-18-13

proposed, the rule reflects agency experience and practice; and, consistent with congressional intent, the proposed rule is intended to help address product hazards and promote the timely, accurate, and complete disclosure of information necessary to protect public health and safety. Additional information regarding stakeholder experience in framing and communicating corrective action plans and related voluntary recall notices could assist CPSC in refining related interpretive rule guidance, with a goal of protecting public health and safety.

Thus, although the APA does not require the Commission to begin this rulemaking with a notice of proposed rulemaking, the Commission is providing an opportunity for public comment.

V. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. *Id.* 553(d). However, an earlier effective date is permitted for interpretive rules and statements of policy. *Id.* Thus, this proposed rule is excepted from the APA effective date requirement. *Id.* 553(d)(2).

Because CPSC is giving notice and soliciting comment (even though notice and comment procedures are not required), the public and potentially affected firms will have significant advance notice of the agency's proposed guidance. Moreover, implementation of the rule will not result in the imposition of new, mandatory requirements. Stakeholders necessarily are involved in the negotiations that precede corrective action plans and associated recall notices, and they would benefit from the additional information about agency policy and staff expectations to be contained in the

DRAFT 9-18-13

rule when finalized. Therefore, the Commission proposes that the effective date be the date of publication of a final rule in the *Federal Register*.

VI. Regulatory Flexibility Act

Under section 603 of the Regulatory Flexibility Act (RFA), when the APA requires an agency to publish a general notice of proposed rulemaking, the agency must prepare an initial regulatory flexibility analysis assessing the economic impact of the proposed rule on small entities. 5 U.S.C. 603(a). As noted, the Commission is proposing an interpretive rule that would provide guidance concerning the content of voluntary recall notices and further would provide that, when appropriate, corrective action plans may include compliance program-related requirements. Although the Commission is choosing to issue the rule through notice and comment procedures, the APA does not require a proposed rule. Therefore, no initial regulatory flexibility analysis is required under the RFA. Moreover, the proposed rule would not establish any mandatory requirements and would not impose any obligations on small entities (or any other entity or party).

VII. Paperwork Reduction Act

The proposed rule would not impose any information collection requirements. It sets out proposed guidelines for the content of recall notices that are issued as part of corrective action agreements negotiated between Commission staff and firms. Accordingly, the rulemaking is not subject to the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520.

VIII. Environmental Considerations

DRAFT 9-18-13

The Commission's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. These regulations provide a categorical exclusion for certain CPSC actions that normally have "little or no potential for affecting the human environment." 16 CFR 1021.5(c)(1). This proposed rule falls within the categorical exclusion.

List of Subjects

16 CFR Part 1115

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1115 – SUBSTANTIAL PRODUCT HAZARD REPORTS

1. The authority for part 1115 continues to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2070, 2071, 2073, 2076, 2079, and 2080.

2. Add new paragraph (a)(1)(xv) to § 1115.20 to read as follows:

§ 1115.20 Voluntary remedial actions.

* * * * *

(a) * * *

(1) * * *

(xv) Compliance program-related requirements.

* * * * *

DRAFT 9-18-13

3. Add a new Subpart D to read as follows:

Subpart D -- Voluntary Recall Notices

§ 1115.30 Purpose.

(a) This section sets forth the information that should be included in a voluntary recall notice and the manner in which the notice should be distributed.

(b) The Commission establishes these guidelines to help ensure that every voluntary recall notice effectively helps consumers and other persons to:

(1) Identify the specific product to which the voluntary recall notice pertains;

(2) Understand the product's actual or potential hazards to which the voluntary recall notice pertains and information relating to such hazards;

(3) Understand all remedies available to consumers concerning the product to which the voluntary recall notice pertains; and

(4) Take appropriate actions in response to the notice.

§ 1115.31 Applicability.

This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products (as those terms are defined herein and in the Consumer Product Safety Act (CPSA)), and other products or substances that are regulated under the CPSA, or any other Act enforced by the Commission.

§ 1115.32 Definitions.

In addition to the definitions given in Section 3 of the CPSA (15 U.S.C. 2052), the following definitions apply:

(a) *Direct voluntary recall notice* means a voluntary recall notice that is communicated, sent, or transmitted directly to specifically identified consumers.

DRAFT 9-18-13

(b) *Electronic* means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, voice-recording systems, or similar capabilities.

(c) *Electronic medium* means an electronic method of communication (including, but not limited to, website, electronic mail, telephonic system, text messaging, tweeting, magnetic disk, CD-ROM), pursuant to which the intended recipient can effectively access the information provided and as to which the firm can provide, upon request, evidence of delivery.

(d) *Firm* means a manufacturer (including importer), retailer, or distributor, as those terms are defined in the CPSA.

(e) *Voluntary recall notice* means a notification to consumers and others of the voluntary remedial action applicable to a consumer product or other products or substances that are regulated under the CPSA, or any other Act enforced by the Commission.

