Dist 12/9/09

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

BP - Final Rule on Guidelines and Requirements for Mandatory Recall Notices
This document to be discussed at Open Commission Meeting Wednesday, December 16, 2009 (Item 3 on Agenda)

VOTE SHEET

DATE: DEC - 9 2009

TO The Commission
Todd Stevenson, Secretary

FROM Cheryl A. Falvey, General Counsel
Philip Chao, Assistant General Counsel
Mary A. House, Attorney

SUBJECT Final Rule on Guidelines and Requirements for Mandatory Recall Notices

Section 214 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) amends section 15 of the Consumer Product Safety Act (CPSA) to add a new subsection 15(i). Section 15(i)(1) of the CPSA, titled "Requirements for Recall Notices," requires that, "[n]ot later than 180 days after the date of enactment of the [CPSIA], the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required by an order under" sections 12, 15(c), or 15(d) of the CPSA. Section 15(i)(2) of the CPSA sets forth requirements that must be included in a mandatory recall notice "[e]xcept to the extent that the Commission determines with respect to a particular product that one or more of the following items is unnecessary or inappropriate under the circumstances...." The attached draft *Federal Register* notice for Commission consideration contains a final rule on Guidelines and Requirements for Mandatory Recall Notices that meets the requirements of section 214 of the CPSIA.

Please indicate your vote on the following options:

I. Approve the *Federal Register* notice as drafted.

_____ _____
(Signature) (Date)

Note: This document has not been reviewed or accepted by the Commission.
Initials CH Date 12/9/09

CPSA 6(b)(1) CLEARED for PUBLIC 12/9/09
NO MFRS/PRVTLBLRS OR PRODUCTS IDENTIFIED
X EXCEPTED BY: PETITION
RULEMAKING ADMIN. PRCDG
WITH PORTIONS REMOVED:

II. Approve the *Federal Register* notice with changes. (Please specify.)

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_____ _____

(Signature) (Date)

III. Do not approve the *Federal Register* notice.

_____ _____

(Signature) (Date)

IV. Take other action. (Please specify.)

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_____ _____

(Signature) (Date)

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: December 9, 2009

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
/r Maruta Z. Budetti, Executive Director
John G. Mullan, Assistant Executive Director of Compliance
Philip L. Chao, Assistant General Counsel

FROM : Marc J. Schoem, Deputy Director, Office of Compliance and Field Operations
Mary A. House, Attorney, Office of the General Counsel

SUBJECT : Final Rule on Guidelines and Requirements for Mandatory Recall Notices

INTRODUCTION

Section 214 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA", Pub. L. 110-314) amends section 15 of the Consumer Product Safety Act ("CPSA"), and requires, in part, that the U.S. Consumer Product Safety Commission ("Commission" or "CPSC"), by rule, establish guidelines which set forth a uniform class of information to be included in any notice announcing an involuntary recall, commonly referred to as a mandatory recall. The information included in any mandatory recall notice must help consumers identify the product, understand the product hazard, and understand any remedy associated with the recall. On March 20, 2009, a proposed rule, titled "Guidelines and Requirements for Mandatory Recall Notices: Notice of Proposed Rulemaking," was published in the *Federal Register* (74 FR 11883) (the "NPR"). Attached for your review and consideration is the staff's response to comments that are incorporated into the final rule, a copy of the NPR, and a draft of the final rule.

SECTION 214 OF THE CPSIA

Section 214 of the CPSIA amends section 15 of the CPSA to add a new subsection (i). Section 15(i) of the CPSA, titled "Requirements for Recall Notices," requires that, ''[n]ot later than 180 days after the date of enactment of the [CPSIA], the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required by an order under'' sections 12, 15(c), or 15(d) of the CPSA. Thus, section 214 of the CPSIA only applies to Commission-ordered recalls or recalls ordered by a United States district court. The substantive authority to order a recall, as well as control over the final form and content, arises out of sections 12, 15(c), and 15(d) of the CPSA, while section 15(i) of the CPSA pertains to information that firms can expect to find in an order requiring that a mandatory recall notice be issued. Pursuant to section 15(i) of the CPSA, the guidelines must include information that would help consumers identify: (a) the product subject to recall; (b) the product hazard

(including a description of incidents and injuries); and (c) any remedy associated with the recall. Section 15(i)(1) of the CPSA. Section 15(i)(2) of the CPSA sets forth requirements that must be included in a mandatory recall notice "[e]xcept to the extent that the Commission determines with respect to a particular product that one or more of the following items is unnecessary or inappropriate under the circumstances":

- Product description, including model numbers or SKUs, common product name(s), and a photograph of the product;
- Description of the action being taken;
- Number of units with respect to the action being taken;
- Description of the substantial product hazard and reason for the action;
- Identification of the manufacturers and significant retailers;
- Dates between which the product was manufactured and sold;
- Number and a description of any injuries or deaths associated with the product, the ages of anyone injured or killed, and the dates on which the Commission received information about such injuries or deaths;
- Description of the remedy available to consumers, actions consumers must take to receive the remedy, and information a consumer needs to obtain a remedy or further information about the remedy (such as addresses, phone numbers and email addresses); and
- Other information the Commission deems appropriate.

The statute outlines what information must be included in a mandatory recall notice, but gives the Commission flexibility to remove inappropriate items, as well as to add requirements, where the circumstances for a particular product recall warrant such deviation.

FINAL RULE FOR MANDATORY RECALL NOTICES

A proposed rule establishing guidelines and requirements for mandatory recall notices appeared in the *Federal Register* on March 20, 2009. The proposed rule would establish a new subpart C in part 1115 of title 16 of the Code of Federal Regulations titled "Guidelines and Requirements for Mandatory Recall Notices." A detailed description of the proposed rule appears in the preamble to the NPR, attached hereto.

The Commission received 44 public comments on or before the April 20, 2009 deadline.[1] Thirty-five comments came from individuals in the general public, comprised of administrative law students from Drexel University's Earle Mack School of Law. One comment representing various consumer interest groups was received. The Commission also received seven comments from trade associations and industry representatives. Comments from individuals and the consumer interest groups supported the proposed rule. Several commenters suggested that mandatory requirements for recall notices will remove what they perceive as an excessive level

[1] Note that one comment received was related to component part testing issues.

of control that firms have in negotiating recall notice contents. Some individuals and industry representatives, however, said that the rule is broad, requires additional clarification, and includes many items which are irrelevant and unnecessary to meet the stated goals of a recall. Industry comments tended to focus on the issues of applicability to voluntary recalls, the number of product units, injuries and deaths, identification of foreign manufacturers, and the definition of "significant retailer."

Many commenters failed to appreciate the nature of the CPSC's authority with regard to ordering a mandatory recall. As required by section 15(i) of the CPSA, the proposed rule sets forth a uniform class of information to be included in a mandatory recall notice. However, the substantive authority to issue an order requiring a mandatory recall notice, including control over the final form and content of such a recall notice, appears in sections 12 of the CPSA (pertaining to orders by a United States district court), and 15(c) and 15(d) of the CPSA (regarding orders by the Commission) of the CPSA. Section 15(i) of the CPSA provides that the Commission shall set forth guidelines for categories of information that should appear in mandatory recall notices, and may include "any information the Commission determines would be helpful to consumers in" identifying a product, understanding a product hazard, and understanding a remedy. Additionally, section 15(i) of the CPSA sets forth specific information that must be included in such a recall notice, unless the Commission determines that the information is "unnecessary or inappropriate" in a particular case. The Commission also has authority to require "[o]ther information the Commission deems appropriate" in promulgating information requirements for mandatory recall notices. Thus, the final rule sets forth guidelines concerning information that firms can expect may be ordered in any Commission or court-ordered mandatory recall notice, as well as specific content requirements subject to Commission or court alterations in a particular recall order. The rule does not, however, alter the Commission's authority and flexibility to continue to tailor mandatory recall notices for a particular recall scenario.

The confusion regarding the Commission's authority with regard to mandatory recall notices likely arises out of the fact that the Commission also stated in the preamble to the proposed rule 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." Unlike mandatory recall notices which are ordered by the Commission (and done rarely in the Commission's history), voluntary recall notices are negotiated with each firm and are the typical vehicle for conducting a product safety recall. Despite this fact, nothing precludes the Commission from using the information categories stated in the proposed rule as a guideline or as a starting point for negotiating voluntary recall notices. Guidelines are not rules, and the Commission could not require the use of these information categories in a voluntary recall. The Commission would retain the discretion to work with recalling firms to tailor voluntary recall notices for each particular recall scenario.

The staff recommends making eight changes to the final rule; seven changes respond to the comments received, as outlined below. The recommended changes to the final rule include:

1 – *Other persons* – Adding the following definition to § 1115.25 as item (e): "*Other persons* means, but is not limited to, consumer safety advocacy organizations, public interest

groups, trade associations, industry advocacy organizations, other state, local, and federal government agencies, and the media."

2– *General Guidelines Regarding Form and Content* – Removing the word "firm" from § 1115.26(a)(3) to clarify that, in a mandatory recall scenario, firms are not the entity determining the form and content of a recall notice. The final form and content of mandatory recall notices are ordered by a United States district court or the Commission: "A recall notice should 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."

3 – *Forms of Notice* – Clarifying that more than one form of recall notice should be provided by adding the following to § 1115.26(a) as item (5): "At least two of the recall notice forms listed in subsection (b) should be used."

4 – *Direct Recall Notice* – Amending § 1115.26(b)(2) to clarify when a firm is deemed to have direct contact information. Also updates the forms of direct contact information to include telephone numbers: "A direct recall notice should be used for each consumer for whom a firm has direct contact information, or when such information is obtainable, 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. Forms of direct recall notice include, but are not limited to, United States mail, electronic mail, and telephone calls."

5 – *Notices in Languages in Addition to English* – Adding examples to § 1115.26(c) of when a recall notice may be required to be made available in additional languages by adding the following sentence: "For example, it may be necessary or appropriate to require a recall notice be in a language in addition to English when a product label is in a language in addition to English, when a product is marketed in a language in addition to English, or when a product is marketed or available in a geographic location where English is not the predominant language."

6 – *Product Description* – Clarifying in § 1115.27(c) that the information outlined in § 1115.27(c) must be included in a recall notice to the extent applicable to the product, by amending the last sentence to read: "To the extent applicable to a product, descriptive information that must appear on a recall notice includes, but is not limited to:"

7 – *Identification of manufacturers* – Clarifying in § 1115.27(h) that foreign manufacturers must be identified by a legal name, city, and country of headquarters by amending the last sentence as follows: "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 foreign manufacturer's legal name and the city and country of its headquarters."

8 – *Region* – Adding a new § 1115.27(j) requirement titled "Region" to provide for a description of the geographic region where a consumer product subject to a recall was sold, or held for purposes of sale or distribution in commerce, when such information is necessary or appropriate to assist consumers with product identification: "*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, must be provided."

STAFF RESPONSES TO COMMENTS ON GUIDELINES AND REQUIREMENTS FOR MANDATORY RECALL NOTICES

A summary of the significant issues raised by the comments and the staff's responses appear below. The number assigned to each comment is for organizational purposes and does not signify the comment's value, importance, or order in which it was received.

A. Comments Related to Procedural Issues

Comment 1 – Administrative Procedure Act ("APA") – One commenter states that the NPR is lacking because it does not contain a list of data or studies relied upon as required by the APA. Although the preamble to the proposed rule states that the agency relied on agency recall guidance materials, including but not limited to the Recall Handbook, the exact resources were not made available to the general public. The commenter believes that, at minimum, information on where to access the resources should be provided or, a web link provided for direct access to the documents. The commenter states that no final rule should issue until the public has the opportunity to review the underlying data.

Response – The requirements for mandatory recall notices set forth in the proposed rule are largely dictated by section 214 of the CPSIA. The proposed rule also includes the Commission's interpretation and clarification of section 214 of the CPSIA, as well as additional guidelines. The preamble to the proposed rule states that, in drafting the proposed rule, the agency relied on its experience conducting recalls and recall effectiveness gained since the CPSC's inception, as well as agency recall guidance materials, including but not limited to the Recall Handbook. The preamble to the proposed rule also contained a link to the Recall Handbook. The Commission did not rely on quantifiable "data" in drafting the proposed rule; it relied on the text of the statute and more than thirty years of experience conducting recalls, which is summarized in the Recall Handbook. Recall templates and a recall checklist are also available to the public on the CPSC's web site at http://www.cpsc.gov/businfo/corrective.html. These materials have been available to the public on the CPSC web site long before passage of the CPSIA.

No reason exists to delay the effective date of the final rule where: (i) a substantial portion of the rule is based on statutory requirements that are already in effect, (ii) the guidance provided in the rule is not subject to the notice and comment period required by the APA (5 U.S.C. §553(b)(3)(A)), (iii) no data or studies were relied upon in drafting the proposed rule, (iv) the proposed rule contained a link to the Recall Handbook, and (v) the recall guidance materials referred to in the proposed rule have been available on the CPSC's web site for many years.

Comment 2 – Regulatory Flexibility Act ("RFA") – Two commenters took opposite positions with regard to applicability of the RFA to the proposed rule. One commenter states that the RFA should not be applicable to children's products so that small businesses will not be able to circumvent recall duties. Another commenter opines that the CPSC is attempting to evade the RFA when it states that small businesses will not be affected by the rule. The commenter takes this position based on the discretion the Commission has with regard to determining a "significant retailer," which the commenter believes, depending on the definition,

could have a large effect on small businesses. The comment suggests that a small business analysis should be done on the proposed regulation.

Response – The staff recommends proceeding with the final rule without a regulatory flexibility analysis. The RFA generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Section 605(b) of the RFA states that the requirement to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, and the agency provides an explanation for that conclusion.

This final rule will have little to no effect on small businesses. First, the recall notice requirements set forth in the final rule are largely dictated by the CPSIA and are already in effect. Second, mandatory recalls are rare in the Commission's history. Issuing the final rule will not alter the agency's primary reliance on voluntary recalls. Finally, the recall burden on small businesses will not be altered by the definition of "significant retailer." The sole purpose of identifying retailers in the recall notice is to assist consumers with product identification. It has no effect on which firm issues a recall notice or has responsibility for conducting a recall.

Comment 3 – Effective Date – Several commenters state that because they believe the proposed rule seeks to impose requirements that go beyond the CPSIA, firms require notice of the additional requirements and time to comply. Accordingly, these commenters state that the rule should not be effective upon publication, but should follow the standard of becoming effective 30 days after publication so that firms have time to comply. One commenter suggests further that the rule be clarified not to apply retroactively, and that the requirements only apply to goods manufactured after August 14, 2009.

Response–The final rule does not go beyond the CPSIA. Section 214 of the CPSIA specifically provides that the Commission shall promulgate guidelines that "include any information that the Commission determines would be helpful to consumers" to identify the product, understand the identified hazard, and understand the proposed remedy. The Commission also was specifically authorized to issue requirements for mandatory recall notices that the Commission deems appropriate. Section 15(i)(2)(I) of the CPSA. Staff recommends that the rule be effective upon publication, regardless of when the product was manufactured, because the final rule does not impose any burden that would need additional time for compliance. Further, the final rule applies only to mandatory recalls pursuant to a court order (section 12 of the CPSA) or an order of the Commission (sections 15(c), and 15(d) of the CPSA). Mandatory recalls are infrequent in the Commission's history, and currently there are no pending matters where a mandatory recall is at issue. Because of the length of time involved in litigating these issues in a U.S. district court or administratively, it is impracticable that any action would be litigated to conclusion and that an order requiring a mandatory recall notice would be issued in 30 days time. Accordingly, any firm subject to the final rule will have far more than 30 days to comply.

Comment 4 – Application to Voluntary Recalls – Many commenters note the Commission's statement that the proposed rule will apply to mandatory recall notices only and will serve as a guideline for voluntary recalls unless and until the Commission initiates a separate rulemaking to apply the requirements to voluntary recalls.

Individual commenters and consumer groups generally support the extension of the mandatory notice requirements to voluntary recalls to promote uniformity and consistency in providing consumers recall data and to prevent firms from circumventing the requirements for a mandatory recall notice by agreeing to a voluntary recall. One commenter notes that voluntary recalls comprise the vast majority of recalls and that the protections and information afforded by the mandatory recall notice should be extended to consumers in voluntary recall notices as well. Some commenters believe that consumer safety is compromised by not using the same notice requirements for both mandatory and voluntary recalls. One commenter states that the mandatory recall notice requirements should at least be applied to voluntary recall notices for ultrahazardous products.

Industry commenters are generally opposed to extending the mandatory recall notice requirements to voluntary recall notices, arguing that important differences exist between a mandatory and voluntary recall. For example, one commenter states that, during a voluntary recall, the firm and the CPSC staff have time to develop an effective recall notice in a more positive environment. Depending on the nature of the product and the harm, the same level of detail may not be necessary for every recall to be helpful to consumers. These commenters support the current system whereby the final notice requirements are left for each specific recall situation working with the staff. One commenter notes the success of the Fast Track program and believes the Commission should continue to foster cooperation in that program and only impose mandatory recall procedures when absolutely required. Some commenters state that imposing mandatory notice requirements will discourage firms from conducting voluntary recalls, which is typically done to avoid the burdens of a mandatory recall. Less voluntary recalls will lead to over-burdening the Commission staff and resources.

A few commenters are concerned about the mandatory notice requirements even serving as a guideline for a voluntary recall notice and urge the Commission to withdraw this statement. One commenter believes that a heightened level of importance should be associated with mandatory recalls. Other commenters note that, even though the Commission acknowledges that a separate rulemaking will be necessary to extend the requirements to voluntary recalls, using the rule as a guideline is essentially a distinction without a difference. One commenter suggests that the Commission explicitly acknowledge in the preamble that a proposed voluntary recall notice will not be required to meet all of the guidelines for a mandatory recall notice in order to be approved for voluntary corrective action.

Response – The staff recommends that the Commission maintain its intent to use the mandatory recall notice requirements as a guide for voluntary recall notices unless and until a separate rule on voluntary recall notices is undertaken. Voluntary recalls comprise the vast majority of recalls conducted by the CPSC. The ultimate purpose of every recall notice, to get dangerous products out of the hands of consumers as quickly as possible, applies to both voluntary and mandatory recall notices. In most circumstances, and as evidenced in the Recall

Handbook and many of the voluntary recall notices available on the CPSC's web site, much of the information set forth in the proposed rule is already incorporated into voluntary recall notices.

Moreover, no substantial differences between a mandatory and voluntary recall notice exist, or should exist. Consumers require the same type of information, and time is of the essence, in either case. A guideline list of uniform information for voluntary recall notices will offer the same baseline requirements for all recall notices, aiding in predictability for both firms and consumers, and allow both the Commission and firms to use resources efficiently. Moreover, just as with mandatory recall notices, the Commission retains the flexibility to work with firms to tailor voluntary recall notices to a particular product and particular recall circumstance.

B. Notice Guidelines and Requirements

Comment 5 – Notice Guidelines and Requirements Generally –

a. Many commenters seek clarification of the rule. Several are concerned that many requirements are unnecessary, extraneous, too complicated, and do not help consumers locate relevant products and determine what to do with them. In particular, several commenters are concerned about harm that could occur to business reputation based on the detailed requirements and the speed at which imperfect information may travel. Several commenters state that some information is burdensome for firms to maintain and report with no added benefit to consumers, and are concerned about the costs to maintain detailed records such as photographs and pricing information. These commenters prefer a shorter mandatory recall notice that would purportedly be more helpful to consumers.

Response – Most requirements set forth in the final rule are statutorily mandated, and the Commission has the authority to add requirements it determines are appropriate. With regard to the form of the notice, the CPSC also favors short, factual recall notices. Most, if not all, requirements in the final rule are already used as information categories in many voluntary recall notices and have not resulted in lengthy recall notices that are confusing to the consumer. A quick review of recall notices on the CPSC web site demonstrates this fact.

The rule is not burdensome, as it does not impose any recordkeeping requirements on firms. For example, in the staff's experience, locating a photograph of the product and the price range has not been a significant issue for firms at the time of a recall. The staff rejects the idea that a recall notice causes undue harm to business reputation. In the staff's experience, responsible firms generally desire to move quickly to remove defective products from the marketplace because it is statutorily required, preserves their brand and consumer confidence, limits liability, and, most importantly, reduces the likelihood of injuries and deaths from unsafe products.

b. One commenter proposes that the Commission create a mandatory recall notice template form that includes all required sections for a notice. The commenter believes that a

template will be more efficient, save time and resources, and allow the Commission to quickly check for all requirements to speed approval of recall notices.

Response –The CPSC already has a bank of recall notice examples that staff provides to firms to help create a recall notice. To the extent such a template is revised, it can and should be done outside of this rulemaking process, to allow both the Commission and industry flexibility to update such templates as appropriate.

c. Several commenters discuss use of the words "should" and "must" in the proposed rule, and suggest that in the final rule, use of the word "should" should be changed to "must" to alleviate any confusion regarding the mandatory nature of the requirements.

Response – With regard to use of the words "should" and "must" in the final rule generally, the statute directs the Commission to issue a guidance. Guidance provided by the Commission regarding mandatory recall notices uses the term "should." The statute also requires the inclusion of certain contents in a mandatory recall, and such requirements are described in the regulation using the words "must" or "shall."

1. Recommended Additions

As summarized below, several commenters recommend that the rule include additional information.

Comment 6 – Purpose – § 1115.23 – One commenter believes that the proposed rule's purpose and reasoning section are too generic and lack specific information. The commenter suggests including specific rationales for why certain requirements will be effective and suggests adding specific examples or data to illustrate what the specific recall problem is and how the rule will address the problem.

Response – Section 214 of the CPSIA sets forth a uniform class of information to be included in mandatory recall notices. The final rule's requirements are largely dictated by the statutory language. Further, as already noted, the Commission's interpretation of section 214 of the CPSIA, as reflected in the proposed rule, is not based on a scientific study, but rather on the culmination of the Commission's and the staff's many years of experience conducting product safety recalls. Because of the wide variety of consumer products and industries that such recalls encompass, it is necessary to allow flexibility to tailor recall notices to a specific target consumer group, product, and hazard situation to effectively remove hazardous products from the hands of consumers. The statute, and thus the final rule, gives the Commission and/or a court the flexibility to add or remove requirements from a particular recall notice as necessary and appropriate, keeping in mind the goal of increasing recall effectiveness, and to assist consumers in product identification, understanding the product hazard, and understanding any available remedy.

Comment 7 – Sequencing Notice Information – One commenter suggests that the rule address the sequence of information found in a mandatory recall notice. The most important information should appear at the top because it is more likely to be read. For example, the

photograph of the product should appear at the top of the notice under the "recall" heading. The commenter proposes the following order: description of product hazard, type of hazard or risk, identification of retailers, etc... This commenter also suggests that the rule address readability issues, such as the use of bullet points over lengthy paragraphs.

Response–The CPSC staff agrees that recall notices should be written with the intent to aid readability and understanding by consumers, but that this issue is best addressed on an individual, case-by-case basis. In a mandatory recall situation, the Commission or a court has control over the final form and content of a recall notice, and can require such notices to conform to the standard format already in use. Accordingly, the staff recommends declining to set a uniform sequence in the current rulemaking, as what is the most critical recall information may vary slightly by recall.

Comment 8 – Timeliness and Prohibited Acts –

a. One commenter notes that the rule omits timeliness issues with regard to issuing a mandatory recall notice. This commenter argues that the rule should give firms an incentive to comply in a timely fashion and provide penalties for non-compliance.

Response – Timeliness is important with regard to both mandatory and voluntary recall notices. With regard to mandatory recall notices specifically, the Commission or a court will have control over the timing of recall notices once ordered.

b. One commenter suggests using the civil penalties in section 20(a) of the CPSA as a guideline for penalties for non-compliance with any time constraints imposed. Another commenter suggests adding a section on prohibited acts for non-compliance with part C generally.

Response – All prohibited acts over which the Commission has penalty authority are listed in section 19 of the CPSA, and the associated penalty amount provisions are located in section 20 of the CPSA. Section 19(a)(5) of the CPSA provides that it is unlawful for any person to "fail to comply with an order issued under section 15(c) or (d)." Accordingly, these penalty provisions already apply to mandatory recall orders and the staff recommends declining to duplicate these provisions in the rule.

Comment 9 – FOIA Rights – One commenter suggests that the rule include a section on Freedom of Information Act ("FOIA") rights.

Response– The staff recommends declining to address FOIA issues in the rule. The Commission has a separate, existing rule on FOIA, at 16 CFR part 1015.

Comment 10 – "Region" Requirement – One commenter suggests adding a "Region" requirement to mandatory recall notices that specifies the geographic region in which the product was made available in order to narrow down areas of concern when a national retailer is involved. This commenter suggests that the "Region" section should have a subsection stating

whether the product was for sale on line, so that a consumer understands when the geographic area may have been broadened by internet sales.

Response –When it is relevant, a specific region where a product is made available for sale is typically included in a recall notice. However, adding a region description to mandatory recall notices could help narrow the geographic range for affected retailers and consumers (while not narrowing the range for dissemination of a recall notice generally). Such a designation may help consumers identify whether they may have the product being recalled. Accordingly, the staff recommends adding information for "Region" as § 1115.27(j), which provides that "[w]here 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, must be provided."

2. Definitions and Guidelines -- §§ 1115.25 through 1115.26

Comment 11 – Definitions – Section 1115.25 – One commenter suggests that "other persons," referenced in proposed § 1115.26, be formally defined in the rule so that the explanation which appears in the preamble to the proposed rule is captured in the final rule. Another commenter states that it is important to keep "other persons" in the rule to acknowledge that both governmental and non-governmental entities are involved in the dissemination of information in the interest of consumer safety.

Response – The staff agrees with the commenters that defining "other persons" in the rule acknowledges the importance that both governmental and non-governmental entities can play in the broad dissemination of consumer product safety information. Accordingly, the staff recommends defining, and broadening the definition of "other persons" at § 1115.25 as follows: "*Other persons* means, but is not limited to, consumer safety advocacy organizations, public interest groups, trade associations, industry advocacy organizations, other state, local, and federal government agencies, and the media."

Comment 12 – Direct Recall Notices – Section 1115.26(a)(4) and (b)(2) – Many comments were received regarding § 1115.26(b)(2) on direct recall notices and § 1115.26(a)(4) stating the idea that direct recall notices are the most effective form of a recall notice.

a. Overall, individual consumer comments support the proposed rule with regard to direct recall notices, suggesting that consumers tend to tune out information not directed to them. One commenter notes that direct recall notices have worked effectively in Illinois since 2006. A few commenters suggest revising the rule to require firms to exhaust resources and to send direct recall notices via every means possible depending on the data they have, *i.e.,* mail, electronic mail, and via telephone. One commenter suggests requiring e-mail notification when a firm has e-mail contact information. One commenter suggests asking consumers to forward e-mail notices to people they know have an interest in receiving the information in order to take advantage of social networking abilities. However, another commenter suggests that, because people ignore e-mails based on the large volume received, direct regular mail notices and automated phone messages would be more effective. Another commenter suggests that a direct recall notice be required in all cases where a firm has contact information unless the firm can

prove by a preponderance of evidence that a direct recall notice will not be as effective as other forms of a recall notice.

However, one commenter urges that direct recall notices should only be required when a significant and imminent health and safety risk is involved because of the costs involved in direct notice and because over-warning can de-sensitize consumers. Moreover, section 15 of the CPSA recognizes that the form of notice depends on the risk involved and affords parties the opportunity for a hearing before the Commission can order a number of actions.

Response – Direct recall notices are the most effective form of a recall notice. 74 FR at 11886. The statement is based on the Commission's experience that one of the most important aspects of conducting a recall is to target recall notices to those consumers that are more likely to have purchased the product at issue. Direct recall notices have the advantage of reaching a large portion of the consuming public that may have actually purchased the product. Even if the product was not ultimately used by the purchaser, in the case of a parent buying a product for a child or a consumer buying a gift, the purchaser is in a good position to notify the product's user of the recall. Ensuring that notice of the recall is provided in a timely manner to the affected target audience is a major component of recall effectiveness, and direct recall notices are a key advantage in the recall process when this information is known. Moreover, the rule recommends, but does not require, use of direct recall notices. Assessing whether direct notice is necessary, appropriate, or possible in a particular mandatory recall is best done on an individual basis.

b. One commenter advocates a clear delineation in the rule with regard to responsibility for direct recall notices. This commenter argues that manufacturers should never have responsibility for a direct recall notice, but should have responsibility for broad dissemination through other means. Direct notice responsibility should fall to the product distributors and retailers that have such contact information.

Response – Determining which firms have responsibility for a recall and disseminating recall notices is beyond the scope of the rule, which solely relates to information categories required on a mandatory recall notice.

c. Some commenters note the limitations of relying solely on direct recall notices. One commenter states that direct recall notices are not the best method of notifying consumers, and should never be used as the sole method of notifying consumers because they miss an entire category of consumers – third party consumers that purchase products second-hand or receive them as gifts. Considering the popularity of certain web sites that sell, re-sell, or auction consumer products, direct recall notices could miss a large population of the consuming public. Additionally, the general public has an interest in knowing about recalled products, such that the recall strategy should be to reach the broadest possible audience.

Response – The staff agrees that a direct recall notice should not be the sole form of recall notification because the purpose of a recall notice is to reach the broadest possible audience of consumers that may have purchased or received the products. Sole reliance on direct recall notices ignores the fact that other persons may benefit from receiving recall notices and

that other persons assist in broad dissemination of recall notices. The final rule acknowledges this by adding § 1115.26(a)(5) stating that at least two of the recall notice forms listed in subsection (b) should be used.

d. One commenter asks the Commission to clarify the rule with regard to the factors for determining when a firm actually has direct contact information. This commenter states that firms have millions of bits of information, but being able to track the information to a specific time frame and product is time consuming and costly. Moreover, firms may have some information related to the sale, *i.e.*, credit card information, but may not have all information without relying on a third party to match data, which can also be time consuming and costly. The commenter urges that the rule clarify that it only applies when accurate, up to date, contact information is readily and practically available, and is in fact in the firm's direct possession. Another commenter suggests adding "telephone number" to the list of contact information, and to prioritize the direct notice methods as follows: (1) direct mail, (2) e-mail, and (3) telephone.

Response – Assessing when a firm has possession of direct contact information and when the information should be used is best done on an individual basis because of the variety of information that firms or third parties may possess. However, the final rule clarifies that "[a] direct recall notice should be used for each consumer for whom a firm has direct contact information, or when such information is obtainable, 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." The Commission or a court retains flexibility to determine when a firm has direct contact information and when a direct recall notice is appropriate. The final rule also clarifies that a telephone number is considered direct contact information: "[d]irect contact information includes, but is not limited to, name and address, telephone number, and electronic mail address."

Comment 13 – Forms of Recall Notice – Section 1115.26(b)(1) – Commenters are positive about the various methods available for dissemination of information, but want the Commission to make more than one form of notice mandatory. For example, one commenter would require multiple forms of dissemination so that firms cannot rely on a single press release and notice to retailers. Another commenter suggests requiring firms to contact national and local media. Another commenter is concerned that the rule does not impose any requirement on firms to ensure that notices are actually received and not dismissed as spam or junk mail and says requiring multiple dissemination methods would address this problem. Several commenters would require the use of paid advertisements, for example, where injuries and deaths have occurred. Similarly, another commenter suggests that the recall notice be required to be disseminated in the same manner as advertising and promotion for the product.

Response – As noted above in response to comment 12c, § 1115.26(a)(5) provides that more than one form of recall notice should be used. The staff recommends declining to provide for any certain type of notice for every recall in the final rule. Recall notice forms may vary depending on the type of hazard, the severity of the risk, and the nature and distribution of the target audience. While circumstances will arise where paid advertisements are warranted, and the Commission's or a court's order may require their use directed to certain target audiences, in certain time frames and intervals, retaining flexibility and creativity to adjust the forms of

required recall notices to the specifics of each case and to allow for technological advancements in recall notice forms should be maintained.

Comment 14 – Web site Recall Notices – Section 1115.26(b)(3) – Several comments support § 1115.26(b)(3), stating that a web site recall notice should be prominent and clear on the first entry point of a web site, such as a home page, and to be interactive. Several commenters suggest making a web site recall notice a mandatory requirement when a firm maintains a web site. One commenter agrees that the information must be on the home page and urges the CPSC not to allow firms to bury recall notices deep within a web site. These commenters support the idea of an interactive web site that allows a consumer to seek a remedy on line.

However, one industry group commenter dislikes the idea that a recall notice be placed on a firm's home page and states that such a requirement goes beyond the CPSIA mandate. This commenter argues that manufacturers and distributors post web site recall notices in a location where consumers have become familiar with locating the information. This commenter urges that the CPSC should not adopt a "one-size fits all" home page requirement and that the decision should be left for decision based on the circumstances of each case. Moreover, the requirement for an interactive web site which allows a consumer to request a remedy does not make sense in all cases. The commenter gives the example of ATVs and ROVs, which must be taken in to an independent dealer for repair. Because section 214 of the CPSIA does not require an interactive web site, the commenter would delete this section from the final rule.

Response – The staff agrees that product safety information should not be buried in a firm's web site and rejects the proposition that the rule goes beyond the requirements of the CPSIA with regard to providing an interactive web site for recalls. First, the guidelines and policies set forth in § 1115.26 are guidelines, not requirements. Moreover, section 214 of the CPSIA specifically provides that the Commission should "include any information that the Commission determines would be helpful to consumers" in order to identify the product, understand the identified hazard, and understand the proposed remedy. For example, in the ATV hypothetical provided by the commenter, even if an ATV cannot be exchanged via a web site, a prominently placed web site recall notice that is interactive will expand the recall notice to the relevant target audience, increasing recall effectiveness, and will help consumers: (i) identify the product subject to recall; (ii) identify the hazard associated with the product; (iii) understand the nature of the remedy being offered; (iv) if the remedy is repair, locate a dealer to make the necessary repair and/or (v) arrange an appointment for such repair at an appropriate dealer. The staff agrees that the content and nature of web site interactivity may be product and remedy specific, but the tool itself can be used in many ways to enhance consumer understanding and recall effectiveness. Moreover, the CPSC has provided guidance to firms conducting recalls to post recall notices prominently on the home page of the firm's web site since at least 2000.

Comment 15 – Recall Notices in Languages in Addition to English – Section 1115.26(c) – Comments generally support § 1115.26(c), which states that the Commission or a court may require that a recall notice be in languages in addition to English "when necessary or appropriate to adequately inform and protect the public," but would set mandatory criteria for recall notices in additional languages. For example, one commenter states that the phrase "necessary and appropriate" requires further clarification and an explanation of the criteria that will be used.

Another commenter urges the Commission to consider languages likely used by consumers when reviewing and approving recall notices, and to insure that recall hotlines and on-line forms should be made available in additional languages when the product was likely purchased by non-English speaking consumers.

Several commenters note the current demographic situation in the United States, stating that approximately 12% of the population speaks Spanish, and suggest that the Commission require that all recall notices be drafted in both English and Spanish. Another commenter suggests requiring that all recall notices be drafted in the top two or three other languages spoken in the United States.

Moreover, several commenters opine that the rule should contain criteria to help determine when recall notices in additional language should be required. Suggestions for criteria for a mandatory language requirement include:

- When product labeling is primarily in a language other than English;
- When product instructions are written in more than one language; and
- When a product is marketed in a language other than English.

Finally, one commenter suggests that the Commission maintain a "bank" of standard recall information in other major languages spoken in the United States to help reduce the costs of providing recall notices in additional languages.

Response – Staff recommends adding non-exhaustive examples of when the Commission or a court may order that a recall notice be made in languages in addition to English. Non-exhaustive examples clarify when it may be necessary or appropriate to order a recall notice in a language in addition to English while maintaining the Commission or a court's flexibility to tailor recall notices to individual recall circumstances. Two criteria suggested by commenters, when the product labeling is primarily in a language other than English and when a product is marketed in a language other than English, both establish circumstances where recall notices may be necessary or appropriate to increase the likelihood that the safety message conveyed in a recall notice will reach and be understood by the intended target audience. These two criteria have been added as examples in the final rule. The staff recommends adding an additional example: when a product is marketed or available in a geographic area where English is not the predominant language. This example demonstrates that even when a product's marketing or labeling is in English, there may be circumstances that arise in a mandatory recall scenario that still make it appropriate to distribute recall notices in languages in addition to English.

The staff recommends declining to adopt additional criteria in the final rule. The ubiquity of manufacturers providing instructions in languages other than English, for example when a product is marketed and sold in countries outside the United States, would require scrutiny of the language issue in almost every recall situation and would not result in an efficient use of staff resources. Similarly, insufficient information exists to impose a requirement that every mandatory recall notice be made available in two or three languages. Commenters failed to provide sufficient data to support such a requirement. Finally, maintaining a "bank" of standard recall information in other languages is something the Commission could consider

doing as a matter of efficiency, but, like the recall templates mentioned earlier, is not within the scope of the rule, which focuses on information categories and content required in mandatory recall notices.

3. Notice Requirements -- Section 1115.27

Comment 16 – Terms– Section 1115.27(a) – Most commenters support § 1115.27(a)'s requirement to use the word "recall" in the heading and text of the notice. A few commenters suggest use of the label "Safety Recall" in the heading to alert consumers to a safety issue with regard to the product. One commenter suggests using the term "Urgent Recall" in the heading whenever there is a serious risk of death or loss of limb. This commenter urges that the Commission use this designation to create a more serious class of product recalls.

Finally, one commenter dislikes requiring use of the word "recall" in every notice, arguing that it may be misleading and "unnecessarily harmful to the character of a product, manufacturer, importer, or retailer" by suggesting the harm is greater than it actually may be. This commenter suggests using language from the "action taken" section, which the commenter believes will be more accurate in describing the nature of the recall at issue. At minimum, the commenter suggests using "recall" along with the "action taken" in the header so that consumers can quickly and easily see the nature of the action being taken with regard to the product.

Response – In the staff's experience since the inception of the CPSC, and as a matter of Commission policy, use of the word "recall" is preferred because it is universally recognized by consumers and other persons as meaning that a safety issue has arisen that requires action by the consumer. The CPSC's position on the title of a recall notice has been in the Recall Handbook for many years. The staff does not agree that the dissemination of a recall notice harms manufacturers. As reviewed in the Recall Handbook, consumers no longer necessarily view product recalls in a negative light and are more likely to have a negative view of a firm if it does not take responsibility for conducting an effective recall. How well a company conducts a timely, reasonable recall of a product may have a strong influence on consumers' attitude about the firm. Successful product recalls can result in continuing consumer support and demand for the firm's products.

While the Commission categorizes recalls, as set forth in the Recall Handbook Section III, CPSC Evaluation of Section 15 Reports, the Commission has avoided categorizing recall notices because we want consumers to review and respond to all recall notices. Consumers should have the opportunity to read each notice and make an informed decision regarding whether they have the product, whether the risk of injury applies to them, how to avoid injury, and how to take advantage of any remedy associated with the recall. The staff is concerned that categorizing recalls by the severity of risk may hinder the overall goal of recall effectiveness.