§ 1115.33 Voluntary recall notice principles.

(a) *General.* (1) A voluntary recall notice should provide sufficient information and motivation for consumers and other persons to identify the product and its actual or potential hazards, and to respond and take the stated action. A voluntary recall notice should clearly and concisely state the potential for injury or death.

(2) A voluntary recall notice should be written in language designed for, and readily understood by, the targeted consumers or other persons. The language should be simple and should avoid or minimize the use of highly technical or legal terminology. The language and formatting of a voluntary recall notice in the form of a press release should comport with the most current edition of the Associated Press Stylebook.

DRAFT 9-18-13

(3) A voluntary recall notice should be targeted and tailored to the specific product and circumstances. In determining the form and content of a voluntary recall notice, the manner in which the product was advertised and marketed should be considered.

(4) A direct voluntary recall notice is the most effective form of voluntary recall notice.

(5) Voluntary recall notices should be made using: (i) each of a press release or recall alert, an in-store recall poster, and website posting, and (ii) at least two other of the voluntary recall notice forms listed in subsection (b).

(b) *Form of voluntary recall notice.* (1) *Possible forms.* A voluntary recall notice may be written, electronic, or in any other form agreed upon by Commission staff and the firm. Voluntary recall notices may be transmitted using an electronic medium and in hard copy form. Acceptable forms of, and means for, communicating voluntary recall notices include, but are not limited to:

- (i) Letter, website posting, electronic mail, RSS feed, or text message;
- (ii) Press release or recall alert;
- (iii) Video news release, radio news release, b-roll package, YouTube, Instagram, or Vine video;
- (iv) Newspaper, magazine, catalog, or other publication;
- (v) Advertisement, newsletter, and service bulletin; and
- (vi) Social media, including, but not limited to, Facebook, Google+, Twitter, Pinterest, Tumblr, Flickr, and blogs.

DRAFT 9-18-13

(2) *Direct voluntary recall notice.* A direct voluntary recall notice should be used for each consumer for whom a firm has direct contact information, or when such information is reasonably obtainable from third parties, such as retailers, or from the firm's internal records, regardless of whether the information was collected for product registration, sales records, catalog orders, billing records, marketing purposes, warranty information, loyal purchaser clubs, or other such purposes. Direct contact information includes, but is not limited to, name and address, telephone number, and electronic mail address. Direct voluntary recall notices may be transmitted using an electronic medium and in hard copy form. Direct voluntary recall notices should include in a readily-apparent location, a prominent and conspicuous statement (*e.g.*, by using large, bold, red typeface), which includes the term "Safety Recall," and which otherwise highlights the importance of the communication.

(3) *Website recall notice.* A website recall notice should be visible on a website's first entry point, such as a home page, should be clear and prominent, and should be interactive, by permitting consumers and other persons to obtain recall information and request a remedy directly on the website.

(4) *Social media notice.* A social media notice should be prominently placed and should remain prominently placed for 48 hours after initial placement.

(c) *Languages.* All voluntary recall notices should be in the English language. In addition, a voluntary recall notice should be translated into additional languages, if, in the Commission's discretion, such translations are necessary or appropriate to adequately inform consumers or the public. Such voluntary recall notice translations should be transmitted in the same manner as, and along with, the English language voluntary recall

DRAFT 9-18-13

notice. In circumstances requiring voluntary recall notice translations, the recalling firm should provide consumer recall support (such as call center scripts, in-store posters and other communications) in both English and the applicable translation. Where Spanish, in addition to English, is the appropriate language for a voluntary recall notice, the recalling firm should use the Commission's Spanish translation of the recall press release on its website and other agreed-upon locations.

§ 1115.34 Voluntary recall notice content guidelines.

Every voluntary recall notice should include the information set forth below:

(a) *Terms.* A voluntary recall notice should include the word "recall" in the heading and text.

(b) *Date.* A voluntary recall notice should include its date of release, issuance, posting, or publication.

(c) *Headline.* The headline (or equivalent language in an electronic medium) on the voluntary recall notice should be brief and should communicate: the name of the firm conducting the recall; the type of product being recalled; the hazard; the name of the U.S.-based manufacturer, importer, or retailer responsible for effectuating the remedy for consumers; and the name of the retailer, if the firm is the exclusive retailer of the product. The headline may include a reference to the nature of the remedy (such as refund, repair or replacement).