Comment 17 – Product Identification – Sections 1115.27(c)(1)-(6) – A few commenters agree with requiring additional identifying product information. One commenter suggests that it is unclear whether § 1115.27(c)(1) through (6) establishes requirements because the word "must" is not used. This commenter suggests clarifying the rule so that firms know whether all or some subset of these product identification guidelines are required.

Response – Section 15(i)(2) of the CPSA requires that a mandatory recall notice include a product description, including model numbers or SKUs, common product name(s), and a photograph of the product. The final rule is organized such that items in § 1115.26 are guidelines and policies, and items in § 1115.27 are requirements. Accordingly, § 1115.27(c) provides that "[a] recall notice must 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 it from similar products. The information must enable consumers to readily determine whether or not they have, or may be exposed to, the product." The rule lists six types of descriptive information relevant to product identification, including the fact that a photograph "must" be included. The staff expects that when the information specified under this section is applicable to a particular product, it must be included as part of the product description. However, the list is not exhaustive, and there may be additional product identification information that is required for a particular recall notice. The staff recommends a change to the final rule to state that "[t]o the extent applicable to a product, descriptive information that must appear on a recall notice includes, but is not limited to:" in order to clarify the rule's requirements.

Comment 18 – Remedy – Sections 1115.27(d) and (m) – Several comments would strengthen the remedy requirements in §§ 1115.27(d) and (m). One commenter observes that the remedy offered must be implementable by all parties. The commenter notes that there have been several instances where a manufacturer offered a remedy, such as a voucher or coupon, that was not recognized by all retailers' computer systems when presented by a consumer. Accordingly, consideration of different systems should be given when providing a remedy and approval by the CPSC.

A few commenters suggest limiting a manufacturer's ability to instruct consumers to discard products. They argue that this remedy should be limited to situations where a firm has gone out of business or the product is of nominal value. One commenter urges the Commission not to approve any recall notice that does not include replacement, repair, or refund of the purchase price as a remedy because consumers will be less likely to comply without compensation as they do not want to pay for the item twice. Finally, one commenter urges the Commission to include a section for "incentive" or "reward" to inform consumers about any additional incentives for the return of the product, or state that "none" are being given.

Response – The nature of remedies approved as part of a corrective action plan goes to the substance of a corrective action plan, which is not at issue in the rule. With regard to the suggestion to include a category for a description of any recall incentive in a mandatory recall notice, the staff notes that the Commission generally encourages firms to offer incentives for compliance with recall notices in order to increase recall effectiveness. However, the staff does not recommend adding an additional category for incentives. Incentives are properly part of the remedy being offered. An additional category for incentives in every recall notice, even when an incentive is not being offered, will lengthen the recall notice without improving the overall effectiveness of the notice or providing new or different information to help consumers understand the remedy being offered.

Comment 19 – Product Units – Section 1115.27(e) – Several comments suggest clarifying § 1115.27(e) by requiring a statement of the number of product units included in a recall notice. The rule requires a notice to "state the approximate number of product units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce." A few commenters state that the rule should only include products actually sold to consumers so that the number does not include products that were never sold to any distributor or retailer or are still in the hands of the manufacturer and were never imported. Commenters believe that these products are not subject to a recall and that it is inappropriate, and beyond the scope of the CPSIA, to include in the number of units products that have never been in the hands of consumers. Moreover, these commenters argue that including such data is misleading and distorting of the number of products actually subject to the recall and cannot be said to help consumers identify a product, understand a product hazard, or obtain a remedy.

One commenter suggests that product unit information is unnecessary, unhelpful to the consumer, and is likely to overwhelm the average consumer. According to this commenter, including product unit information only serves to frustrate the purpose of understanding the product's actual or potential hazard. This information could have a negative effect on the firm, and media and other groups could incorrectly focus on the number of products being recalled rather than any actual threat of public harm.

Response 19 – Section 15(i)(2)(C) of the CPSA requires that a mandatory recall notice include "[t]he number of units of the product with respect to which the action is being taken." Accordingly, firms must state product unit information in a mandatory recall notice pursuant to the statute. The Commission's interpretation of this section of the statute is consistent with past Commission practice for all recall notices, as set forth in the Recall Handbook, which is to list all units of a product manufactured, imported, and/or distributed in commerce. Commenters suggesting that products that are not in the hands of consumers are not subject to a recall are incorrect. CPSC has jurisdiction over all consumer products subject to a recall, and all such products must be dealt with in a corrective action plan, regardless of where the product is in the supply chain. For example, a manufacturer holding product could not sell, modify, or destroy product without CPSC authorization. Stating the number of product units involved informs consumers as to the scope of a recall, aids product identification, and increases recall effectiveness.

Comment 20 – Description of Substantial Product Hazard, Injuries and Deaths – Sections 1115.27(f) and (l) – The Commission received many comments with regard to §§ 1115.27(f) and (l) regarding a description of substantial product hazard and a description of the incidents, injuries and deaths. Several commenters agree that requiring a mandatory recall notice to describe and state the number of injuries and deaths is helpful to consumers and will motivate them to comply with the recall. Many commenters, however, state that specific information on injuries and deaths is unnecessary and irrelevant, or suggest that the rule should be further clarified to prevent the recall notice from becoming a lengthy, multi-paged document.

a. One commenter states that § 1115.27(f) exceeds the scope of the intent of the CPSIA with regard to a description of the substantial product hazard and reason for action. This information may not be feasible for firms to provide and may be more misleading than

informative because a firm may not know all of this information at the time of a recall. Further, several commenters state that reporting death statistics is outside the purpose of a recall, will not help consumers or their decision to participate in a recall, but will have an adverse effect on retailers and producers.

Response – Sections 15(i)(2)(D) and (G) of the CPSA require that a mandatory recall notice include "[a] description of the substantial product hazard and the reasons for the action," as well as "[t]he number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths." Accordingly, the statute and the final rule require both a description of the substantial product hazard and specific information on injuries and deaths, including the number, description and ages of persons involved. However, recall notices will, by necessity, only include information regarding a substantial product hazard and any injuries or deaths which are known at the time of the recall notice.

b. Commenters request clarification on what constitutes an injury that requires reporting, what "associated with the product" means, what "product conditions or circumstances" can give rise to an injury or death related to a product, and what a "concise summary" constitutes. For example, one commenter opines that the term "injury" should be defined to only include injuries which require medical treatment, and to exclude minor injuries such as superficial scrapes and bruises. This commenter states that defining "injury" will make reporting consistent across recall notices. Another commenter states that "associated with the product" language could be interpreted broadly to require that all deaths or injuries be reported, even when there may be other causes, such as gross negligence or use contrary to warning labels. One commenter suggests that the rule address whether a manufacturer must list any death or injury, however tangential, or may qualify injuries where gross negligence and contrary use are involved. Finally, one commenter believes that requiring detailed information on injuries and deaths will expose firms to liability for acts that have not been proven in court to be causally linked to the products without providing any benefits to the consumer. Moreover, it could require corporations to implicate themselves criminally or civilly, in violation of the Fifth Amendment of the Constitution.

Response – With regard to the types of injuries required to be reported on a recall notice, the staff recommends interpreting the statutory requirement to be consistent with the way the Commission has always reported injuries on recall notices and to include all injuries, regardless of whether a consumer sought medical treatment, where the consumer product is present at the time of the injury and may have been a contributing factor.

A well-crafted recall notice does not necessarily subject a firm to increased product liability. The Commission's mandate is public safety and effective recall notices are an important tool in the Commission's arsenal. The staff notes that allowing a defective product to stay on the market without providing the public with timely hazard and recall information would likely result in increased liability for non-compliant firms, not only from potential civil and criminal penalties by the Commission, but from product liability lawsuits as well. Finally, no concern exists that providing information on injuries and deaths in a recall notice impairs any Fifth Amendment right against self-incrimination, as the Fifth Amendment protects individuals,

not corporate entities. *See, e.g., Bellis v. U.S.*, 417 U.S. 85, 88-90 (1974) (reviewing history of decisions regarding the Fifth Amendment privilege and its inapplicability to corporations and stating that no artificial organization may utilize the personal privilege against self-incrimination to avoid producing corporate documents).

c. Several comments would clarify the rule to allow reporting of injuries and age ranges in the aggregate. These commenters argue that reporting specific ages is not necessarily helpful for the consumer to evaluate the risks involved. Moreover, if the rule is interpreted to require a description of each injury and the age of each person, this could turn the recall notice into a lengthy, multi-page document that defeats the purpose of efficiently and effectively identifying the product, explaining the hazard, and communicating a remedy to consumers. Age ranges can be described in numbered ranges, or, for example, as adult, child, infant. One commenter opines that the number of injuries is not as important as the details of the injuries and deaths, to distinguish minor injuries from other types of harm.

Response – Reporting of injuries and deaths, including the ages of individuals injured or killed, is statutorily required in a mandatory recall notice. Providing this information, however, need not result in a lengthy recall notice. Consumers and firms can find numerous examples of recall notices on the CPSC's web site, and note that when age and injury information is detailed, it does not result in lengthy, unreadable recall notices. The Commission or a court retains the flexibility to craft effective recall notices for particular recall scenarios which are in the best interest of the consumer. Where there are few injuries or deaths reported, and when children or other vulnerable populations are involved, firms can expect that the Commission or a court may order that a mandatory recall notice include the age of each person injured or killed. However, cases may arise when the Commission or a court uses its discretion to aggregate age information when, for example, the age range does not affect a vulnerable segment of the population. The exact wording of any recall notice cannot be done before the fact, and the staff recommends that the Commission decline to adopt a specific, one size fits all, approach to how this information is presented for every recall notice, except to say that firms should anticipate that aggregation of age information will be required in limited circumstances.

d. One commenter states that information regarding injuries on exact dates can be considered confidential material supplied to staff under section 15(b) of the CPSA. Including such information in a recall notice would undermine confidentiality under section 6(b) of the CPSA and otherwise. Another commenter notes that the date of injury may be unrelated to when the consumer decides to report the injury and how accurately the injury is characterized. One commenter states that if the information must be provided, then the Commission should at least allow firms to provide a range of dates rather than exact dates, or a summary such as "prior to the time of this announcement." Another commenter, however, agrees that the recall notices should include the dates or date ranges when the Commission received information about deaths or injuries, and suggests that the Commission further require the dates or date ranges when the recalling firm received information about deaths or injuries.

Response – Some commenters may misunderstand the statutory requirement with regard to reporting dates related to injuries. Neither the statute nor the rule require that a mandatory recall notice state the actual date that an injury or death occurred, or the actual date when a firm

received information about an injury. Section 15(i)(2)(G) of the CPSA requires that a mandatory recall notice include "the dates on which the *Commission* received information about such injuries or deaths." (Emphasis added.) For the purposes of mandatory recall notices, the staff recommends interpreting this to require that, at a minimum, a month and year be reported as to when the Commission received such information. This interpretation allows for aggregation of the month and year when necessary or appropriate to shorten the information presented on a recall notice while not sacrificing appropriate and statutorily required detail. For example, if the Commission learns of three injuries on three separate dates in a single month, a mandatory recall notice may provide the month and year in which these injuries were reported, presenting accurate information in a shortened format. However, the Commission or a court retains the flexibility to order the use of exact dates or the use of a range of dates by month and year, depending, among other things, on the number of injuries and the risk involved, if it is more helpful to consumers.

e. One commenter suggests that information on injuries and deaths is a subpart of the section on substantial product hazard and should be moved under that section.

Response – A description of the substantial product hazard and a description of the associated injuries and deaths are separate categories of information presented on a recall notice. Both the statute and the final rule separate these categories of information. *See, e.g.*, sections 15(i)(2)(D) and (G) of the CPSA. As can be seen on numerous prior recall notices, the information presented under substantial product hazard is a short, factual statement regarding the *actual* or *potential* harm, *i.e.*, choking, laceration, drowning, while the number and description of injuries reports actual injuries that have occurred. In some instances, for example, the risk of injury for choking may be present, but no reported injuries have occurred.

Comment 21 – Identification of Manufacturers – Section 1115.27(h) – Many comments address § 1115.27(h) regarding identification of manufacturers on a mandatory recall notice. A few comments are favorable, but many comments question the value of identifying a foreign manufacturer and suggest that this information is confidential business information subject to trade secret protection.

a. Many commenters disagree with the requirement to name a foreign manufacturer. A few comments simply state that while the information may be helpful to the CPSC, it is not helpful to a consumer and may be confusing with regard to who is responsible for the recall. Several commenters opine that not only is the information irrelevant to an effective recall and the stated goals of a recall notice under section 214 of the CPSIA, but the identity of foreign manufacturers is proprietary, confidential business information which should only be required to be provided to the Commission under trade secret protection. These commenters state that the CPSIA does not require identification of a foreign manufacturer, and that the name of the importer and country of origin should be sufficient. Moreover, publishing the name of foreign manufacturers can cause significant harm to a firm and is information not shared with competitors. Naming a foreign manufacturer may cause confusion to consumers and unfairly place blame on foreign manufacturers when the problem, for example, may actually be with the design of the product. Finally, one commenter opines that information on the country of origin is not helpful to the consumer and detracts from the overall effectiveness of a recall notice. Such

information may confuse consumers to believe that all products manufactured in a country are dangerous.

Response – Section 15(i)(2)(E) of the CPSA requires that a mandatory recall notice shall include "[a]n identification of the manufacturers ... of the product." A "manufacturer" is defined in the CPSA as "any person who manufactures or imports a consumer product." Section 3(a)(11) of the CPSA. The term "manufactured" means to "manufacture, produce, or assemble." Section 3(a)(10) of the CPSA. A consumer product includes "any article, or component part thereof, produced or distributed" for sale to consumers. Section 3(a)(5) of the CPSA. Thus, any firm that manufactures, produces, assembles or imports a consumer product, or any component part thereof, may be characterized as a product manufacturer. As is often the case, a consumer product may have more than one manufacturer. This fact is acknowledged both by the statute, which employs the plural term "manufacturers" and the rule, which provides that "[a] recall notice must identify each manufacturer (including importer) of the product and the country of manufacture."

The identity of a foreign manufacturer is not a trade secret or commercially sensitive information in every case. For example, many voluntary recall notices issued in the past identify a foreign manufacturer. In the context of a mandatory recall situation, whether identification of a foreign manufacturer is indeed trade secret, confidential information, and/or whether an exception to section 6 of the CPSA applies, will necessarily be litigated in the judicial or administrative proceeding. These issues require a fact-dependent, individualized analysis in every case; it is not something that could ever be decided broadly and apply to all manufacturers. To the extent that section 6 of the CPSA is applicable in a particular circumstance, the staff would acknowledge that both the Commission and a firm must comply with the law and any exceptions thereto.

b. Another commenter opines that the rule is ambiguous as to whether different information is required from foreign and domestic manufacturers. The commenter would clarify the rule to state that a recall notice must identify a domestic manufacturer's legal name, city, and state of headquarters, or if a foreign manufacturer is involved, identify the city and country of its headquarters (but omit the name of the company). Another commenter agrees that the manufacturer's name and country of manufacture should be on the recall notice, but not the city and state of the headquarters. This commenter does not see any added benefit to the consumer to have this information.

Response – The rule anticipates that many consumer products have both foreign and domestic manufacturers and importers, both of which must be identified. The rule requires all manufacturers to be identified by their legal names. Additionally, domestic companies should be identified by the city and state of their headquarters, and foreign companies should be identified by the city and country of their headquarters. The staff agrees that the language in the proposed rule was unclear with regard to what identifying information is required for foreign manufacturers. The staff recommends that the final rule clarify that foreign manufacturers be identified by: (i) legal name; (ii) city; and (iii) country of headquarters. This information will help consumers identify the product and distinguish between manufacturers with similar names.

c. One commenter suggests that the Commission require a manufacturer's web site address to be listed with the identification information, in addition to name, trade name, city and state, to facilitate recall information dissemination and allow consumers to access recall and remedy information via the company's web site.

Response – While the final rule does not prevent consumers from searching for a manufacturer's web site address, the staff recommends declining to require that a manufacturer's web address be listed as identifying information. A web address for recall information is already provided elsewhere on the recall notice. The manufacturer may or may not have a web site and may or may not be the firm in charge of a recall. The staff does not want consumers to be confused with regard to which entity is responsible for the recall, or to deluge the wrong firm with phone calls about a recall.

d. One commenter suggests excluding small importers that are not the sole importer or retailer from any provision that allows them to be characterized as a "manufacturer" or "significant retailer" for purposes of a recall, because the burden on small importers would be too great and they would not likely have the type of information available to manufacturers and retailers to implement a recall. However, another commenter observes that the burden on small businesses should not be great because there are few mandatory recalls.

Response – Determining which firm is responsible for conducting a recall is outside the scope of the final rule, which focuses on guidelines and requirements for information categories to include in a mandatory recall notice.

Comment 22 – Identification of "Significant Retailers" – Section 1115.27(i) – Many commenters request clarification of the § 1115.27(i) with regard to identification of "significant retailers," arguing that the proposed rule is too vague regarding what criteria will be used to determine a "significant retailer." While a few commenters suggest broadening the definition, most commenters seek clarification of the definition and limitations on the Commission's discretion to apply the term.

a. One commenter opines that singling out retailers does not help to identify a product. This information is only relevant if the remedy is to return the product to the retailer, or if there is only one retailer. Moreover, several commenters prefer to keep the current system whereby no specific retailer is named, and the firm can rely on language such as "sold at department store and retail stores nationwide."

Response – Section 15(i)(2)(E) of the CPSA requires that a mandatory recall notice shall include "[a]n identification of the ... significant retailers of the product." Thus, the statute requires the identification of "significant" retailers but provides no definition of the term "significant."

b. Several commenters believe the definition of "significant retailers" should be expanded to include all retailers, instead of just "significant" retailers. Many commenters state that if only a few retailers are listed, consumers may be confused and believe that their product is not at issue in the recall simply because the retailer they purchased the product from is not listed.

Moreover, this scenario would leave out the majority of retailers where the products were actually purchased and may compromise dissemination of recall information to the majority of the consuming public. One commenter suggests that in order to keep the notice short, the Commission require the notice to state that the retailer list is not exhaustive and to provide a web site address where the consumer can find an exhaustive list of retailers. Several commenters claim that, because the definition of "significant retailer" is so vague, firms will simply list all retailers to avoid non-compliance. These commenters argue that a long list of retailers will increase the length of the notice and make it difficult for consumers to obtain the information required for an effective recall.

Response – Section 15(i)(2)(E) of the CPSA requires that a mandatory recall notice identify *significant* retailers of the product. Although the statute does not define "significant," the staff does not read it to mean identification of *all* retailers. While the Commission could identify all retailers on its web site if it were in the interest of public safety, the staff recommends declining to do so in every mandatory recall scenario. First, the statute requires identification of "significant" retailers, not all retailers. Second, it is unclear whether requiring every mandatory recall notice to include an exhaustive list of retailers on the CPSC web site would increase recall effectiveness or would be an efficient use of Commission resources. Such a requirement may become burdensome with no added value to consumers. Finally, the staff is not concerned that listing significant retailers under the definition in the final rule will result in a lengthy recall notice, as the Commission retains the discretion to control the substance, format, and organization of recall notices in the interest of consumer safety and recall effectiveness.

c. Many commenters suggest that the definition of, and the criteria for, "significant retailer" be clarified and that § 1115.27(i)(5) should not contain a vague catch-all that allows the Commission to find a retailer significant if it "is in the public interest." Many commenters request that the Commission set forth criteria the Commission will consider in determining what is in the public interest.

Response – The staff's experience with recall notices and identification of retailers is that the identification of significant retailers helps consumers to determine whether or not they may have purchased the defective product. Accordingly, the rule provides four circumstances under which identifying a retailer may be helpful to consumers to identify a product: (i) an exclusive retailer; (ii) a retailer that is also an importer of the product; (iii) a retailer with national and/or regionally located stores; and (iv) a retailer that holds or sold a significant number of the defective products. The rule also provides the Commission, or a court, with the flexibility to determine that although a retailer may not fall into one of the four enumerated categories, circumstances may arise whereby designation of the retailer as "significant" for a particular mandatory recall would help consumers identify the product. The staff recommends that the final rule maintain this flexibility because: (i) it is not possible to anticipate every circumstance where listing a particular retailer may become helpful to consumers beforehand, and (ii) the Commission, under sections 15(c) and (d) of the CPSA, and a court, pursuant to section 12 of the CPSA, already have final authority over the form and content of mandatory recall notices. The guidelines and requirements set forth in the rule should not limit this authority, but merely set forth uniform expectations for firms subject to a mandatory recall order.

d. Some commenters state that the Commission failed to define "regional retailer" or "regionally-located." Accordingly, these commenters argue that this section of the rule is too vague.

Response – The staff recommends declining to define the word "regional," and suggests that the term be understood based on its ordinary and customary usage. For example, a regional chain could be located in one region of the state of California, it could comprise affiliated stores existing in an entire state, or it could comprise affiliated stores located in a group of states, or finally, stores located in one or more regions of the United States.

e. Some commenters note that there are many situations where regional chains or "mom and pop" stores sell the majority of the products and collectively outsell a national retailer, but the national retailer may end up being named as a "significant retailer" because, compared to any one store, it may have sold more products. Several commenters observe that the rule as proposed will likely result in a small number of national retailers being named in virtually every recall notice, which will dilute the purpose of the information. One commenter suggests addressing this problem by changing § 1115.27(i)(4) from "a significant number of the total manufactured" to "a majority of the total manufactured." This commenter believes that naming one retailer where a majority of the products were sold would be more helpful to the consumer than listing every "significant retailer."

Response – With regard to the idea that listing some, but not all, retailers will cause consumer confusion, this has not been the experience of the CPSC staff. For example, a recall notice can list major retail outlets, but also explain that the list of retailers is not exhaustive. In a situation where Store A sold 40% of the defective product and more than 50 smaller home centers and hardware stores sold the remaining 60%, a recall notice could employ additional, helpful language describing the types of stores where the product was sold without causing the notice to become unduly long and unreadable: "Product was sold nationwide at Store A and at home centers and hardware stores nationwide."

The staff recommends declining to adopt the suggestion that the required statutory term "significant" be modified to mean a "majority" of the products. The statute itself requires identification of "significant" retailers. Many situations arise where there may be two or three retailers that sell 60-80% of the products. While no retailer individually sold a majority of the products, listing these retailers is helpful to consumers to determine whether or not they may have purchased the defective product.

f. One commenter opines that the definition should be expanded to include contractors, so that contractors must notify consumers when the materials were used in building projects. The example provided is the drywall situation, where the nature of the product makes it difficult for consumers to discern whether the defective product is in their home.

Response – The staff recommends against including "contractors" in the description of retailers, but this does not preclude the fact that there may be situations when contractors may be considered to be retailers. Even if the Commission were to include contractors in the description of retailers, it would not address the commenter's primary concern that contractors notify

homeowners with regard to the materials used in their building projects. The statute at issue here, section 15(i) of the CPSA, does not impose any specific obligation on a retailer to notify consumers. As reviewed above, substantive responsibility for recalls and recall notices are not outlined in this section of the statute, which solely sets forth a uniform class of information that firms subject to a mandatory recall should expect to find in an order pursuant to section 12, 15(c) or 15(d) of the CPSA. Being listed as a "significant retailer" does not create any obligation on the part of retailers so listed; the information is present solely to assist consumers with product identification.

Comment 23 – Dates of Manufacture and Sale – Section 1115.27(j) – One commenter opines that the dates of manufacture and sale under § 1115.27(j) are too expansive. Manufacturers date code products by the date of manufacture, not the date of sale. Manufacturers often do not know the date a product first hits retail shelves. Providing more than manufacturing dates may be confusing to consumers. The current system of citing manufacturing dates by date code, or date of sale if known, has been successful.

Response – Section 15(i)(2)(F) of the CPSA requires that a mandatory recall notice include "[t]he dates between which the product was manufactured and sold." The statute thus requires both the dates of manufacture and the dates of sale. If a manufacturer does not have this information, it is expected that, where available, it may be provided by retailers or distributors.

Comment 24 – Price – Section 1115.27(k) – A few commenters suggest expanding the price requirement in § 1115.27(k). One commenter would require suggested retail price, prices known to the manufacturer, and the highest and lowest retail price known. Another commenter suggests that the approximate price range is not helpful enough, and that the price range should be made specific for geographic locations.

One commenter opines that a price should only be required when the remedy is a purchase price refund. Otherwise, this information is unhelpful and clutters the recall notice.

Response – The Commission typically requires approximate price information in all recall notices to assist with product identification. The staff, however, does not believe it is necessary to specifically require every price known to the manufacturer in every mandatory recall notice; the approximate price range is sufficient for product identification purposes, and to assist the consumer in understanding what the price refund may be. Further, providing a price range for each specific geographic location in every recall situation is not always practical. It is unclear whether such information will add sufficient value to the recall notice to offset the use of resources in every recall situation. The Commission retains the flexibility, however, to require more information on price if it would assist consumers.

Comment 25 – Other Information – Section 1115.27(n) – One commenter states that § 1115.27(n) regarding "other information" that the Commission or a court may deem appropriate for inclusion in a recall notice should state what types of additional information may be required to put firms on notice. The commenter argues that without such clarification an aggrieved party may later argue that a requirement placed on it is burdensome and not contemplated by the rule. Accordingly, the commenter suggests that the rule clarify that

§ 1115.27 is exhaustive as can be currently contemplated, but that other requirements will be included as the situation demands. At a minimum, the rule should state that future requirements will be based on a fair assessment of the situation.

Response – Section 15(i)(2)(I) of the CPSA provides that a mandatory recall notice must include "[o]ther information the Commission deems appropriate." Moreover, when a mandatory recall notice is ordered by a court or the Commission, it has authority over the final form and content of the recall notice and can require additional information deemed appropriate in particular cases pursuant to sections 12, 15(c) and 15(d) of the CPSA. Thus, the authority to include any other information the Commission deems appropriate in a mandatory recall notice does not solely originate from section 15(i) of the CPSA. The rule reflects the Commission or a court's inherent authority with regard to the form and content of mandatory recall notices, and the Commission should decline to limit its own authority in the rule.

Comment 26 – Control Over Final Form and Content – Section 1115.29 – Most commenters support § 1115.29 which states that the Commission or the Court has the final determination as to the form and content of a recall notice. Consumer groups, in particular, support this rule to level the influence that firms have traditionally had over form and content. One commenter suggests imposing a deadline on firms for disseminating the recall notice after Commission approval and immediate posting on the CPSC's web site after approval. One commenter, however, feels that the rule is vague and allows the CPSC excessive discretion with regard to recall form and content. This commenter suggests more specificity and criteria be inserted into the rule to create more uniform expectations for firms. Another commenter suggests imposing a deadline on the Commission's approval process, and allowing firms to disseminate a recall notice if the Commission has not rejected or approved the proposed recall notice within the time frame in order to get recall information out to the public as soon as possible.

Response – The Commission and/or a court have statutory authority to control the final form and content of mandatory recall notices. Mandatory recall notices must be approved by the Commission before they are disseminated. Sections 15(c)(1) & 15(d)(2) of the CPSA. Nothing in section 15(i) of the CPSA or the final rule changes this control; the statute merely requires that the Commission provide guidance on a uniform set of information that firms can expect to find in a mandatory recall notice, as well as sets forth certain requirements for mandatory recall notices which can be altered by the Commission in particular recall scenarios as necessary or appropriate. Thus, the date of dissemination by both the CPSC and the firm is directed by the CPSC, and the CPSC posts all recall press notices on its web site at www.CPSC.gov after approval by the Commission.

Proposed Rules

Federal Register
Vol. 74, No. 53
Friday, March 20, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Guidelines and Requirements for Mandatory Recall Notices: Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 requires the United States Consumer Product Safety Commission ("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. This proposal would establish the guidelines and requirements to satisfy that requirement.

DATES: Written comments must be received by April 20, 2009.

ADDRESSES: Comments should be e-mailed to *mandatoryrecallnotices@cpsc.gov*. Comments also may be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–7923. Comments may also be filed by facsimile to (301) 504–0127. Comments should be captioned "Section 15(i) NPR."

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Deputy Director, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7520.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 ("CPSIA", Pub. L. 110–314) was enacted on August 14, 2008. The CPSIA amends statutes that the U.S. Consumer Product Safety Commission ("Commission") administers, adding requirements with broad applicability and some product-specific provisions as well.

B. CPSIA Requirements

Section 214 of the CPSIA amends section 15 of the Consumer Product Safety Act ("CPSA") to add a new subsection (i). That section requires that, "not later than 180 days after the date of enactment of the CPSIA, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required by an order under" sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)). Public Law 110–314, section 214(c), 122 Stat. 3016 (August 14, 2008). The guidelines must include information that would be helpful in identifying the product, hazard, and remedy associated with a recall. 15 U.S.C. 2064, as added by CPSIA § 214.

Section 214 of the CPSIA also requires that a recall notice include certain specific information, unless the Commission determines otherwise. This information includes, but is not limited to, descriptions of the product, hazard, injuries, deaths, action being taken, and remedy; identification of the manufacturer and retailers; identification of relevant dates; and any other information the Commission deems appropriate. *Id.*

C. Basis for Proposed Rule

The Commission and Commission staff have been using recall notifications since the Commission's inception. Under section 15(c) of the CPSA, if the Commission determines that notification is required to adequately protect the public from a substantial product hazard, the Commission may order a manufacturer, retailer, or distributor to provide notice to certain persons. 15 U.S.C. 2064(c). In addition, for many years, the Commission has made information concerning recall notices publicly available, including, for example, in the agency's Recall Handbook (*http://www.cpsc.gov/BUSINFO/8002.html*).

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

D. Description of the Proposed Rule

In general, the proposed rule would establish a new subpart C, titled, "Guidelines and Requirements for Mandatory Recall Notices," in part 1115 of title 16 of the Code of Federal Regulations.

1. Proposed § 1115.23—Purpose

Proposed § 1115.23 would describe the purpose for a new subpart C, "Guidelines and Requirements for Mandatory Recall Notices." In accordance with direction in the CPSIA, the proposed rule would set out guidelines and requirements for recall notices issued under section 15(c) and (d) or section 12 of the CPSA. The proposed guidelines would provide guidance concerning the content and form of such notices. As required by the CPSIA, the proposed rule also would specify the content required in such recall notices.

2. Proposed § 1115.24—Applicability

Consistent with section 15(i) of the CPSA, as added by section 214 of the CPSIA, the proposed rule would apply only to mandatory recall notices, i.e., recall notices issued pursuant to an order of the Commission under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or pursuant to an order of a U.S. district court under section 12 of the CPSA (15 U.S.C. 2061).

Proposed § 1115.24, therefore, would explain that the requirements in subpart C apply to manufacturers (including importers), retailers, and distributors of consumer products.

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. 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.

3. Proposed § 1115.25—Definitions

Proposed § 1115.25 would define certain terms used in subpart C. For

example, proposed § 1115.25(a) would define "recall" as "any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d))." The proposed definitions in this section are based on the staff's experience with recalls under section 15. Additionally, proposed § 1115.25 would state that the definitions in section 3 of the CPSA (15 U.S.C. 2052) apply.

4. Proposed § 1115.26—Guidelines and Policies

Proposed § 1115.26 would provide general guidance and describe the policies pertaining to recall notices. The proposed guidelines would restate the goals delineated in section 214 of the CPSIA. The CPSIA requires the guidelines to include information helpful to consumers. The Commission believes, however, that recall notices are intended to be of benefit and importance not only to consumers, but also to "other persons," and proposed § 1115.26(a) would reflect this position. The latter broader category is intended to encompass the wide range of persons and broader public referenced in section 15(c) or (d) and in section 12 of the CPSA (15 U.S.C. 2061, 2064(c) or (d)). As used here, the term "other persons" would include, but would not be limited to, consumer safety advocacy organizations, public interest groups, trade associations, other State, local and federal government agencies, and the media. Historically, these persons have played significant roles in assisting with the dissemination of recall notice information. The Commission anticipates that these roles will continue.

In general, proposed § 1115.26(a) would state general principles that are important for recall notices to be effective. For example, proposed § 1115.26(a)(1) would state that a recall notice should provide information that enables consumers and other persons to identify the product and take a stated action. Proposed § 1115.26(a)(2) through (a)(4) would provide guidance on the form of the recall notice, recognizing the various forms of notice and providing guidance concerning direct recall notices and Web site recall notices.

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. By necessity due to lack of specific contact information, most recall notices are disseminated to broad or, on occasion, partially-targeted audiences. A direct recall notice, on the other hand, is sent directly to specific, identifiable consumers of the recalled product. In most instances, these consumers will be the purchasers of the recalled product. In other instances, the purchasers may have given the product to other consumers, for example, as a gift. In the latter case, if the purchaser received the recall notice, the purchaser will generally know to whom the purchaser gave the product and will likely be able to 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 the direct recall notice than to receive a broadly-disseminated recall notice.

Proposed § 1115.26(b)(1) would describe other possible forms of recall notices (such as letters, electronic mail, and video news releases), and proposed § 1115.26(b)(3) would discuss Web site recall notices.

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.

5. Proposed § 1115.27—Recall Notice Content Requirements

In addition to requiring the Commission to issue guidelines for recall notices required under sections 12 and 15(c) and (d) of the CPSA, the CPSIA sets out specific content requirements. The CPSIA states that such recall notices shall include the specified information, including other information that the Commission or a court deems appropriate, unless the Commission or a court determines that including the information would not be appropriate in the particular recall notice. Thus, proposed § 1115.27 would set forth the recall notice content requirements specified in the CPSIA and would provide further details where appropriate.

For example, proposed § 1115.27(a) would require that a recall notice include the word "recall" in the heading and text. Although the CPSIA does not explicitly require use of the word "recall," it does require a "description of the action being taken." For many years, the Commission staff's Recall Handbook has directed that this term should be used. 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 recall notice should motivate firms and media to widely publicize the recall information, and it should motivate consumers to act on the recall for the sake of safety. To those ends, the word "recall" draws media and consumer attention to the notice and to the information contained in the notice, and it does so more effectively than omitting the term or using an alternative term. A recall notice must be read to be effective, and drawing attention to the notice through the use of the word "recall" increases the likelihood that it will be read and, therefore, effectuates the purposes of the CPSA and CPSIA.

Proposed § 1115.27(b) would require the recall notice to contain the date of its release, issuance, posting, or publication.

The CPSIA requires that a recall notice include a description of the product, including the model number or SKU number, the names of the product, and a photograph. Proposed § 1115.27(c) would further flesh out information needed to describe the product by adding such items as the product's color, and identifying tags or labels.

Proposed § 1115.27(d) would require the recall notice to contain a clear and concise statement of the actions that a firm is taking concerning the product. This is required by the CPSIA.

Proposed § 1115.27(e) would require the recall notice to state the approximate number of units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce. This information is required by the CPSIA.

The statute requires that a recall notice include a description of the substantial product hazard. Proposed § 1115.27(f) would clarify this requirement by stating that the description must enable consumers to identify the risks of potential injury or death associated with the product, and it must identify the problem giving rise to the recall and the type of hazard or risk at issue (e.g., burn, laceration). Proposed § 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.

The statute requires identification of the manufacturers and significant retailers. Proposed § 1115.27(g) would state that the recall notice must identify the firm conducting the recall and also would clarify that, under the CPSA, the term "manufacturer" includes an importer. Proposed § 1115.27(h) would describe how the manufacturer must be identified (e.g., legal name, location of headquarters).

The statute does not define "significant retailer." Identifying these

retailers will help consumers determine whether or not they shopped at the identified retailer, and, in turn, whether or not they might have the product. In the absence of a statutory definition, and based on its experience with recalls, the Commission believes that a significant retailer can be determined on the basis of several factors, and proposed § 1115.27(i) would describe those factors.

First, under proposed § 1115.27(i), a product's retailer is significant if it was the exclusive retailer of the product. Identifying an exclusive retailer is valuable because it can help consumers to conclude that, if they did not shop at that retailer, they are not likely to have the product, and, conversely, if they did shop at that retailer, they may have the product.

Second, a product's retailer is significant if it was an importer of the product. As an importer, a retailer will typically have greater 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 it is a nationwide or regionally-located retailer. Retailers that are located nationwide will be likely to have sold more units of the product, or to have sold the product to more consumers, than retailers that are not located nationwide. Therefore, nationwide retailers are likely to be more familiar to consumers than are retailers that are not nationwide. In addition, a regionally-located retailer, such as a retailer with a number of stores in several states, will be likely to be better known to consumers in those states or that region.

Fourth, a retailer that 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, will have sold the product to, and affected, more consumers, than a retailer that 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 there may be reasons other than those stated above that consumers will benefit from knowing the identities of certain retailers. Basing identification of a retailer on the public interest allows the Commission and firms flexibility to meet consumers' needs in a particular recall and to, in general, seek the best possible recall effectiveness.

Proposed § 1115.27(j) would require the recall notice to 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. These dates would be included for each make and model of the product covered by the recall notice. This information is required by the CPSIA.

Although the statute does not list price of the product among the information required in a recall notice, proposed § 1115.27(k) would require the recall notice to state the approximate price of the product or a price range. Information about the price will help consumers to identify the product and be aware of the appropriate amount for a refund if that is the remedy.

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. Proposed § 1115.27(m) would require the recall notice to provide a description of any remedy available to the consumer, what actions the consumer must take to obtain a remedy, and any information the consumer needs in order to obtain a remedy. Proposed § 1115.27(n) would require the recall notice to contain any other information that the Commission or a court deems appropriate and orders. This information is all required by the CPSIA.

6. Proposed § 1115.28—Multiple Products or Models

Proposed § 1115.28 would require the notice for each product or model covered by a recall notice to meet the requirements of this subpart.

7. Proposed § 1115.29—Final Determination Regarding Form and Content

Proposed § 1115.29(a) would provide, in accordance with the statute, that the Commission (in the case of a recall notice under section 15(c) or (d)) or a court (in the case of a recall notice under section 12) makes the final determination regarding the form and content of a recall notice. Additionally, proposed § 1115.29(b) would allow the Commission to determine that one or more recall notice requirements set forth in subpart C is not required and will not be included in a recall notice. Proposed § 1115.29(c) would state that the Commission must review and agree, in writing, to all aspects of a recall notice before a firm may publish, broadcast, or otherwise disseminate a recall notice that is to be issued pursuant to an order under section 15(c) or (d) of the CPSA.

E. Effective Date

The Administrative Procedure Act ("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 statements of policy and "as otherwise provided by the agency for good cause found and published with the rule." *Id.* The guidelines are essentially a statement of policy. The requirements for the content of mandatory recall notices are largely dictated by the CPSIA with some further clarifications by the Commission. The statutory requirements for the content of mandatory recall notices are already in effect. Therefore, the Commission finds that good cause exists for the guidelines and requirements to become effective when published in final and proposes that the effective date be the date of publication of a final rule in the **Federal Register**.