(d) *Description of product.* A voluntary recall notice should include a clear and concise statement of the information that will enable consumers and other persons to readily and accurately identify the specific product and distinguish the product from similar products. The information should allow consumers to determine readily whether

DRAFT 9-18-13

they have, or may have been exposed to the product. To the extent applicable to a product, descriptive information that should appear on a voluntary recall notice should include, but not be limited to:

(1) The product's name, including informal and abbreviated names, by which customers and other persons should know or recognize the product;

(2) The product's intended or targeted use population (*e.g.*, infants, children, or adults);

(3) The product's colors and sizes;

(4) The product's model names and numbers, serial numbers, date codes, stock keeping unit (SKU) numbers, and tracking labels, including their exact locations on the product;

(5) Identification and exact locations of product tags, labels, and other identifying parts, and a statement of the specific identifying information found on each part; and

(6) Product photographs. Upon request, a firm should provide to the Commission, digital, color photographs that are of high resolution and quality, in a format that is consistent with applicable Commission specifications. Effective notification may require multiple photographs and photographic angles.

(e) *Description of action being taken.* A voluntary recall notice should contain a clear and concise statement of the actions that a firm is taking concerning the product. These actions may include, but are not limited to, one or more of the following: stop sale and distribution in commerce; recall to the distributor, retailer, or consumer level; repair; request return, and provide a replacement; and request a return, and provide a refund or credit.

DRAFT 9-18-13

(f) *Statement of number of product units.* A voluntary recall notice should state the approximate number of product units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce.

(g) *Description of substantial product hazard.* A voluntary recall notice should contain a clear and concise description of the product's actual or potential hazards that result from the product condition or circumstance giving rise to the recall. The description should enable consumers and other persons to readily identify the reasons that a firm is conducting a recall. The description should also enable consumers and other persons to readily identify and understand the risks and potential injuries or deaths associated with the product conditions and circumstances giving rise to the recall. The description should include:

(1) The product defect, fault, failure, or flaw, and/or problem giving rise to the recall;

(2) The type of hazard or risk, including, by way of example only, burn, fall, choking, laceration, entrapment, or death; and

(3) A statement that the hazard "can" occur when there have been incidents or injuries associated with the recalled product.

(h) *Identification of recalling firm.* A voluntary recall notice should identify the firm conducting the recall by stating the firm's legal name and commonly known trade name, the city and state of its headquarters, and Web domain or other effective and reasonably accessible electronic mechanism through which consumers and others can communicate with the firm. The notice should state whether the recalling firm is a manufacturer (including importer), retailer, or distributor.

DRAFT 9-18-13

(i) *Identification of manufacturer.* A voluntary recall notice should 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 United States, a voluntary recall notice should identify the foreign manufacturer and the United States importer. A voluntary recall notice should identify the manufacturer by stating the manufacturer’s legal name and the city and state of its headquarters, or, if a foreign manufacturer, the foreign manufacturer’s legal name and the city and country of its headquarters.

(j) *Identification of significant retailers.* A voluntary recall notice should identify each significant retailer of the product. A recall notice should identify such a 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 information and belief, any one or more of the circumstances set forth below is present (the Commission may request 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 multiple stores nationwide or regionally;

DRAFT 9-18-13

(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.

(k) *Region.* Where necessary or appropriate to assist consumers in determining whether they have the product at issue, a description of the region where the product was sold, or held for purposes of sale or distribution in commerce, should be provided.

(l) *Dates of manufacture and sale.* A voluntary recall notice should 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 should be included for each make and model of the product.

(m) *Price.* A voluntary recall notice should state the approximate retail price or price range of the product.

(n) *Description of incidents, injuries and deaths.* A voluntary recall notice should contain a clear and concise summary description of all incidents (including, but not limited to, property damage), injuries, and deaths associated with the product; conditions or circumstances giving rise to the recall, as well as a statement of the number of such incidents, injuries, and deaths. The description should allow consumers and other persons to understand readily the nature and extent of the incidents and injuries. A voluntary recall notice should provide the age and state of residence of all persons killed.

(1) If, after the issuance of the voluntary recall notice, the firm receives information that a significant number of additional incidents, or one or more fatalities

DRAFT 9-18-13

associated with the product have occurred, such information should be reflected in an update to the notice on the firm's website.

(2) The firm should immediately notify the Commission of injuries and/or fatalities that may necessitate the issuance of an updated voluntary recall notice.

(o) *Description of remedy.* A voluntary recall notice should contain a clear and concise statement, readily understandable by consumers and other persons, of:

(1) Each remedy available to a consumer for the product conditions or circumstances giving rise to the recall. Remedies include, but are not limited to, refunds, product repairs, product replacements, rebates, coupons, gifts, premiums, and other incentives.

(2) All specific actions that a consumer must take to obtain each remedy, including, but not limited to, instructions on how to participate in the recall. These actions may include, but are not limited to, contacting a firm, removing the product from use, discarding the product, forwarding the product to the manufacturer, returning the product to the retailer, scheduling an in-home repair, or removing or disabling a part of the product.

(3) All specific information that a consumer needs to obtain each remedy and to obtain all information about each remedy. This information may include, but is not limited to, the following: manufacturer, retailer, and distributor contact information (such as name, address, telephone, and facsimile number, e-mail address, and website address); whether telephone calls will be toll-free or collect; and telephone number days and hours of operation, including time zone. If inclusion of all model names and model and serial numbers in the voluntary recall notice is complicated or extensive, the voluntary recall

DRAFT 9-18-13

notice should refer consumers to the recalling firm's website, call center, or similar customer service resource.

(4) If, after the issuance of the voluntary recall notice, the firm intends to change the process or nature of the remedy, this information should be promptly communicated to Commission staff. Changes to the process or nature of the remedy should be reflected in an update to the voluntary recall notice agreed to by the Commission and the firm. The updated voluntary recall notice should be posted promptly on the firm's website and the Commission's website and otherwise transmitted to consumers in a manner consistent with the communication of the initial voluntary recall notice.

(p) *Compliance program.* A voluntary recall notice may contain a reference to applicable compliance programs or requirements, as appropriate.

(o) *Other information.* A voluntary recall notice should contain such other information as the Commission and the recalling firm deem appropriate.

§ 1115.35 Multiple products or mode

For each product or model covered by a voluntary recall notice, the notice should comport with the guidelines set forth in § 1115.34.

Dated: _____

Todd A. Stevenson
Secretary, Consumer Product Safety Commission



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

This document has been electronically
approved and signed.

Memorandum

Date: September 18, 2013

TO: The Commission
Todd Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Kenneth R. Hinson, Executive Director

FROM: Scott J. Wolfson, Director
Office of Communications

Ray M. Aragon, Assistant Executive Director,
Office of Compliance and Field Operations

SUBJECT: Briefing Package: Proposed Rule for Voluntary Recall Notice Content and Format
Guidelines

Introduction

As required in Section 214 of the Consumer Product Safety Improvement Act (CPSIA) of 2008 [15 U.S.C. § 2064(i)], the Commission promulgated a rule in January 2010, establishing guidelines and requirements for the information that must be contained within a mandatory recall notice to the public. Generally, mandatory recall notices must:

(1) include sufficient and concise information for consumers and other persons to identify the product, its actual or potential hazards, the risk of injury or death, and be motivated to take the stated remedial action.

(2) be written in language designed for, and readily understood by, the targeted consumers or other persons. The language should be simple and should avoid or minimize the use of highly technical or legal terminology.

(3) be targeted and tailored to the specific product and circumstances. In determining the form and content of a recall notice, the manner in which the product was advertised and marketed should be considered.

Consistent with the best practices in risk communications, mandatory recall notices can include, but are not limited to: press releases, letters, website postings, retail posters, e-mails, RSS feeds, text messages, videos, print publication announcements, and advertisements.

The information required by the rule to appear in a mandatory recall notice includes: a description of the recalled product, action being taken by the recalling firm, number of units affected, identification of the substantial product hazard and reason for the action, identification of manufacturers and significant retailers, dates when the recalled product was manufactured and sold, number and description of any injuries or deaths, the ages of anyone injured or killed, the remedy available to consumers, and other information the Commission deems appropriate. The Commission retains the authority to make the final determination as to the form and content of a mandatory recall notice and may determine that some of the information is unnecessary or inappropriate for a particular recall (15 U.S.C. 2064(i); 16 C.F.R. § 1115.29).

In crafting Section 214 of the CPSIA, Congress contemplated voluntary recall notices, in addition to mandatory recall notices, as the legislative history clearly shows. In fact, Congress not only contemplated such notices, Congress indicated that voluntary recall notices would include information similar to what is contained in mandatory recall notices “as applicable and to the greatest extent possible.” (H.R. Rep. No. 110-501, pg. 40). This Congressional guidance was a key consideration in the development of this draft proposed rule.

Although no mandatory recall notices have been announced since issuance of the mandatory recall notice rule in January 2010, CPSC has worked cooperatively with regulated companies on more than 1,000 voluntary corrective action programs and the associated recall notices. These voluntary notices involve staff-initiated defect and regulatory violation cases, as well as defect and regulatory violation cases filed by firms under Section 15 of the Consumer Product Safety Act (CPSA). The defect cases filed by firms under Section 15 of the CPSA include those filed under the Fast Track Reporting System. In most cases, these defective or violative products were not involved in any incidents or injuries; although in some cases, the defective or violative products were involved in serious injuries or deaths.

Development and issuance of voluntary recall notices is the most resource-intensive task carried out by the agency’s Office of Communications (Communications) staff. Staff’s commitment to the task is unqualified, as these notices can prevent injuries from occurring.

Benefits of a voluntary recall notice rule

CPSC staff believes that a separate, interpretive rule setting forth the content that should be included in a voluntary recall notice will result in: (1) greater efficiencies during recall negotiations, (2) greater predictability for the regulated community in working with the agency to develop voluntary recall notice content, and (3) timelier issuance of recall announcements to the public.