F. Regulatory Flexibility Certification

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Section 603 of the RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. 5 U.S.C. 603. However, section 605(b) of the RFA states that this requirement does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, and the agency provides an explanation for that conclusion.

This rulemaking will have little or no effect on small businesses. This rulemaking consists of guidelines (which do not require a regulatory flexibility analysis) and recall notice content requirements that are largely dictated by the CPSIA. The requirement to issue a recall notice for recalls under section 12 or 15(c) or (d) of the CPSA does not come from this rulemaking, but from the existing provisions of section 15 and 12 of the CPSA. Moreover, the guidelines and requirements will only come into play in the context of an administratively adjudicated order to a specific party. Such mandatory recalls have occurred infrequently in the Commission's history. Therefore, the Commission concludes that the proposed guidelines and requirements will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

This proposed rule does not impose any information collection requirements. It sets out proposed guidelines and content requirements for recall notices that are required by statute to be imposed in individual enforcement actions under existing law pursuant to section 15(c) or (d) or section 12 of the CPSA. Accordingly, it is not subject to the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520.

H. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This proposed rule falls within the categorical exemption.

List of Subjects in 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, 2069, 2070, 2071, 2073, 2076, 2079, and 2080.

2. Add a new Subpart C to read as follows:

* * * * *

Subpart C—Guidelines and Requirements for Mandatory Recall Notices

Sec.

1115.23 Purpose.
1115.24 Applicability.
1115.25 Definitions.
1115.26 Guidelines and policies.
1115.27 Recall notice content requirements.
1115.28 Multiple products or models.
1115.29 Final determination regarding form and content.

* * * * *

Subpart C—Guidelines and Requirements for Mandatory Recall Notices

§ 1115.23 Purpose.

(a) The Commission establishes these guidelines and requirements for recall notices as required by section 15(i) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064(i)). The guidelines and requirements set forth the information to be included in a notice required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)). Unless otherwise ordered by the Commission under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a U.S. district court under section 12 of the CPSA (15 U.S.C. 2061), the content information required in this subpart must be included in every such notice.

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

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

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

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

§ 1115.24 Applicability.

This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products as those terms are defined herein and in the CPSA.

§ 1115.25 Definitions.

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

(a) *Recall* means any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(b) *Recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(c) *Direct recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)), that is sent directly to specifically-identified consumers.

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

§ 1115.26 Guidelines and policies.

(a) *General.* (1) A 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 recall notice should clearly and concisely state the potential for injury or death.

(2) A 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.

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

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

(b) *Form of recall notice*—(1) *Possible forms.* A recall notice may be written, electronic, audio, visual, or in any other form ordered by the Commission in an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a U.S. district court under section 12 of the CPSA (15 U.S.C. 2061). The forms of, and means for communicating, recall notices include, but are not limited to:

(i) Letter, Web site posting, electronic mail, RSS feed, or text message;

(ii) Computer, radio, television, or other electronic transmission or medium;

(iii) Video news release, press release, recall alert, Web stream, or other form of news release;

(iv) Newspaper, magazine, catalog, or other publication; and

(v) Advertisement, newsletter, and service bulletin.

(2) *Direct recall notice.* A direct recall notice should be used for each consumer for whom a firm has direct contact information. Direct contact information includes, but is not limited to, name and address, and electronic mail address. Forms of direct recall notice include, but are not limited to, United States mail, electronic mail, and telephone calls. A direct recall notice should prominently show its importance over other consumer notices or mail by including "Safety Recall" or other appropriate terms in an electronic mail subject line, and, in large bold red typeface, on the front of an envelope and in the body of a recall notice.

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

(c) *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.

§ 1115.27 Recall notice content requirements.

Except as provided in § 1115.29, every recall notice must include the information set forth below:

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

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

(c) *Description of product.* A recall notice must 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 it from similar products. The information must enable consumers to readily determine whether or not they have, or may be exposed to, the product. Description information includes but is not limited to:

(1) The product's names, including informal and abbreviated names, by which consumers 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 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. A firm must provide photographs. Each photograph must be electronic or digital, in color, of high resolution and quality, and in a format readily transferable with high quality to a Web site or other appropriate medium. As needed for effective notification, multiple photographs and photograph angles may be required.

(d) *Description of action being taken.* A recall notice must 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 return and provide a refund.

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

(f) *Description of substantial product hazard.* A recall notice must contain a clear and concise description of the product's actual or potential hazards that result from the product condition or circumstances giving rise to the recall. The description must enable consumers and other persons to readily identify the reasons that a firm is conducting a recall. The description must 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 must 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.

(g) *Identification of recalling firm.* A recall notice must identify the firm conducting the recall by stating the firm's legal name and commonly known trade name, and the city and state of its headquarters. The notice must state whether the recalling firm is a manufacturer (including importer), retailer, or distributor.

(h) *Identification of manufacturers.* A 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.

(i) *Identification of significant retailers.* A recall notice must identify each significant retailer of the product. A recall notice must 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 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.

(j) *Dates of manufacture and sale.* A 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.

(k) *Price.* A recall notice must state the approximate retail price or price range of the product.

(l) *Description of incidents, injuries, and deaths.* A recall notice must 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 must enable consumers and other persons to readily understand the nature and extent of the incidents and injuries. A recall notice must state the ages of all persons injured and killed. A recall notice must state the dates or range of dates on which the Commission received information about injuries and deaths.

(m) *Description of remedy.* A recall notice must 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, returning part or all of the product, or removing or disabling part of the product.

(3) All specific information that a consumer needs in order 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 numbers, e-mail address, and Web site address); whether telephone calls will be toll-free or collect; and telephone number days and hours of operation including time zone.

(n) *Other information.* A recall notice must contain such other information as 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), deems appropriate and orders.

§ 1115.28 Multiple products or models.

For each product or model covered by a recall notice, the notice must meet the requirements of this subpart.

§ 1115.29 Final determination regarding form and content.

(a) *Commission or court discretion.* The recall notice content required by this subpart must be included in a recall notice whether or not the firm admits the existence of a defect or of an actual or potential hazard, and whether or not the firm concedes the accuracy or applicability of all of the information contained in the recall notice. The Commission will make the final determination as to the form and content of the recall notice for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), and a U.S. district court will make the final determination as to the form and content of a recall notice for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061).

(b) *Recall notice exceptions.* 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), may determine that one or more of the recall notice requirements set forth in this subpart is not required, and will not be included, in a recall notice.

(c) *Commission approval.* Before a firm may publish, broadcast, or otherwise disseminate a recall notice to be issued pursuant to an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), the Commission must review and agree in writing to all aspects of the notice.

Dated: March 13, 2009.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–6021 Filed 3–19–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150066–08]

RIN 1545–BI45

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing; correction.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79421), relating to foreign base company sales income.

FOR FURTHER INFORMATION CONTACT: Jeffery Mitchell, (202) 622–7034 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is subject to these corrections are under section 954 of the Internal Revenue Code.

Need for Correction

As published the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–150066–08), which was the subject of FR Doc. E8–30729, is corrected as follows:

1. On page 79422, column 1, in the preamble under the heading Background and Explanation of Provision, the last sentence, the language "The preamble to the temporary regulations explains these proposed regulations." is corrected to read "The preamble to the temporary regulations explains the amendments."

2. On page 79422, column 2, in the preamble under the heading Comments and Public Hearing, the first paragraph, line 3, the language "consideration will be give to any written" is corrected to read "consideration will be given to any written".

3. On page 79422, column 3, in the preamble under the heading Part 1—Income Taxes, instructional paragraph 2, lines 5 and 6, the language "(b)(2)(ii)(e), (b)(4) *Example (3)*, (c), and (d), and adding *Examples 8* and *9* to" is corrected to read "(b)(2)(ii)(e) and (b)(4) *Example (3)*, and adding *Examples 8* and *9* to".

4. On page 79423, column 1, § 1.954–3, the third sentence of *Example 8*, the language "8 is the same as the text of § 1.954–3T" is corrected to read "8 is the same as the text of § 1.954–3T(b)(4)".

5. On page 79423, column 1, § 1.954–3, the third sentence of *Example 9*, the language "9 is the same as the text of § 1.954–3T" is corrected to read "9 is the same as the text of § 1.954–3T(b)(4)".

Guy R. Traynor,

Federal Register Liaison, Procedure & Administration, Associate Chief Counsel, Publications & Regulations.

[FR Doc. E9–5892 Filed 3–19–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0026; FRL–8780–4]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Permits by Rule and Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on July 22, 1998, October 4, 2002, and September 25, 2003; these revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), Chapter 106—Permits by Rule and Chapter

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Guidelines and Requirements for Mandatory Recall Notices

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: The Consumer Product Safety Commission ("Commission," "CPSC," "we") is issuing a final rule establishing guidelines and requirements for mandatory recall notices as required by section 214 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"); Public Law 110-314. The rule contains the Commission's interpretation of information which must appear on mandatory recall notices ordered by the Commission or a United States district court pursuant to certain sections of the Consumer Product Safety Act ("CPSA"). The rule also contains Commission guidelines for additional information that the Commission or a court may order to be included on a mandatory recall notice.

DATES: *Effective Date*: This rule is effective upon publication.

Compliance Date: Regardless of when a product subject to a recall was manufactured, all mandatory recalls ordered pursuant to sections 12, 15(c) or 15(d) of the CPSA are subject to the guidelines and requirements herein as of the date of publication of this final rule.

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Deputy Director, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7520.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of March 20, 2009 (74 FR 11883), the CPSC published a proposed rule that would establish guidelines and requirements for mandatory recall notices ordered by the Commission or a United States District Court under the Consumer Product Safety Act. The rule was intended to provide firms with a uniform set of information they can expect to find in a recall notice ordered by the Commission or a court. The Commission and a court's substantive authority to order that a mandatory recall notice be issued, including control over the final form and content of such notice, arise under sections 12, 15(c), and 15(d) of the CPSA. Section 214 of the CPSIA did not change this authority. Rather, section 214(c) of the CPSIA, which adds a new subsection 15(i) to the CPSA, requires the Commission to establish guidelines which set forth a uniform class of information that will be included in mandatory recall notices, and specifies certain content that must be included in mandatory recall notices. However, the Commission or a court ordering that a recall notice issue retains final authority over the form and content of mandatory recall notices. Accordingly, the Commission or a court may remove information that is unnecessary or inappropriate under the circumstances, or add additional

appropriate information to a mandatory recall notice. Sections 15(i)(2) and 15(i)(2)(I) of the CPSA.

The preamble to the proposed rule contained detailed explanations of the proposed rule and described the basis for the proposed rule. *See* 74 FR 11883 through 11886. We refer readers to that preamble if they wish to obtain further information or explanation with regard to the rule. In brief, the Commission developed the proposed rule based on its expertise with recall notifications since the Commission's inception. Accordingly, the final rule is a culmination of the statutory requirements and the Commission's expertise, which is summarized in the Commission's Recall Handbook, available at http://www.cpsc.gov/BUSINFO/8002.html. Each section of the rule is either statutorily required by section 214 of the CPSIA, or the Commission has determined will likely increase recall effectiveness by helping consumers to: (a) identify a product subject to a recall; (b) understand the hazard identified with such product; or (c) understand what remedy is being offered with regard to the recalled product.

The rule does not contain requirements for voluntary recall notices which result from corrective action settlement agreements with Commission staff. If the Commission decides to extend the requirements to voluntary recall notices, it would proceed with a separate rulemaking. However, unless and until the Commission issues a rule pertaining to requirements for voluntary recall notices, this rule will serve as a guide for information to include on voluntary recall notices. Using the final rule as guide for voluntary recall notices is appropriate because all recall notices are drafted in a manner designed to increase recall effectiveness by notifying consumers in a timely, efficient, and effective manner as to the identification of the consumer product, the nature of the associated hazard or defect, and the available remedy. Further, all recall notices issued, whether voluntary or mandatory, should be tailored to the specific product and

circumstances of a recall. Section 214 of the CPSIA did not alter the Commission's ability to negotiate voluntary recall notices with a manufacturer and to tailor both voluntary and mandatory recall notices to a particular recall scenario.

The Commission received 43 substantive comments on the proposed rule. After reviewing the comments the CPSC made several changes to the rule. The changes between the proposed and the final rules are as follows:

Table 1: Summary of Changes to the Final Rule

Proposed Rule	Final Rule
Did not contain a definition of "Other persons."	Defines "Other persons" in a new § 1115.25(e). This change is discussed in more detail in response to comment 12 in section III of this document below.
Provided that "firms" target and tailor recall notices and consider the manner in which a product was marketed and advertised in determining the form and content of a recall notice.	Removes the word "firm" in § 1115.26(a)(3) to clarify that, in a mandatory recall scenario, firms are not the entity determining the form and content of a recall notice. By statute, the final form and content of mandatory recall notices are ordered by a United States district court or the Commission. *See* sections 12, 15(c) and 15(d) of the CPSA.
Did not address use of more than one form of recall notice.	Clarifies in § 1115.26(a)(5) that more than one form of recall notice should be used. This

	change is discussed in more detail in response to comments 15 and 17 in section III of this document below.
Did not address when a firm has direct contact information. Unclear whether a telephone number is considered direct contact information.	Clarifies in § 1115.26(b)(2) when a firm has direct contact information. Also clarifies that a telephone number is considered direct contact information. These changes are discussed in more detail in response to comment 16 in section III of this document below.
Did not contain examples of when a recall notice may be required in languages in addition to English.	Provides examples of circumstances when a recall notice may be required to be made available in languages in addition to English in § 1115.26(c). This change is discussed in more detail in response to comment 19 in section III of this document below.
Did not clearly set forth that information related to the product description is required.	Clarifies in § 1115.27(c) that the information outlined therein must be included in a recall notice when applicable to a product. This change is discussed in more detail in response to comment 23 in section III of this document below.
Did not specify when a foreign manufacturer's legal name must be identified.	Clarifies in § 1115.27(h) that foreign manufacturers must be identified by a legal

	name, city, and country of headquarters. This change is discussed in more detail in response to comment 32 in section III of this document below.
Did not require a description of the region where a product was sold or offered for sale.	Adds "Region" at a new § 1115.27(j) as a separate category of information which is required when necessary or appropriate to assist consumers to identify a product. This change is discussed in more detail in response to comment 21 in section III of this document below.

II. Legal Authority

The substantive authority for the Commission or a United States District Court to order that a firm issue a mandatory recall notice comes from existing statutes in sections 12, 15(c), and 15(d) of the CPSA. Section 15(c) of the CPSA specifically provides that, when the Commission orders that a firm conduct a mandatory recall, such order "shall specify the form and content of any notice required to be given...." Section 214 of the CPSIA does not alter the Commission's or a court's authority over the final form and content of a mandatory recall notice. Section 214(c) of the CPSIA, which added subsection 15(i) to the CPSA, states that the Commission shall, by rule, within 180 days of the date of enactment of the CPSIA (August 14, 2008), establish guidelines which set forth a uniform class of information to be included in any recall notice ordered under sections 15(c) or (d), or by court order pursuant to section 12 of the CPSA.

(15 U.S.C. 2061, 2064(c), or 2064(d)). Thus, the statute calls for a rulemaking which sets forth guidelines concerning information that firms can expect may be ordered in any Commission or court-ordered mandatory recall and the statute specifies specific content that must be included in mandatory recall notices.

Section 15(i) of the CPSA states that the guidelines established by the Commission must include information that would help consumers: (a) identify a specific product; (b) understand the identified hazard; and (c) understand any remedy available to the consumer. Section 15(i) of the CPSA also requires that a recall notice include certain specific information, unless the Commission determines otherwise. This information includes, but is not limited to, descriptions of the product, hazard, injuries, deaths, action being taken, and remedy; identification of the manufacturer and retailers; identification of relevant dates; and any other information the Commission deems appropriate.

Finally, in addition to section 214 of the CPSIA, section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. Accordingly, the Commission has authority to implement section 15(i) of the CPSA, as amended by section 214(c) of the CPSIA, through section 3 of the CPSIA as well as section 214(c) of the CPSIA.

III. Comments on the Proposed Rule and the CPSC's Responses

We describe and respond to significant issues raised by the comments below. To make it easier to identify comments and the Commission's responses, the word "Comment" will appear in italics before each comment description, and the word "Response" will appear in italics before the Commission's response. We have grouped comments based on their similarity and have

numbered the comments to help distinguish between different comment themes. The number assigned to each comment summary is for organizational purposes and does not signify the comment's value, importance, or order in which it was received.

Additionally, on our own initiative, we have replaced "U.S." with "United States" in the codified text to preclude any potential confusion as to what the abbreviation of "United States" means.

A. Comments Related to Procedural Issues

Comment 1 – Administrative Procedure Act (APA) – One commenter states that the NPR is lacking because it does not contain a list of data or studies relied upon as required by the APA. Although the preamble to the proposed rule states that the agency relied on agency recall guidance materials, including but not limited to the Recall Handbook, the commenter maintains that these resources were not made available to the general public. The commenter believes that, at minimum, information on where to access the resources should be provided or, a web link provided for direct access to the documents. The commenter states that no final rule should issue until the public has the opportunity to review the underlying data.

Response – The requirements for mandatory recall notices set forth in the proposed rule are largely dictated by section 214 of the CPSIA. The proposed rule also includes the Commission's interpretation and clarification of section 214 of the CPSIA, as well as additional guidelines. The preamble to the proposed rule states that, in drafting the proposed rule, the agency relied on its experience conducting recalls and recall effectiveness gained since the CPSC's inception, as well as agency recall guidance materials, including but not limited to the Recall Handbook. Contrary to the commenter's assertion that access to the Recall Handbook was not provided, the preamble to the proposed rule contained a link to the Recall Handbook

(see 74 FR at 11883). Moreover, the Commission did not rely on quantifiable "data" in drafting the proposed rule; it relied on the text of the statute and more than thirty years of experience conducting recalls, which is summarized in the Recall Handbook. Recall templates and a recall checklist are also available to the public on the CPSC's web site at http://www.cpsc.gov/businfo/corrective.html. These materials have been available to the public on the CPSC web site long before passage of the CPSIA.

No reason exists to delay the effective date of the final rule where: (i) a substantial portion of the rule is based on statutory requirements that are already in effect, (ii) the guidance provided in the rule is not subject to the notice and comment period required by the APA (5 U.S.C. §553(b)(3)(A)), (iii) no data or studies were relied upon in drafting the proposed rule, (iv) the proposed rule contained a link to the Recall Handbook, and (v) the recall guidance materials referred to in the proposed rule have been available on the CPSC's web site for many years.

Comment 2 – Regulatory Flexibility Act – Two commenters take opposite positions with regard to applicability of the Regulatory Flexibility Act ("RFA") to the proposed rule. One comment states that the RFA should not be applicable to children's products so that small businesses will not be able to circumvent recall duties. Another commenter opines that the CPSC is attempting to evade the RFA when it states that small businesses will not be affected by the rule. The commenter takes this position based on the discretion the Commission has with regard to determining a "significant retailer," which the commenter believes, depending on the definition, could have a large effect on small businesses. The comment suggests that a small business analysis should be done on the proposed regulation.

Response – The RFA generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. A regulatory flexibility

analysis was not conducted pursuant to section 605(b) of the RFA, which states that the requirement to prepare and make available for public comment an initial regulatory flexibility analysis does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, and the agency provides an explanation for that conclusion.