For more than a decade, Communications and Compliance and Field Operations (Compliance) staff has provided recalling firms with a template and guidelines that convey the CPSC’s content and format principles for producing an effective recall press release and developing supporting

communications materials. As the means and methods of effective risk communication have evolved, so too have our templates and guidelines.

Jointly announced voluntary recall press releases can appear in three different forms:

- 1) A press release segmented into Name of Product, Units, Hazard, Remedy, Consumer Contact, Description, Incidents/Injuries, Remedy, Sold at, Importer/Manufacturer, and Manufactured In. This represents the format used in the majority of cases.
- 2) A press release written in a narrative format, which includes the same content as above. This format is used when there is a fatality associated with the recall.
- 3) A press release that uses the words, "Recall Alert," in the headline and has a similar format as the segmented press release. This style of press release is primarily used when a recalling firm is able to demonstrate to Compliance that more than 95 percent of affected consumers can be contacted directly by the company.

The language agreed upon in the recall press release is often used as the basis for retailer in-store posters, website posts, call center scripts, videos, tweets, blurbs, and other forms of notice associated with the recall.

CPSC staff seeks the production of recall notices that are timely; understandable to the consumer; motivating to the consumer to take advantage of the remedy being offered by the recalling company; fair and accurate in their descriptions of the hazard, injuries, product, and remedy being offered; and that adhere to the disclosure provisions of 16 C.F.R. § 1101.

To achieve this result, agency staff negotiates with recalling firms and gives consideration to the issues raised by firms in the context of delivering timely, accurate, and complete information to affected consumers.

Negotiations over standardized language and formatting can often result in delays in the issuance of the voluntary recall notice, which can prevent consumers from receiving timely important information about defective or violative products. In addition to the safety implications, the delayed issuance of a voluntary recall notice can adversely impact the recalling firm's effectiveness in conducting the recall. Staff believes that a voluntary recall notice rule can expedite reaching an agreement over the content of the notice, while advancing both parties' interest in disseminating fair, accurate, and timely information regarding defective or violative products.

It is anticipated that Communications and Compliance staff will achieve a higher level of productivity in processing the substantial number of defect and regulated product violation announcements that occur each year if the Commission's principles and guidelines regarding the content and format for voluntary recall notices are standardized, promulgated, and published in the Code of Federal Regulations.

In FY 2013, a new performance goal was established that calls upon the Office of Communications to track the time dedicated to announcing product recalls. The Commission seeks greater staff efficiency in generating recall notices, while recognizing that external factors, such as a company experiencing delays in starting up call center operations, are out of the CPSC's control. By clearly setting forth Commission policy regarding the language and format used in voluntary recall notices, there is the potential for increased efficiencies in executing recalls for both CPSC and firm staff.

In addition, the proposed interpretive rule would present the Commission's policy regarding the use of certain forms of notice and methodologies of dissemination, such as specific social media platforms, which enables CPSC and firms to provide consumers with more timely, helpful information regarding hazardous products.

Relationship between the mandatory recall notice rule and the voluntary recall notice rule

The Congressional record shows that Congress contemplated that voluntary recall notices would include information similar to what is contained in mandatory recall notices, "as applicable and to the greatest extent possible" (H.R. Rep. No. 110-501, pg. 40). In addition, the preamble to the Commission's final rule for "Guidelines and Requirements for Mandatory Recall Notices" provides that "the rule may serve as a general guide for information to include in voluntary recall notices in some instances." (75 Fed. Reg. 3355, 3356, January 21, 2010). Staff's experience is that, despite this language, recalling firms have generally not viewed the mandatory notice rule as a guide for developing voluntary recall notices.

Staff believes that a separate rule for voluntary recall notices, that modernizes and builds upon the mandatory recall notice rule and aggregates guidance from other sources, will communicate the Commission's expectations for voluntary recall notices, by clearly articulating applicable principles and guidelines for the form and content of voluntary recall notices. For these reasons, staff believes that a separate rule will enhance the efficiency of the negotiation process and result in more timely and effective recall notices.

Using the mandatory recall notice rule as a guide, we recommend a set of principles and guidelines for voluntary recall notices that adopts many elements of the mandatory recall notice rule, with appropriate modifications. Below, we discuss those aspects of the draft proposed voluntary recall notice rule that would differ substantively from the corresponding provision in the mandatory recall notice rule. We cite the mandatory recall notice rule section to provide context and reference for those provisions in the draft proposed voluntary recall notice rule. Recognizing that the voluntary recall notice rule is interpretative (while the mandatory recall notice rule is legislative) and that the voluntary recall context involves the cooperation of the firm in question, in adapting the language of the mandatory recall notice rule, we have replaced the word "must" with "should," where appropriate.

- 16 C.F.R. § 1115.26(a)(2). Draft proposed 16 C.F.R. § 1115.33(a)(2) adopts the language from this section of the mandatory recall notice rule but adds the following sentence: "The language and formatting of the recall press release should comport with the latest edition of the Associated Press Stylebook."

Rationale: For decades, CPSC staff has used the Associated Press (AP) Stylebook to develop the template used for drafting recall press releases. Staff’s experience is that most media outlets are familiar with, and/or use within their own media organization, rules set forth in the AP Stylebook. Thus, news outlets that use the AP Stylebook, we believe, are more likely to disseminate information contained in a press release that comports with the AP Stylebook.

- 16 C.F.R. § 1115.26(a)(5). Draft proposed 16 C.F.R. § 1115.33(a)(5) adopts the language from this section of the mandatory recall notice rule but specifies that voluntary recall notices should be made by press release or recall alert, in-store retail poster, and website posting in every case.

Rationale: The proposed rule states the current agency practice of pursuing a press release or recall alert, retail level poster, and website posting in connection with every voluntary recall.

- 16 C.F.R. § 1115.26(b)(1). Draft proposed 16 C.F.R. § 1115.33(b)(1) sets forth specific means for communicating voluntary recalls in video form, such as YouTube, Instagram, or Vine, and identifies specific social media sites through which recall information can be disseminated.

Rationale: Guidance from the Office of Management and Budget calls for agencies to format public communications for mobile platforms, such as smartphones and tablets, among other platforms. With the development of recall applications by GSA and various private developers, a voluntary recall notice rule should promote the use of communications using digital media. The proposed rule seeks to reflect the common practice in recent years for Compliance and Communications staff to request that recalling firms use their own social media platforms to communicate directly with customers about a voluntary recall notice, to enhance the likelihood that customers will learn about the recall and pursue the remedy offered and use video and digital communications media for this purpose.

- 16 C.F.R. § 1115.26(b)(2). Draft proposed 16 C.F.R. § 1115.33(b)(2) adopts the language from this section of the mandatory recall notice rule and changes the phrase “when such information is obtainable,” to “when such information is reasonably obtainable from third parties, such as retailers.”

Rationale: The proposed rule references the Commission’s expectation in the interest of public safety that firms will take reasonable steps to obtain direct customer contact information from third parties for purposes of issuing direct voluntary recall notices.

- 16 C.F.R. § 1115.26(b). Draft proposed 16 C.F.R. § 111.33(b)(4) does not correspond to any provision in the mandatory recall notice rule and provides that a recalling firm should prominently place its social media notice and keep such notice prominently placed for at least 48 hours.

Rationale: Staff is aware that some recalling firms that have agreed to post a recall notice using social media have shortly thereafter posted unrelated information that has had the effect of significantly reducing the prominence of the social media posting in a manner that could make the posting less visible and less likely to receive consumer attention, thereby defeating the purpose of the recall notice.

- 16 C.F.R. § 1115.26(c). Draft proposed 16 C.F.R. § 1115.33(c) reads: “*Languages.* All voluntary recall notices should be in the English language. In addition, a voluntary recall notice should be translated into additional languages, if, in the Commission’s discretion, such translations are necessary or appropriate to adequately inform consumers or the public. Such voluntary recall notice translations should be transmitted in the same manner as, and along with, the English language voluntary recall notice. In circumstances requiring voluntary recall notice translations, the recalling firm should provide consumer recall support (such as call center scripts, in-store posters and other communications) in both English and the applicable translation. Where Spanish, in addition to English, is the appropriate language for a voluntary recall notice, the recalling firm should use the Commission’s Spanish translation of the recall press release on its website and other agreed-upon locations.”

Rationale: For voluntary recall notices that CPSC translates into Spanish, the proposed rule calls for the recalling firm to place the release on its website and incorporate it into its other communications platforms. If the firm has the capabilities, the firm may translate the notice into Spanish and submit the translation to CPSC staff for review. The proposed rule addresses the importance of transmitting recall information in the language or languages most appropriate to adequately inform consumers or the public of the recall.

- 16 C.F.R. § 1115.27. Draft proposed 16 C.F.R. § 1115.34(c) is a new subsection which reads: “*Headline.* The headline on the recall notice should be brief, yet communicate the name of the firm conducting the recall, the type of product being recalled, and the hazard. The headline can include a reference to the nature of the remedy (-to repair, -to refund, -to replace). The headline should include the name of the retailer, if there is an exclusive retailer of the product, and the name of a responsible U.S.-based entity, *i.e.*, the firm that is identified in the notice as the firm to be contacted by the consumer with regard to the recall.”