As with the proposed rule, the final rule will have little to no effect on small businesses. First, the recall notice requirements set forth in the final rule are largely dictated by the CPSIA and are already in effect. Second, mandatory recalls are rare in the Commission's history, so, even if we were to assume that a significant economic impact would exist (and we do not claim that such an impact exists), the impact would not affect a "substantial number" of small entities. Third, the final rule will not alter the agency's reliance on voluntary recalls. Finally, the recall burden on small businesses will not be altered by the definition of "significant retailer." The sole purpose of identifying retailers in the recall notice is to assist consumers with product identification. It has no effect on which firm issues a recall notice or has responsibility for conducting a recall.

Comment 3 – Effective Date – Several commenters state that because they believe the proposed rule seeks to impose requirements that go beyond the CPSIA, firms require notice of the additional requirements and time to comply. Accordingly, these commenters state that the rule should not be effective upon publication, but should follow the standard of becoming effective 30 days after publication so that firms have time to comply. One commenter suggests further that the rule be clarified not to apply retroactively and that the requirements only apply to goods manufactured after August 14, 2009.

Response – The final rule is effective upon publication, regardless of when the product was manufactured, because it does not impose a burden on any firm that would need additional time for compliance. Further, the final rule applies only to mandatory recalls pursuant to a court order (section 12 of the CPSA) or an order of the Commission (sections 15(c), and 15(d) of the CPSA). Mandatory recalls are infrequent in the Commission's history, and currently there are no pending matters where a mandatory recall is at issue. Because of the length of time involved in litigating these issues in a United States district court or administratively, it is impracticable that any action would be litigated to conclusion and that an order requiring a mandatory recall notice would be issued in 30 days time. Accordingly, any firm subject to the final rule will have far more than 30 days to comply. Finally, the final rule does not go beyond the CPSIA. Section 214 of the CPSIA specifically provides that the Commission shall promulgate both guidelines and requirements for mandatory recall notices, and authorizes the Commission to issue additional requirements as it deems appropriate. Section 15(i)(2)(I) of the CPSA.

B. General Comments on the Proposed Rule and Commission Responses

Comment 4 – Many commenters seek clarification of the rule. Several are concerned that many requirements are unnecessary, extraneous, too complicated, and do not help consumers locate relevant products and determine what to do with them. In particular, several commenters are concerned about harm that could occur to business reputation based on the detailed requirements and the speed at which imperfect information may travel. Several commenters state that some information is burdensome for firms to maintain and report with no added benefit to consumers, and are concerned about the costs to maintain detailed records such as photographs and pricing information. These commenters prefer a shorter mandatory recall notice that would purportedly be more helpful to consumers.

Response – Most requirements set forth in the final rule are statutorily mandated, and the Commission has the authority to add requirements it determines are appropriate. A review of the CPSC web site demonstrates that the use of many of the requirements in the final rule in previously issued voluntary recall notices have not resulted in lengthy recall notices. Moreover, the final rule is not burdensome because it does not impose any recordkeeping requirements on firms. Locating a photograph of the product and the price range has not been a significant issue for firms at the time of a recall. Finally, the Commission rejects the idea that a recall notice causes undue harm to business reputation. Responsible firms generally desire to move quickly to remove defective products from the marketplace because it is statutorily required, preserves their brand and consumer confidence, limits liability, and, most importantly, reduces the likelihood of injuries and deaths from unsafe products.

Comment 5 – One commenter would create a mandatory recall notice template form that includes all required sections for a notice. The commenter believes that a template will be more efficient, save time and resources, and allow the Commission to quickly check for all requirements to speed approval of recall notices.

Response – The CPSC already has a bank of recall notice examples that staff provides to firms to help create a recall notice. To the extent such a template is revised, it can and should be done outside of this rulemaking process, to allow both the Commission and industry flexibility to update such templates as appropriate.

Comment 6 – Several commenters discuss use of the words "should" and "must" in the proposed rule, and suggest that in the final rule, use of the word "should" should be changed to "must" to alleviate any confusion regarding the mandatory nature of the requirements.

Response – With regard to use of the words "should" and "must" in the final rule generally, the statute directs the Commission to issue both a guidance and requirements for mandatory recall notices. Guidance provided by the Commission regarding mandatory recall notices uses the term "should," while requirements are described in the regulation using the words "must" or "shall."

Comment 7 – One commenter notes that the rule omits timeliness issues with regard to issuing a mandatory recall notice. This commenter argues that the rule should incentivize firms to comply in a timely fashion, and provide penalties for non-compliance.

Response – Timeliness is important with regard to both mandatory and voluntary recall notices. With regard to mandatory recall notices specifically, the Commission or a court will have control over the timing of recall notices once ordered.

Comment 8 - One commenter suggests using the civil penalties in section 20(a) of the CPSA as a guideline for penalties for non-compliance with any time constraints imposed. Another commenter suggests adding a section on prohibited acts for non-compliance with part C generally.

Response – All prohibited acts over which the Commission has penalty authority are listed in section 19 of the CPSA, and the associated penalty amount provisions are located in section 20 of the CPSA. Section 19(a)(5) of the CPSA provides that it is unlawful for any person to "fail to comply with an order issued under section 15(c) or (d)." Accordingly, these penalty provisions already apply to mandatory recall orders and the Commission declines to duplicate these provisions in the rule.

Comment 9 – FOIA Rights – One commenter suggests that the rule include a section on Freedom of Information Act ("FOIA") rights.

Response – The Commission declines to address FOIA issues in the rule because a separate, pre-existing, rule on FOIA exists at 16 CFR part 1015.

C. Specific Comments on the Proposed Rule and Commission Responses

1. Section 1115.23--Purpose

Proposed § 1115.23 would describe the purpose for a new subpart C, "Guidelines and Requirements for Mandatory Recall Notices." In accordance with direction in the CPSIA, the proposed rule would set out guidelines and requirements for recall notices issued under section 15(c) and (d) or section 12 of the CPSA.

Comment 10 – One commenter believes that the proposed rule's purpose and reasoning section are too generic and lack specific information. The commenter suggests including specific rationales for why certain requirements will be effective and suggests adding specific examples or data to illustrate what the specific recall problem is and how the rule will address the problem.

Response – Section 214 of the CPSIA sets forth a uniform class of information to be included in mandatory recall notices. The final rule's requirements are largely dictated by the statutory language. Further, the Commission's interpretation of section 214 of the CPSIA is not based on a scientific study, but rather on the culmination of the Commission's and the staff's many years of experience conducting product safety recalls. Because of the wide variety of consumer products and industries that such recalls encompass, it is necessary to allow flexibility to tailor recall notices to a specific target consumer group, product, and hazard situation to effectively remove hazardous products from the hands of consumers. The statute and the final rule give the Commission and/or a court the flexibility to add or remove requirements from a particular recall notice as necessary and appropriate, keeping in mind the goal of increasing

recall effectiveness, and to help consumers identify products, understand the product hazard, and understand any available remedy.

2. Section 1115.24 - Applicability

Proposed § 1115.24 would explain the requirements in subpart C apply to manufacturers (including importers), retailers, and distributors of consumer products. The preamble to the proposed rule (see 74 FR at 11883) explained that the rule would not contain requirements for recalls and recall notices that are voluntary and result from corrective action settlement agreements with Commission staff. The preamble to the proposed rule further noted that, 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, but that the proposed rule would serve as a guide for voluntary recall notices.

Comment 11 – Many commenters note the Commission's statement that the proposed rule will apply to mandatory recall notices only and will serve as a guideline for voluntary recalls unless and until the Commission initiates a separate rulemaking to apply the requirements to voluntary recalls.

Comments from individuals and consumer groups generally support the extension of the mandatory notice requirements to voluntary recalls to promote uniformity and consistency in providing consumers recall data and to prevent firms from circumventing the requirements for a mandatory recall notice by agreeing to a voluntary recall. One commenter notes that voluntary recalls comprise the vast majority of recalls and that the protections and information afforded by the mandatory recall notice should be extended to consumers in voluntary recall notices as well. Some commenters believe that consumer safety is compromised by not using the same notice requirements for both mandatory and voluntary recalls. One commenter states that the

mandatory recall notice requirements should at least be applied to voluntary recall notices for ultrahazardous products.

Industry commenters are generally opposed to extending the mandatory recall notice requirements to voluntary recall notices, arguing that important differences exist between a mandatory and voluntary recall. For example, one commenter states that, during a voluntary recall, the firm and the CPSC staff have time to develop an effective recall notice in a more positive environment. Depending on the nature of the product and the harm, the same level of detail may not be necessary for every recall to be helpful to consumers. These commenters support the current system whereby the final notice requirements are left for each specific recall situation working with the staff. One commenter notes the success of the Fast Track program and believes the Commission should continue to foster cooperation in that program and only impose mandatory recall procedures when absolutely required. Some commenters state that imposing mandatory notice requirements will discourage firms from conducting voluntary recalls, which is typically done to avoid the burdens of a mandatory recall. Less voluntary recalls will lead to over-burdening the Commission staff and resources.

A few commenters are concerned about the mandatory notice requirements even serving as a guideline for a voluntary recall notice and urge the Commission to withdraw this statement. One commenter believes that a heightened level of importance should be associated with mandatory recalls. Other commenters note that, even though the Commission acknowledges that a separate rulemaking will be necessary to extend the requirements to voluntary recalls, using the rule as a guideline is essentially a distinction without a difference. One commenter suggests that the Commission explicitly acknowledge in the preamble that a voluntary recall notice will not

need to meet all of the guidelines for a mandatory recall notice in order to be approved for voluntary corrective action.

Response – The Commission will use the mandatory recall notice requirements as a guide for voluntary recall notices unless and until a separate rule on voluntary recall notices is undertaken. No major differences exist, or should exist, between a mandatory and voluntary recall notice. The ultimate purpose of every recall notice, to get dangerous products out of the hands of consumers as quickly as possible, applies to both types of recall notices. Consumers need the same type of information, and time may be of the essence, in both cases. Moreover, voluntary recalls comprise the vast majority of recalls conducted by the CPSC. A guideline list of uniform information for voluntary recall notices will offer the same baseline requirements for all recall notices, aiding in predictability for both firms and consumers, and allow both the Commission and firms to use resources efficiently. Because the final rule will serve as a guideline for voluntary recalls, the Commission still retains the flexibility to work with firms to tailor voluntary recall notices to a particular product and particular recall circumstance.

3. Section 1115.25 – Definitions

Proposed § 1115.25 would define "recall," "recall notice," "direct recall notice," and "firm."

Comment 12 – One commenter suggests that the final rule define "other persons," who were mentioned in proposed § 1115.26. The preamble to the proposed rule explained that "the term 'other persons' would include, but would not be limited to, consumer safety advocacy organizations, public interest groups, trade associations, other State, local and federal government agencies, and the media." 74 FR at 11884. Another commenter states that it is important to keep "other persons" in the rule to acknowledge that both governmental and non-

governmental entities are involved in the dissemination of information in the interest of consumer safety.

Response – The Commission agrees that defining "other persons" in the rule acknowledges the importance that both governmental and non-governmental entities can play in the broad dissemination of consumer product safety information. Accordingly, the final rule adds the definition of "other persons" at § 1115.25(e) as follows: "*Other persons* means, but is not limited to, consumer safety advocacy organizations, public interest groups, trade associations, industry advocacy organizations, other state, local, and federal government agencies, and the media." This definition is the same as set forth in the preamble to the proposed rule, with the addition of "industry advocacy organizations," to demonstrate the broad range of entities that assist in disseminating product safety information.

4. Section 1115.26 – Guidelines and Policies

Proposed § 1115.26 provides general guidance and describes the policies pertaining to recall notices. The proposed guidelines would restate the goals delineated in section 214 of the CPSIA. The CPSIA requires the guidelines to include information helpful to consumers.

In general, proposed § 1115.26(a) would state general principles that are important for recall notices to be effective. For example, proposed § 1115.26(a)(1) would state that a recall notice should provide information that enables consumers and other persons to identify the product and take a stated action. Proposed § 1115.26(a)(2) through (a)(4) would provide guidance on the form of the recall notice, recognizing the various forms of notice and providing guidance concerning direct recall notices and Web site recall notices. 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.

Comment 13 – Many comments discuss § 1115.26(b)(2) on direct recall notices and § 1115.26(a)(4) which states that direct recall notices are the most effective form of a recall notice. Overall, individual consumer comments support the proposed rule with regard to direct recall notices, suggesting that consumers tend to tune out information not directed to them. One commenter notes that direct recall notices have worked effectively in Illinois since 2006. A few commenters suggest revising the rule to require firms to exhaust resources and to send direct recall notices via every means possible depending on the data they have, *i.e.,* mail, electronic mail, and via telephone. One commenter suggests requiring e-mail notification when a firm has e-mail contact information. One commenter suggests asking consumers to forward e-mail notices to people they know have an interest in receiving the information in order to take advantage of social networking abilities. However, another commenter suggests that, because people ignore e-mails based on the large volume received, direct regular mail notices and automated phone messages would be more effective. Another commenter suggests that a direct recall notice be required in all cases where a firm has contact information unless the firm can prove by a preponderance of evidence that a direct recall notice will not be as effective as other forms of a recall notice.

However, one commenter urges that direct recall notices should only be required when a significant and imminent health and safety risk is involved because of the costs involved in direct notice and because over-warning can de-sensitize consumers. Moreover, section 15 of the CPSA recognizes that the form of notice depends on the risk involved and affords parties the opportunity for a hearing before the Commission can order a number of actions.

Response – Direct recall notices are the most effective form of a recall notice. 74 FR at 11886. The statement is based on the Commission's experience that one of the most important aspects of conducting a recall is to target recall notices to those consumers that are more likely to have purchased the product at issue. Direct recall notices have the advantage of reaching a large portion of the consuming public that may have actually purchased the product. Even if the product was not ultimately used by the purchaser, in the case of a parent buying a product for a child or a consumer buying a gift, the purchaser is in a good position to notify the product's user about the recall. Ensuring that notice of the recall is provided in a timely manner to the affected target audience is a major component of recall effectiveness, and direct recall notices are a key advantage in the recall process when this information is known. Moreover, the rule recommends, but does not require, use of direct recall notices. Assessing whether direct notice is necessary, appropriate, or possible in a particular mandatory recall is best done on an individual basis.

Comment 14 – One commenter advocates a clear delineation in the rule with regard to responsibility for direct recall notices. This commenter argues that manufacturers should never have responsibility for a direct recall notice, but should have responsibility for broad dissemination through other means. Direct notice responsibility should fall to the product distributors and retailers that have such contact information.

Response – Determining which firms have responsibility for a recall and disseminating recall notices is beyond the scope of the rule, which solely relates to information categories required on a mandatory recall notice.

Comment 15 – Some commenters note the limitations of relying solely on direct recall notices. One commenter states that direct recall notices are not the best method of notifying

consumers, and should never be used as the sole method of notifying consumers because they miss third party consumers that purchase products second-hand or receive them as gifts. Considering the popularity of certain web sites that sell, re-sell, or auction consumer products, direct recall notices could miss a large population of the consuming public. Additionally, the general public has an interest in knowing about recalled products, such that the recall strategy should be to reach the broadest possible audience.

Response – The Commission agrees that a direct recall notice should not be the sole form of recall notification because the purpose of a recall notice is to reach the broadest possible audience of consumers that may have purchased or received the products. Sole reliance on direct recall notices ignores the fact that other persons may benefit from receiving recall notices and assist in broad dissemination of recall notices. The final rule acknowledges this by adding § 1115.26(a)(5) stating that at least two of the recall notice forms listed in subsection (b) should be used.

Comment 16 – One commenter asks the Commission to clarify the rule with regard to the factors for determining when a firm actually has direct contact information. This commenter states that firms have millions of bits of information, but being able to track the information to a specific time frame and product is time consuming and costly. Moreover, firms may have some information related to the sale, *i.e.*, credit card information, but may not have all information without relying on a third party to match data, which can also be time consuming and costly. The commenter urges that the rule clarify that it only applies when accurate, up to date, contact information is readily and practically available, and is in fact in the firm's direct possession. Another commenter suggests adding "telephone number" to the list of contact information, and to prioritize the direct notice methods as follows: (1) direct mail; (2) e-mail; and (3) telephone.

Response – Assessing when a firm has possession of direct contact information and when the information should be used is best done on an individual basis because of the variety of information that firms or third parties may possess. However, the final rule clarifies that "[a] direct recall notice should be used for each consumer for whom a firm has direct contact information, or when such information is obtainable, 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." The Commission or a court retains flexibility to determine when a firm has direct contact information and when a direct recall notice is appropriate. The final rule also clarifies that a telephone number is considered direct contact information: "[d]irect contact information includes, but is not limited to, name and address, telephone number, and electronic mail address."

Comment 17 –Some commenters are positive about the various methods available for dissemination of information, but want the Commission to make more than one form of notice mandatory. For example, one commenter would require multiple forms of dissemination so that firms cannot rely on a single press release and notice to retailers. Another commenter suggests requiring firms to contact national and local media. Another commenter is concerned that the rule does not require firms to ensure that notices are actually received and not dismissed as spam or junk mail and says requiring multiple dissemination methods would address this problem. Several commenters would require the use of paid advertisements, for example, where injuries and deaths have occurred. Similarly, another commenter suggests that the recall notice be required to be disseminated in the same manner as advertising and promotion for the product.

Response – Section 1115.26(a)(5) in the final rule provides that more than one form of recall notice should be used. The Commission declines to provide for any certain type of notice

for every recall in the final rule. Recall notice forms may vary depending on the type of hazard, the severity of the risk, and the nature and distribution of the target audience. While circumstances will arise where paid advertisements are warranted and the Commission's or a court's order may require their use directed to certain target audiences, in certain time frames and intervals, retaining flexibility and creativity to adjust the forms of required recall notices to the specifics of each case and to allow for technological advancements in recall notice forms should be maintained.

Comment 18 – Several comments support § 1115.26(b)(3), stating that a web site recall notice should be prominent and clear on the first entry point of a web site, such as a home page, and be interactive. Several commenters suggest making a web site recall notice a mandatory requirement when a firm maintains a web site. One commenter agrees that the information must be on the home page and urges the CPSC not to allow firms to bury recall notices deep within a web site. These commenters support the idea of an interactive web site that allows a consumer to seek a remedy on line.

However, one commenter opposes placing a recall notice on a firm's home page and states that such a requirement goes beyond the CPSIA mandate. This commenter argues that manufacturers and distributors post web site recall notices in a location where consumers have become familiar with locating the information. This commenter urges that the CPSC should not adopt a "one-size fits all" home page requirement and that the decision should be based on the circumstances of each case. Moreover, the requirement for an interactive web site which allows a consumer to request a remedy does not make sense in all cases. The commenter gives the example of ATVs and RVs, which must be taken in to an independent dealer for repair. Because

section 214 of the CPSIA does not require an interactive web site, the commenter would delete this section from the final rule.

Response – The Commission agrees that product safety information should not be buried in a firm's web site. Since at least 2000, the CPSC has provided guidance to firms to post recall notices prominently on the home page of the firm's web site. The Commission rejects the proposition that the rule goes beyond the requirements of the CPSIA with regard to providing an interactive web site for recalls. First, the guidelines and policies set forth in section 1115.26 of the final rule are guidelines, not requirements. And, as reviewed above, section 214 of the CPSIA specifically provides that the Commission should "include any information that the Commission determines would be helpful to consumers" to identify the product, understand the hazard, and understand the proposed remedy. Although, for example, an ATV cannot be exchanged through a web site, a prominently placed web site recall notice that is interactive will expand the recall notice to the relevant target audience, and increase recall effectiveness by helping consumers with product identification, hazard identification and to understand the nature of the remedy being offered. Moreover, if the remedy is a repair, an interactive web site can help consumers to locate a dealer to make the necessary repair and/or arrange an appointment for such repair at an appropriate dealer. While the content and nature of web site interactivity may be product and remedy specific, the tool itself can be used in many ways to enhance consumer understanding and recall effectiveness.