Rationale: Inserting the protocol for drafting recall notice headlines will support staff’s efforts to achieve fairness, accuracy, efficiency, and newsworthiness of recall press releases. The global marketplace has had an impact on where recalling firms are headquartered and the nature in which they fund and implement corrective action programs. The proposed language for the voluntary recall notice reflects staff’s goal for consumers to interact with U.S.-based companies, while participating in recalls; but the protocol identifies the accepted format used when firms based outside of the United States are the responsible party.

- 16 C.F.R. § 1115.27 (c)(6). Draft proposed 16 C.F.R. § 1115.34 (d)(6) reads: “Product photographs. Upon request, a firm should provide digital, color photographs that are of

high resolution and quality, and in a format that is consistent with the specifications of CPSC's website. As needed for effective notification, multiple photographs and photograph angles may be required."

Rationale: Firms should provide product photographs that comport with the established standards for the sizing of photographs on the CPSC's website. Additionally, the photographs should be of sufficient resolution and quality to convey adequately and accurately the desired visual information on the CPSC's website.

- 16 C.F.R. § 1115.27(f). Draft proposed 16 C.F.R. § 1115.34(g) adopts the language from 16 C.F.R. § 1115.27(f) and adds a subsection (3) that reads: "A statement that the hazard "can" occur when there have been incidents or injuries associated with the recalled product.

Rationale: Consistent with the AP Stylebook and agency practice in drafting recall press releases, the proposed rule conveys that the words "could" or "may" should not be used in the Hazard section of the release when there are documented incidents or injuries. Associated incidents or injuries support use of the word "can" in this context.

- 16 C.F.R. § 1115.27(g). Draft proposed 16 C.F.R. § 1115.34(h) reads: "A voluntary recall notice should identify the firm conducting the recall by stating the firm's legal name, commonly known trade name, city and state of its headquarters, and Web domain, or other effective and reasonably accessible electronic mechanism through which consumers and others can communicate with the firm."

Rationale: In addition to providing identification information for the use of consumers and others, recalling firms should provide a Web domain (or other electronic means), through which consumers and others can communicate directly with the recalling firm regarding the recall.

- 16 C.F.R. § 1115.27(m). Draft proposed 16 C.F.R. § 1115.34(n) adopts the language from this section of the mandatory recall notice rule but strikes the last sentence and adds at the end of the section: "A voluntary recall notice should provide the ages and state of residence of all persons killed."

Rationale: This proposed change would bring the incident and injury section of voluntary recall notices in line with the accepted practice for formatting and disclosure. The proposed modification for the voluntary recall notice rule will protect the identities of victims, while providing the media and public with important information about incidents.

- 16 C.F.R. § 1115.27(m). Draft proposed 16 C.F.R. § 1115.34(n)(1) does not correspond to any provision in the mandatory recall notice rule and provides that a recalling firm that receives information after the issuance of a voluntary recall notice that a significant number of additional incidents (including serious injuries and fatalities) have occurred

should update the notice on its website with this information and notify Commission staff of the updated information.

Rationale: Because recall programs usually remain ongoing for a period of time after the issuance of the initial voluntary recall notice, announcing additional incidents and fatalities may serve to motivate additional consumers to avail themselves of the remedy being offered by the recalling firm.

- 16 C.F.R. § 1115.27(n)(2). Draft proposed 16 C.F.R. § 1115.34(o)(2) adopts the language from this section of the mandatory recall notice rule and identifies the specific actions that can be taken by a consumer to obtain the remedy offered by the recalling firm: “forwarding the product to the manufacturer, returning the product to the retailer, scheduling an in-home repair.”

Rationale: Draft proposed 16 C.F.R. § 1115.34(o)(2) expands the list of consumer actions in the mandatory recall notice rule to specify additional actions that a consumer must take to obtain particular remedies offered by the recalling firm.

- 16 C.F.R. § 1115.27(n)(3). Draft proposed 16 C.F.R. § 1115.34(o)(3) adopts the language from this section of the mandatory recall notice rule and adds the following language at the end of the section: “If inclusion of all model names and model and serial numbers in the voluntary recall notice is complicated or extensive, the voluntary recall notice should refer consumers to the recalling firm’s website, call center, or similar customer service resource.” A new subsection (4) is also added to this section, which reads: “If, after issuance of the voluntary recall notice, the firm intends to change the process or nature of the remedy, this information should be promptly communicated to Commission staff. Changes to the process or nature of the remedy should be reflected in an update to the voluntary recall notice agreed to by the Commission and the firm. The updated voluntary recall notice should be promptly included on the firm’s website and on the Commission’s website, and otherwise transmitted to consumers in a manner consistent with the communication of the initial voluntary recall notice.”

Rationale: At times, recalls involve consumer products with an extensive number or complicated set of model and/or serial names and numbers. To facilitate consumer access to all pertinent information while preserving a clear and informative recall notice that is not confusing to consumers, CPSC staff has used the practice, at times, of (1) linking to charts containing model information on recalling firms’ websites, or (2) working with firms to ensure that call center scripts guide a consumer to knowing whether their product is included in the recall. The proposed rule also seeks to create a system for the common practice of changing the recall remedy or other aspects of the recall after the original public announcement to be reflected in an updated voluntary recall notice.