Comment 19 – Comments generally support § 1115.26(c), which states that the Commission or a court may require that a recall notice be in languages in addition to English "when necessary or appropriate to adequately inform and protect the public," but would set mandatory criteria for recall notices in additional languages. For example, one commenter states

that the phrase "necessary and appropriate" requires further clarification and an explanation of the criteria that will be used. Another commenter urges the Commission to consider languages likely used by consumers when reviewing and approving recall notices and to insure that recall hotlines and on-line forms should be made available in additional languages when the product was likely purchased by non-English speaking consumers.

Several commenters note the current demographic situation in the United States, stating that approximately 12% of the population speaks Spanish, and suggest that the Commission require that all recall notices be drafted in both English and Spanish. Another commenter suggests requiring that all recall notices be drafted in the top two or three other languages spoken in the United States.

Moreover, several commenters opine that the rule should contain criteria to help determine when recall notices in additional language should be required. Suggestions for criteria for a mandatory language requirement include:

- When product labeling is primarily in a language other than English;
- When product instructions are written in more than one language; and
- When a product is marketed in a language other than English.

Finally, one commenter suggests that the Commission maintain a "bank" of standard recall information in other major languages spoken in the United States to help reduce the costs of providing recall notices in additional languages.

Response – The final rule clarifies when the Commission or a court may order that a recall notice be made in languages in addition to English by providing non-exhaustive examples. However, the Commission and/or a court retain flexibility to tailor recall notices to individual recall circumstances. Two criteria suggested by commenters have been added as examples in the

final rule: when the product labeling is primarily in a language other than English and when a product is marketed in a language other than English. Both examples establish circumstances where it may be necessary or appropriate to issue recall notices in additional languages in order to increase the likelihood that audiences will understand the notices. The final rule, at § 1115.26(c), states one additional example: when a product is marketed or available in a geographic area where English is not the predominant language. This example demonstrates that even when a product's marketing or labeling is in English, there may be circumstances that arise in a mandatory recall scenario that still make it appropriate to distribute recall notices in languages in addition to English.

The Commission declines to adopt additional criteria in the final rule that would not result in an efficient use of staff resources. For example, insufficient information exists to impose a requirement that every mandatory recall notice be made available in two or three languages. Finally, maintaining a "bank" of standard recall information in other languages is something the Commission may consider doing as a matter of efficiency, but it is not within the scope of the rule.

5. Section 1115.27 – Recall Notice Content Requirements

Proposed § 1115.27 would set forth the recall notice content requirements specified in the CPSIA and would provide further details where appropriate. For example, proposed § 1115.27(a) would require that a recall notice include the word "recall" in the heading and text. As another example, proposed § 1115.27(b) would require the recall notice to contain the date of its release, issuance, posting, or publication.

Comment 20 – One commenter would have the rule address the sequence of information found in a mandatory recall notice. The commenter would have the most important information

appear at the top of the notice because it is more likely to be read. For example, the photograph of the product should appear at the top of the notice under the "recall" heading. The commenter would use the following order: description of product hazard, type of hazard or risk, identification of retailers, etc. This commenter also suggests that the rule address readability issues, such as the use of bullet points over lengthy paragraphs.

Response – The Commission agrees that recall notices should be written with the intent to aid readability and understanding by consumers, but that this issue is best addressed on an individual, case-by-case basis. In a mandatory recall situation, the Commission or a court has control over the final form and content of a recall notice, and can require such notices to conform to the standard format already in use. The Commission declines to set a uniform sequence in the current rulemaking because what represents the most critical recall information may vary slightly depending on the circumstances surrounding the recall.

Comment 21 – One commenter suggests adding a "Region" provision to mandatory recall notices to specify the geographic region in which the product was made available in order to narrow down areas of concern when a national retailer is involved. This commenter suggests that the "Region" should state whether the product was for sale on line, so that a consumer understands when the geographic area may have been broadened by internet sales.

Response – When it is relevant, a specific geographic region where a product is sold or offered for sale is typically included in a recall notice. Although the proposed rule did not list "region" as part of the recall notice content requirements, adding a separate "region" requirement to a mandatory recall notice could help to narrow the geographic range for affected retailers and consumers (while not narrowing the range for dissemination of a recall notice generally), and would allow for a description of the region in situations where no significant retailer is identified.

Designation of a region may help consumers to identify whether they have the product being recalled. Accordingly, the final rule adds a requirement for "Region" as a new § 1115.27(j), which provides that "[w]here 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, must be provided" and has renumbered the remaining paragraphs accordingly.

Comment 22 – Most commenters support § 1115.27(a)'s requirement to use the word "recall" in the heading and text of the notice. A few commenters suggest use of the label "Safety Recall" in the heading to alert consumers to a safety issue with regard to the product. One commenter suggests using the term "Urgent Recall" in the heading whenever there is a serious risk of death or loss of limb. This commenter urges that the Commission use this designation to create a more serious class of product recalls.

One commenter dislikes using the word "recall" in every notice, arguing that it may be misleading and "unnecessarily harmful to the character of a product, manufacturer, importer, or retailer" by suggesting the harm is greater than it actually may be. This commenter suggests using language from the "action taken" section, which the commenter believes will be more accurate in describing the nature of the recall at issue. At minimum, the commenter suggests using "recall" along with the "action taken" in the header so that consumers can quickly and easily see the nature of the action being taken with regard to the product.

Response – As a matter of Commission policy for consistency and uniformity, use of the word "recall" is preferred because consumers and other persons recognize the word "recall" as meaning that a safety issue has arisen that requires action by the consumer. The CPSC's position on the title of a recall notice has been in the Recall Handbook for many years. The Commission

does not agree that the dissemination of a recall notice necessarily harms manufacturers. As reviewed in the Recall Handbook, consumers no longer necessarily view product recalls in a negative light and are, instead, more likely to have a negative view of a firm if it does not take responsibility for conducting an effective recall. How well a company conducts a timely, reasonable recall of a product may have a strong influence on consumers' attitudes about the firm. Successful product recalls can result in continuing consumer support and demand for the firm's products.

While the Commission categorizes recalls, as set forth in the Recall Handbook Section III, CPSC Evaluation of Section 15 Reports, the Commission has avoided categorizing recall notices because it wants consumers to review and respond to all recall notices. Consumers should have the opportunity to read each notice and make an informed decision regarding whether they have the product, whether the risk of injury applies to them, how to avoid injury, and how to take advantage of any remedy associated with the recall. Categorizing recalls by the severity of risk may hinder the overall goal of recall effectiveness.

Comment 23 – A few commenters agree with proposed § 1115.27(c)'s requirements pertaining to a description of the product. However, one commenter suggests that it is unclear whether § 1115.27(c)(1) through (6) establishes requirements because the word "must" is not used. This commenter suggests clarifying the rule so that firms know whether all or some subset of these product identification guidelines are required.

Response – Section 15(i)(2) of the CPSA requires that a mandatory recall notice include a product description, including model numbers or SKUs, common product name(s), and a photograph of the product. The final rule is organized such that items in § 1115.26 are guidelines and policies, and items in § 1115.27 are requirements. Accordingly, § 1115.27(c)

provides that "[a] recall notice must 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 it from similar products. The information must enable consumers to readily determine whether or not they have, or may be exposed to, the product." The rule lists six types of descriptive information relevant to product identification, including the fact that a photograph "must" be included. The final rule clarifies that when the information specified under this section is applicable to a particular product, it must be included as part of the product description: "[t]o the extent applicable to a product, descriptive information that must appear on a recall notice includes, but is not limited to:" The list is not exhaustive, however, and additional product identification information may be required for a particular recall notice.

Comment 24 – Several comments would strengthen the remedy requirements in proposed §§ 1115.27(d) and (m). One commenter observes that the remedy offered must be implementable by all parties. The commenter notes that there have been several instances where a manufacturer offered a remedy, such as a voucher or coupon, that was not recognized by all retailers' computer systems when presented by a consumer. Accordingly, consideration of different systems should be given when providing a remedy and approval by the CPSC.

A few commenters suggest limiting a manufacturer's ability to instruct consumers to discard products. They argue that this remedy should be limited to situations where a firm has gone out of business or the product is of nominal value. One commenter urges the Commission to not approve any recall notice that does not include replacement, repair, or refund of the purchase price as a remedy because consumers will be less likely to comply without compensation as they do not want to pay for the item twice. Finally, one commenter urges the

Commission to include a section for "incentive" or "reward" to inform consumers about any additional incentives for the return of the product, or state that "none" are being given.

Response – The nature of remedies approved as part of a corrective action plan goes to the substance of a corrective action plan, which is not at issue in the final rule. With regard to the suggestion to include a category for a description of any recall incentive in a mandatory recall notice, while the Commission generally encourages firms to offer incentives for compliance with a recall, the Commission declines to require a separate category for such information. Incentives are properly part of the remedy being offered. An additional category for incentives in every recall notice, even when an incentive is not being offered, will lengthen the recall notice without improving the overall effectiveness of the notice or providing new or different information to help consumers understand the remedy being offered.

The Commission also notes that proposed § 1115.27(m) is now renumbered as § 1115.27(n) in the final rule.

Comment 25 – Proposed § 1115.27(e) would require the recall notice to state the approximate number of product units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce. Several comments suggest clarifying § 1115.27(e) by requiring a statement of the number of product units included in a recall notice. A few commenters state that the rule should only include products actually sold to consumers so that the number does not include products that were never sold to any distributor or retailer or are still in the hands of the manufacturer and were never imported. The commenters believe that these products are not subject to a recall and that it is inappropriate and beyond the scope of the CPSIA to include in the number of units products that have never been in the hands of consumers. Moreover, these commenters argue that including such data is misleading and

distorting of the number of products actually subject to the recall and cannot be said to help consumers identify a product, understand a product hazard, or obtain a remedy.

One commenter suggests that product unit information is unnecessary, unhelpful to the consumer, and is likely to overwhelm the average consumer. According to this commenter, including product unit information only serves to frustrate the purpose of understanding the product's actual or potential hazard. This information could have a negative effect on the firm, and media and other groups could incorrectly focus on the number of products being recalled rather than any actual threat of public harm.

Response – Section 15(i)(2)(C) of the CPSA requires that a mandatory recall notice include "[t]he number of units of the product with respect to which the action is being taken." Accordingly, firms must state product unit information in a mandatory recall notice pursuant to the statute. The Commission's interpretation of this section of the statute is consistent with past Commission practice for all recall notices, as set forth in the Recall Handbook, which is to list all units of a product manufactured, imported, and/or distributed in commerce. As for those comments suggesting that products that are not in the hands of consumers are not subject to a recall, the CPSC has jurisdiction over all consumer products subject to a recall, and all such products must be dealt with in a corrective action plan, regardless of where the product is in the supply chain. For example, in a mandatory recall situation, a manufacturer holding product could not sell, modify, or destroy product without CPSC authorization. Stating the number of product units involved informs consumers as to the scope of a recall, aids product identification, and increases recall effectiveness.

Comment 26 – Many comments address proposed §§ 1115.27(f) and (l) regarding a description of substantial product hazard and a description of the incidents, injuries and deaths.

Several commenters agree that requiring a mandatory recall notice to describe and state the number of injuries and deaths is helpful to consumers and will motivate them to comply with the recall. Many commenters, however, state that specific information on injuries and deaths is unnecessary and irrelevant, or suggest that the rule should be further clarified to prevent the recall notice from becoming a lengthy, multi-paged document. One commenter states that proposed § 1115.27(f) exceeds the scope of the intent of the CPSIA with regard to a description of the substantial product hazard and reason for action. This information may not be feasible for firms to provide and may be more misleading than informative because a firm may not know all of this information at the time of a recall. Further, several commenters state that reporting death statistics is outside the purpose of a recall, will not help consumers or their decision to participate in a recall, but will have an adverse effect on retailers and producers.

Response – Sections 15(i)(2)(D) and (G) of the CPSA require that a mandatory recall notice include "[a] description of the substantial product hazard and the reasons for the action," as well as "[t]he number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths." Accordingly, the statute and the final rule require both a description of the substantial product hazard and specific information on injuries and deaths, including the number, description and ages of persons involved. However, recall notices will, by necessity, only include information regarding a substantial product hazard and any injuries or deaths that are known at the time of the recall notice.

The Commission also notes that it has renumbered § 1115.27(l) as § 1115.27(m) in the final rule.

Comment 27 – Some commenters request clarification on what constitutes an injury that requires reporting, what the phrase "associated with the product" in proposed § 1115.27(f) means, what "product conditions or circumstances" can give rise to an injury or death related to a product, and what a "concise summary" constitutes. For example, one commenter opines that the term "injury" should be defined to only include injuries which require medical treatment, and to exclude minor injuries such as superficial scrapes and bruises. This commenter states that defining "injury" will make reporting consistent across recall notices. Another commenter states that "associated with the product" language could be interpreted broadly to require that all deaths or injuries be reported, even when there may be other causes, such as gross negligence or use contrary to warning labels. One commenter suggests that the rule address whether a manufacturer must list any death or injury, however tangential, or may qualify injuries where gross negligence and contrary use are involved. Finally, one commenter believes that requiring detailed information on injuries and deaths will expose firms to liability for acts that have not been proven in court to be causally linked to the products without providing any benefits to the consumer. Moreover, it could require corporations to implicate themselves criminally or civilly, in violation of the Fifth Amendment of the Constitution.

Response – With regard to the types of injuries required to be reported on a recall notice, the Commission interprets the statutory requirement consistent with past agency practice with regard to reporting injuries on a recall notice, which is to include all injuries, regardless of whether a consumer sought medical treatment, where the consumer product is present at the time of the injury and may have been a contributing factor.

A well-crafted recall notice does not necessarily subject a firm to increased product liability. The Commission's mandate is public safety, and effective recall notices can play an

important role in enhancing public safety. Allowing a defective product to stay on the market without providing the public with timely hazard and recall information would likely result in increased liability for non-compliant firms, not only from potential civil and criminal penalties by the Commission, but from product liability lawsuits as well. Finally, no concern exists that providing information on injuries and deaths in a recall notice impairs any Fifth Amendment right against self-incrimination, as the Fifth Amendment protects individuals, not corporate entities. *See, e.g., Bellis v. United States*, 417 U.S. 85, 88-90 (1974) (reviewing history of decisions regarding the Fifth Amendment privilege and its inapplicability to corporations and stating that no artificial organization may utilize the personal privilege against self-incrimination to avoid producing corporate documents).

Comment 28 – Several comments would clarify the rule to allow reporting of injuries and age ranges in the aggregate. These commenters argue that reporting specific ages is not necessarily helpful for the consumer to evaluate the risks involved. Moreover, if the rule is interpreted to require a description of each injury and the age of each person, this could turn the recall notice into a lengthy, multi-page document that defeats the purpose of efficiently and effectively identifying the product, explaining the hazard, and communicating a remedy to consumers. Age ranges can be described in numbered ranges, or, for example, as adult, child, infant. One commenter opines that the number of injuries is not as important as the details of the injuries and deaths, to distinguish minor injuries from other types of harm.

Response – Reporting of injuries and deaths, including the ages of individuals injured or killed, is statutorily required in a mandatory recall notice. Providing this information, however, need not result in a lengthy recall notice. Consumers and firms can find numerous examples of recall notices on the CPSC's web site, and note that when age and injury information is detailed,

it does not result in lengthy, unreadable recall notices. The Commission or a court retains the flexibility to craft effective recall notices for particular recall scenarios which are in the best interest of the consumer. The exact wording of any recall notice cannot be done before the fact, and the Commission declines to adopt a specific, one size fits all, approach to how this information is presented for every recall notice. Firms should anticipate that aggregation of age information will be required in limited circumstances.

Comment 29 – One commenter states that information regarding injuries on exact dates can be considered confidential material supplied to staff under section 15(b) of the CPSA. Including such information in a recall notice would undermine confidentiality under section 6(b) of the CPSA and otherwise. Another commenter notes that the date of injury may be unrelated to when the consumer decides to report the injury and how accurately the injury is characterized. One commenter states that if the information must be provided, then the Commission should at least allow firms to provide a range of dates rather than exact dates, or a summary such as "prior to the time of this announcement." Another commenter, however, agrees that the recall notices should include the dates or date ranges when the Commission received information about deaths or injuries, and suggests that the Commission further require the dates or date ranges when the recalling firm received information about deaths or injuries.

Response – Some commenters may misunderstand the statutory requirement with regard to reporting dates related to injuries. Neither the statute nor the rule require that a mandatory recall notice state the actual date that an injury or death occurred, or the actual date when a firm received information about an injury. Section 15(i)(2)(G) of the CPSA requires that a mandatory recall notice include "the dates on which the *Commission* received information about such injuries or deaths." (Emphasis added.) At minimum, a month and year must be reported as to

when the Commission received such information. Accordingly, aggregation of the month and year may occur when necessary or appropriate to shorten the information presented on a recall notice while not sacrificing appropriate and statutorily required detail. For example, if the Commission learns of three injuries on three separate dates in a single month, a mandatory recall notice may provide the month and year in which these injuries were reported, presenting accurate information in a shortened format. However, the Commission or a court retains the flexibility to order the use of exact dates or the use of a range of dates by month and year, depending, among other things, on the number of injuries and the risk involved, if it is more helpful to consumers.

Comment 30 – One commenter suggests that information on injuries and deaths is a subpart of the section on substantial product hazard and should be moved under that section.

Response – A description of the substantial product hazard and a description of the associated injuries and deaths are separate categories of information presented on a recall notice. Both the statute and the final rule separate these categories of information. *See, e.g.*, sections 15(i)(2)(D) and (G) of the CPSA. The information presented under substantial product hazard is a short, factual statement regarding the *actual* or *potential* harm, *i.e.*, choking, laceration, drowning, while the number and description of injuries reports actual injuries that have occurred. In some instances, for example, the risk of injury for choking may be present, but no reported injuries have occurred.

Comment 31 – Many comments address § 1115.27(h) regarding identification of manufacturers on a mandatory recall notice. A few comments are favorable, but many comments question the value of identifying a foreign manufacturer, and suggest that this information is confidential business information subject to trade secret protection.

A few comments simply state that while the identification of manufacturers may be helpful to the CPSC, it is not helpful to a consumer and may be confusing with regard to who is responsible for the recall. Several commenters opine that not only is the information irrelevant to an effective recall and the stated goals of a recall notice under section 214 of the CPSIA, but the identity of foreign manufacturers is proprietary, confidential business information which should only be required to be provided to the Commission under trade secret protection. These commenters state that the CPSIA does not require identification of a foreign manufacturer, and that the name of the importer and country of origin should be sufficient. Moreover, publishing the name of foreign manufacturers can cause significant harm to a firm and is information not shared with competitors. Naming a foreign manufacturer may cause confusion to consumers, and unfairly place blame on foreign manufacturers when the problem, for example, may actually be with the design of the product. Finally, one commenter opines that information on the country of origin is not helpful to the consumer and detracts from the overall effectiveness of a recall notice. Such information may confuse consumers to believe that all products manufactured in a country are dangerous.

Response – Section 15(i)(2)(E) of the CPSA requires that a mandatory recall notice shall include "[a]n identification of the manufacturers ... of the product." Section 3(a)(11) of the CPSA defines "manufacturer" as "any person who manufactures or imports a consumer product." The term "manufactured" means to "manufacture, produce, or assemble." Section 3(a)(10) of the CPSA. A consumer product includes "any article, or component part thereof, produced or distributed" for sale to consumers. Section 3(a)(5) of the CPSA. Thus, any firm that manufactures, produces, assembles or imports a consumer product, or any component part thereof, may be characterized as a product manufacturer. As is often the case, a consumer

product may have more than one manufacturer. This fact is acknowledged both by the statute, which employs the plural term "manufacturers" and the rule, which provides that "[a] recall notice must identify each manufacturer (including importer) of the product and the country of manufacture."