Conclusion

CPSC staff dedicates significant resources on a daily basis to the development of voluntary recall notices, and the agency's regulated entities have a need for predictability during the recall process. It is for these reasons that staff recommends the Commission approve this proposed interpretive rule. Staff seeks to aggregate and create a system of guidelines that have been used with the regulated community for years via recall templates, the Recall Handbook, and the preamble to the mandatory recall notice rule. Commission approval of this proposed interpretive voluntary recall notice rule containing these guidelines will result in CPSC better serving consumers and recalling firms by clearly communicating CPSC's expectations in announcing voluntary recalls and streamlining the process for initiating, negotiating, and finalizing the issuance of public announcements regarding voluntary corrective action plans.



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

This document has been electronically
approved and signed.

Memorandum

Date: September 9, 2013

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Kenneth R. Hinson, Executive Director

FROM: Ray M. Aragon, Assistant Executive Director, Office of Compliance and Field
Operations

Howard N. Tarnoff, Senior Counselor to the Director, Office of Compliance and
Field Operations

SUBJECT: Briefing Package: Proposed Rule for Voluntary Recall Notice Content and Format
Guidelines—Compliance Programs

Negotiated corrective actions give staff in the Office of Compliance and Field Operations (Compliance) the opportunity to tailor appropriate remedies to a particular situation and the associated health and safety risks presented. Deficiencies in a firm's compliance program or procedures can result in product hazards or defects and/or violations of mandatory requirements. In such circumstances, staff may, in its discretion, pursue compliance-related remedial actions in a corrective action plan.

Addressing compliance in corrective actions also would be consistent with recent civil penalty agreements that included compliance-related provisions. In three 2013 civil penalty settlement agreements approved by the Consumer Product Safety Commission (the Commission or CPSC), in addition to the payment of civil penalties for failing to timely report under Section 15(b) of the Consumer Product Safety Act (CPSA), firms have agreed to make robust changes to their internal control and compliance systems.¹ Collectively, these additions to the civil penalty agreements have been referred to as "Compliance Programs." Although each Compliance Program has been different, under future Compliance Programs, companies may be expected to agree to some, or all, of the following elements of the Compliance Programs:

¹ See *In the Matter of Kolcraft Enterprises, Inc.* (CPSC Docket No.: 13- C0004), *In the Matter of Williams-Sonoma, Inc.* (CPSC Docket No.: 13-C0005), and *In the Matter of Ross Stores, Inc., et al.* (CPSC Docket No. 13-C0006).

- maintain and enforce a system of internal controls and procedures to ensure that the firm promptly, completely, and accurately reports required information about its products to the CPSC;
- ensure that information required to be disclosed by the firm to the Commission is recorded, processed, and reported, in accordance with applicable law;
- establish an effective program to ensure the firm remains in compliance with safety statutes and regulations enforced by the CPSC;
- provide firm employees with written standards and policies, compliance training, and the means to report compliance-related concerns confidentially;
- ensure that prompt disclosure is made to the firm's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, the firm's ability to report to the Commission;
- give Compliance staff written documentation, upon request, of the firm's improvements, processes, and controls related to the firm's reporting procedures; and,
- make available all information, materials, and personnel deemed necessary to Compliance staff to evaluate the firm's compliance with the terms of the agreement.

To date, three firms have agreed to implement Compliance Programs as a component of civil penalty settlement agreements with the Commission. In the future, it may be appropriate, under certain circumstances, for Compliance to seek agreements from firms to implement a Compliance Program that contains one or more of the above-listed elements, as a component of a voluntary Corrective Action Plan under 16 C.F.R. § 1115.20(a)(1). Such circumstances might include, but are not limited to: multiple previous recalls and/or violations of CPSC requirements over a relatively short period of time; failure to timely report substantial product hazards on previous occasions; or, evidence of insufficient or ineffectual procedures and controls for preventing the manufacturing, importation, and/or distribution of dangerously defective or violative products. In addition to citing the product hazard and remedy to the consumer, it may be appropriate for a voluntary recall notice to reference actions that a recalling firm has agreed to that would ensure compliance with safety statutes, regulations, and mandatory reporting obligations.

To reflect these new potential elements of voluntary Corrective Action Plans and Voluntary Recall Notices, staff proposes to:

- Revise 16 C.F.R. § 1115.20(a)(1) to add a new paragraph (xv) to read as follows:

(xv) Compliance program-related requirements.
- Include a subsection in proposed 16 C.F.R. § 1115.34 to read as follows:

(p) *Compliance Program*. A voluntary recall notice may contain reference to applicable compliance programs or requirements, as appropriate.