The identity of a foreign manufacturer is not a trade secret or commercially sensitive information in every case. For example, many voluntary recall notices issued in the past identify a foreign manufacturer. In the context of a mandatory recall situation, whether identification of a foreign manufacturer is indeed trade secret, confidential information, and/or whether an exception to section 6 of the CPSA applies, will necessarily be litigated in the judicial or administrative proceeding. These issues require a fact-dependent, individualized analysis in every case; it is not something that could ever be decided broadly and apply to all manufacturers. To the extent that section 6 of the CPSA is applicable, the Commission acknowledges that it, and a firm, must comply with the law and any exceptions thereto.

Comment 32 – Another commenter opines that the rule is ambiguous as to whether different information is required from foreign and domestic manufacturers. The commenter would clarify the rule to state that a recall notice must identify a domestic manufacturer's legal name, city, and state of headquarters, or if a foreign manufacturer is involved, identify the city and country of its headquarters (but omit the name of the company). Another commenter agrees that the manufacturer name and country of manufacture should be on the recall notice, but not the city and state of the headquarters. This commenter does not see any added benefit to the consumer to have this information.

Response – The rule anticipates that many consumer products have both foreign and domestic manufacturers and importers, both of whom must be identified. The rule requires all

manufacturers to be identified by their legal names. Additionally, domestic companies should be identified by the city and state of their headquarters, and foreign companies should be identified by the city and country of their headquarters. The Commission agrees that the language in the proposed rule was unclear with regard to what identifying information is required for foreign manufacturers. The final rule clarifies that foreign manufacturers must be identified by: (i) legal name; (ii) city; and (iii) country of headquarters.

Comment 33 – One commenter suggests that the Commission require a manufacturer's web site address to be listed with the identification information, in addition to name, trade name, city, and state, to facilitate recall information dissemination and allow consumers to access recall and remedy information via the company's web site.

Response – The Commission declines to require that a manufacturer's web address be listed as identifying information in every mandatory recall notice. A web address for recall information is already provided elsewhere on the recall notice. The manufacturer may or may not have a web site and may or may not be the firm in charge of a recall. The Commission does not want consumers to be confused with regard to which entity is responsible for the recall, or to deluge the wrong firm with phone calls about a recall.

Comment 34 – One commenter suggests excluding small importers that are not the sole importer or retailer from any provision that allows them to be characterized as a "manufacturer" or "significant retailer" for purposes of a recall, because the burden on small importers would be too great and they would not likely have the type of information available to manufacturers and retailers to implement a recall. However, another commenter observed that the burden on small businesses should not be great because there are few mandatory recalls.

Response – Determining which firm is responsible for conducting a recall is outside the scope of the final rule, which focuses on guidelines and requirements for information categories to include in a mandatory recall notice.

Comment 35 – Many commenters request clarification of proposed § 1115.27(i) with regard to identification of "significant retailers," arguing that the rule is too vague regarding what criteria will be used to determine a "significant retailer."

One commenter opines that singling out retailers does not help to identify a product. This information is only relevant if the remedy is to return the product to the retailer, or if there is only one retailer. Moreover, several commenters prefer to keep the current system whereby no specific retailer is named, and the firm can rely on language such as "sold at department store and retail stores nationwide."

Response – Section 15(i)(2)(E) of the CPSA requires that a mandatory recall notice include "[a]n identification of the ... significant retailers of the product." Thus, the statute requires the identification of "significant" retailers but does not define "significant."

Comment 36 – Several commenters believe the language regarding "significant retailers" should be expanded to include all retailers, instead of just "significant" retailers. Many commenters state that if only a few retailers are listed, consumers may be confused and believe that their product is not at issue in the recall simply because the retailer they purchased the product from is not listed. Moreover, this scenario would leave out the majority of retailers where the products were actually purchased and may compromise dissemination of recall information to the majority of the consuming public. One commenter suggests that, in order to keep the notice short, the Commission should require the notice to state that the retailer list is not exhaustive and to provide a web site address where the consumer can find an exhaustive list of

retailers. Several commenters claim that, because the definition of "significant retailer" is so vague, firms will simply list all retailers to avoid non-compliance. These commenters argue that a long list of retailers will increase the length of the notice and make it difficult for consumers to obtain the information required for an effective recall.

Response – Section 15(i)(2)(E) of the CPSA requires that a mandatory recall notice identify *significant* retailers of the product. Although the statute does not define "significant," the Commission does not read it to mean identification of *all* retailers. While the Commission could identify all retailers on its web site if it were in the interest of public safety, it declines to do so in every mandatory recall scenario. First, the statute requires identification of "significant" retailers, not all retailers. Second, it is unclear whether requiring every mandatory recall notice to include an exhaustive list of retailers on the CPSC web site would increase recall effectiveness or would be an efficient use of Commission resources. Such a requirement may become burdensome with no added value to consumers. Finally, listing significant retailers will not result in a lengthy recall notice because the Commission retains the discretion to control the substance, format, and organization of recall notices in the interest of consumer safety and recall effectiveness.

Comment 37 – Many commenters suggest that the concept of, and the criteria for, "significant retailer" be clarified and that § 1115.27(i)(5) should not contain a vague catch-all that allows the Commission to find a retailer significant if it "is in the public interest." Many commenters request that the Commission set forth criteria the Commission will consider in determining what is in the public interest.

Response – The Commission's experience with recall notices and identification of retailers is that such information helps consumers to determine whether or not they may have the

defective product. Accordingly, the rule provides four circumstances under which identifying a retailer may be helpful to consumers to identify a product: (i) an exclusive retailer; (ii) a retailer that is also an importer of the product; (iii) a retailer with national and/or regionally located stores; and (iv) a retailer that holds or sold a significant number of the defective products. The rule also provides the Commission, or a court, with the flexibility to determine that although a retailer may not fall into one of the four enumerated categories, circumstances may arise whereby designation of the retailer as "significant" for a particular mandatory recall would help consumers identify the product. The final rule maintains this flexibility because: (i) it is not possible to anticipate every circumstance where listing a particular retailer may become helpful to consumers beforehand; and (ii) the Commission, under sections 15(c) and (d) of the CPSA, and a court, pursuant to section 12 of the CPSA, already have final authority over the form and content of mandatory recall notices. Such authority is not altered by section 15(i) of the CPSA and the Commission declines to do so in the final rule.

Comment 38 – Some commenters state that the Commission failed to define "regional retailer," or "regionally-located." Accordingly, these commenters argue that the rule is too vague.

Response – The term "regional" should be understood based on its ordinary and customary usage. For example, a regional chain could be located in one region of the state of California, it could comprise affiliated stores existing in an entire state, or it could comprise affiliated stores located in a group of states, or finally, stores located in one or more regions of the United States.

Comment 39 – Some commenters note that there are many situations where regional chains or "mom and pop" stores sell the majority of the products and collectively outsell a

national retailer, but the national retailer may end up being named as a "significant retailer" because, compared to any one store, it may have sold more products. Several commenters observe that the rule, as proposed, will likely result in a small number of national retailers being named in virtually every recall notice, which will dilute the purpose of the information. One commenter suggests addressing this problem by changing § 1115.27(i)(4) from "a significant number of the total manufactured" to "a majority of the total manufactured." This commenter believes that naming one retailer where a majority of the products were sold would be more helpful to the consumer than listing every "significant retailer."

Response – With regard to the idea that listing some, but not all, retailers will cause consumer confusion, this has not been the Commission's experience. For example, a recall notice can list major retail outlets, but also explain that the list of retailers is not exhaustive. In a situation where Store A sold 40% of the defective product and more than 50 smaller home centers and hardware stores sold the remaining 60%, a recall notice could employ additional, helpful language describing the types of stores where the product was sold without causing the notice to become unduly long and unreadable: "Product was sold nationwide at Store A and at home centers and hardware stores nationwide."

The Commission declines to adopt the suggestion that the required statutory term "significant" be modified to mean a "majority" of the products. The statute itself requires identification of "significant" retailers. Many situations arise where there may be two or three retailers that sell 60 to 80% of the products. While no retailer individually sold a majority of the products, listing these retailers is helpful to consumers to determine whether or not they may have the defective product.

Comment 40 – One commenter would expand the description of retailers to include contractors, so that contractors must notify consumers when the materials were used in building projects. The commenter cited, as an example, the drywall situation, where the nature of the product makes it difficult for consumers to discern whether the defective product is in their home.

Response – The Commission declines to include the term "contractors" in the description of retailers, but this does not preclude the fact that there may be situations when contractors may be considered to be retailers. Even if the Commission were to include contractors in the description of retailers, it would not address the commenter's primary concern that contractors notify homeowners about the materials used in building projects. The statute at issue here, section 15(i) of the CPSA, does not impose any specific obligation on a retailer to notify consumers. Being listed as a "significant retailer" does not create any obligation on the part of retailers so listed; the information is present solely to assist consumers with product identification.

Comment 41 – One commenter opines that the dates of manufacture and sale under proposed § 1115.27(j) (now renumbered as § 1115.27(k) in the final rule) are too expansive. Manufacturers date code products by the date of manufacture, not the date of sale. Manufacturers often do not know the date a product first hits retail shelves. Providing more than manufacturing dates may be confusing to consumers. The current system of citing manufacturing dates by date code, or date of sale if known, has been successful.

Response – Section 15(i)(2)(F) of the CPSA requires that a mandatory recall notice include "[t]he dates between which the product was manufactured and sold." The statute thus

requires both the dates of manufacture and the dates of sale. If a manufacturer does not have this information, it is expected that, where available, it may be provided by retailers or distributors.

Comment 42 – A few commenters suggest expanding the price requirement in proposed § 1115.27(k) (now renumbered as § 1115.27(l) in the final rule). One commenter would require suggested retail price, prices known to the manufacturer, and the highest and lowest retail price known. Another commenter suggests that the approximate price range is not helpful enough, and that the price range should be made specific for geographic locations.

One commenter opines that a price should only be required when the remedy is a purchase price refund. Otherwise, this information is unhelpful and clutters the recall notice.

Response – The Commission typically requires approximate price information in all recall notices to assist with product identification. We decline to require every price known to the manufacturer in every mandatory recall notice; the approximate price range is sufficient for product identification purposes, and to assist the consumer in understanding what the price refund may be. Further, providing a price range for each specific geographic location in every recall situation is not always practical. It is unclear whether such information will add sufficient value to the recall notice to offset the use of resources in every recall situation. The Commission retains the flexibility, however, to require more information on price if it would assist consumers.

Comment 43 – One commenter states that proposed § 1115.27(n) (now renumbered as § 1115.27(o) in the final rule) regarding "other information" that the Commission or a court may deem appropriate for inclusion in a recall notice should state what types of additional information may be required to put firms on notice. The commenter argues that without such clarification an aggrieved party may later argue that a requirement placed on it is burdensome

and not contemplated by the rule. Accordingly, the commenter suggests that the rule clarify that § 1115.27 is exhaustive as can be currently contemplated, but that other requirements will be included as the situation demands. At a minimum, the rule should state that future requirements will be based on a fair assessment of the situation.

Response – Section 15(i)(2)(I) of the CPSA provides that a mandatory recall notice must include "[o]ther information the Commission deems appropriate." Moreover, when a mandatory recall notice is ordered by a court or the Commission, it has authority over the final form and content of the recall notice and can require additional information deemed appropriate in particular cases pursuant to sections 12, 15(c) and 15(d) of the CPSA. Thus, the authority to include any other information the Commission deems appropriate in a mandatory recall notice does not solely originate from section 15(i) of the CPSA. The rule reflects the Commission or a court's inherent authority with regard to the form and content of mandatory recall notices, and the Commission declines to limit its own authority in the rule.

6. Section 1115.28 – Multiple Products or Models

Proposed § 1115.28 would require the notice for each product or model covered by a recall notice to meet the requirements of this subpart.

We received no comments on this provision and have finalized it without change.

7. Section 1115.29 – Final Determination Regarding Form and Content

Comment 44 – Most commenters support § 1115.29 which states that the Commission or the Court has the final determination as to the form and content of a recall notice. Consumer groups, in particular, support this rule to level the influence that firms have traditionally had over form and content. One commenter suggests imposing a deadline on firms for disseminating the recall notice after Commission approval and immediate posting on the CPSC's web site after

approval. One commenter, however, feels that the rule is vague and allows the CPSC excessive discretion with regard to recall form and content. This commenter suggests more specificity and criteria be inserted into the rule to create more uniform expectations for firms. Another commenter suggests imposing a deadline on the Commission's approval process, and allowing firms to disseminate a recall notice if the Commission has not rejected or approved the proposed recall notice within the time frame in order to get recall information out to the public as soon as possible.

Response – The Commission and/or a court have statutory authority to control the final form and content of mandatory recall notices. Mandatory recall notices must be approved by the Commission before they are disseminated. Sections 15(c)(1) & 15(d)(2) of the CPSA. Nothing in section 15(i) of the CPSA or the final rule changes this control; the statute merely requires that the Commission provide guidance on a uniform set of information that firms can expect to find in a mandatory recall notice, as well as sets forth certain requirements for mandatory recall notices which can be altered by the Commission in particular recall scenarios as necessary or appropriate. Thus, the date of dissemination by both the CPSC and the firm is directed by the CPSC, and the CPSC posts all recall press notices on its web site at www.CPSC.gov after approval by the Commission.

IV. Environmental Impact

Generally, the Commission's regulations are considered to "have little or no potential for affecting the human environment," and environmental assessments and impact statements are not usually prepared. *See* 16 CFR 1021.5(c). The final rule establishes requirements and guidelines for mandatory recall notices is not expected to have an adverse impact on the environment.

Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

V. Paperwork Reduction Act of 1995

The rule does not impose information collection requirements. Rather, the rule sets forth a uniform set of information categories that are either statutorily required or provided as guidelines by the Commission for use in recall notices that are ordered by the Commission or a United States district court in individual enforcement actions under sections 12, 15(c) or 15(d) of the CPSA. Additionally, under 5 CFR § 1320.4(a)(2), the Paperwork Reduction Act requirements do not apply to collections of information "during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action...against specific individuals or entities." Accordingly, it is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 through 3520.

VI. Executive Order 12988

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The requirements and guidelines contained in the rule do not impact the States, as they only apply to mandatory recalls ordered by the Commission or a United States district court. Moreover, section 26 of the CPSA with regard to preemption only addresses the preemptive effect of consumer product safety standards under the CPSA. The current rule is not a consumer product safety standard under the Act. Accordingly, the Commission has determined that this rule does not contain requirements or guidelines that impact the States.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Section 603 of the RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. 5 U.S.C. 603. Section 605(b) of the RFA, however, states that this requirement does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, and the agency provides an explanation for that conclusion.

This final rule will have little or no effect on small businesses. First, this rule consists of guidelines (which do not require a regulatory flexibility analysis) and recall notice content requirements that are largely dictated by the CPSIA. Second, these guidelines and requirements apply in the context of an administratively adjudicated order to a specific party to issue a recall notice. Such mandatory recalls have occurred infrequently in the Commission's history. Finally, the substantive authority for a court or the Commission to order that a mandatory recall notice issue comes from existing law, sections 12, 15(c) and 15(d) of the CPSA, rather than the final rule. Therefore, the Commission concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. § 553(d). However, an earlier

effective date is permitted for statements of policy and "as otherwise provided by the agency for good cause found and published with the rule." *Id.* The guidelines for mandatory recall notices are essentially a statement of policy. The content requirements for mandatory recall notices are dictated largely by section 214(c) of the CPSIA, with some clarification by the Commission. The statutory requirements for mandatory recall notices are already in effect. Further, the Commission is not currently engaged in an adjudicative matter that could result in an order for a firm to issue a mandatory recall notice. Thus, all firms will have more than 30 days notice with regard to these guidelines and requirements. Accordingly, the Commission finds that good cause exists for the guidelines and requirements for mandatory recall notices to become effective upon publication of the final rule in the **Federal Register**. Further, the rule applies to all mandatory recalls ordered after the date of publication in the **Federal Register**, regardless of when the product being recalled was manufactured.

List of Subjects in 16 CFR Part 1115

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

For the reasons stated above, the Commission amends 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, 2069, 2070, 2071, 2073, 2076, 2079, and 2080.

2. Add a new Subpart C to read as follows:

* * * * *

Subpart C--Guidelines and Requirements for Mandatory Recall Notices

Sec.

1115.23 Purpose.

1115.24 Applicability.

1115.25 Definitions.

1115.26 Guidelines and policies.

1115.27 Recall notice content requirements.

1115.28 Multiple products or models.

1115.29 Final determination regarding form and content.

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Subpart C--Guidelines and Requirements for Mandatory Recall Notices

§ 1115.23 - Purpose.

(a) The Commission establishes these guidelines and requirements for recall notices as required by section 15(i) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C.

2064(i)). The guidelines and requirements set forth the information to be included in a notice required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)). Unless otherwise ordered by the Commission under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a United States district court under section 12 of the CPSA (15 U.S.C. 2061), the content information required in this subpart must be included in every such notice.

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

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

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

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

§ 1115.24 - Applicability.

This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products as those terms are defined herein and in the CPSA.

§ 1115.25 - Definitions.

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

(a) *Recall* means any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(b) *Recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(c) *Direct recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)), that is sent directly to specifically-identified consumers.

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

(e) *Other persons* means, but is not limited to, consumer safety advocacy organizations, public interest groups, trade associations, industry advocacy organizations, other state, local, and federal government agencies, and the media.

§ 1115.26 - Guidelines and policies.

(a) *General.* (1) A 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 recall notice should clearly and concisely state the potential for injury or death.

(2) A 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.

(3) A recall notice should 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.

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

(5) At least two of the recall notice forms listed in subsection (b) should be used.

(b) Form of recall notice--(1) Possible forms. A recall notice may be written, electronic, audio, visual, or in any other form ordered by the Commission in an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a United States district court under section 12 of the CPSA (15 U.S.C. 2061). The forms of, and means for communicating, recall notices include, but are not limited to:

(i) Letter, Web site posting, electronic mail, RSS feed, or text message;

(ii) Computer, radio, television, or other electronic transmission or medium;

(iii) Video news release, press release, recall alert, Web stream, or other form of news release;

(iv) Newspaper, magazine, catalog, or other publication; and

(v) Advertisement, newsletter, and service bulletin.

(2) *Direct recall notice.* A direct recall notice should be used for each consumer for whom a firm has direct contact information, or when such information is obtainable, 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. Forms of direct recall notice include, but are not limited to, United States mail, electronic mail, and telephone calls. A direct recall notice should prominently show its importance over other consumer notices or mail by including "Safety Recall" or other appropriate terms in an electronic mail subject line, and, in large bold red typeface, on the front of an envelope and in the body of a recall notice.

(3) *Web site recall notice.* A Web site recall notice should be on a Web site's first entry point such as a home page, should be clear and prominent, and should be interactive by permitting

consumers and other persons to obtain recall information and request a remedy directly on the Web site.

(c) *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 United States 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. For example, it may be necessary or appropriate to require a recall notice be in a language in addition to English when a product label is in a language in addition to English, when a product is marketed in a language in addition to English, or when a product is marketed or available in a geographic location where English is not the predominant language.

§ 1115.27 Recall notice content requirements.

Except as provided in § 1115.29, every recall notice must include the information set forth below:

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

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

(c) *Description of product.* A recall notice must 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 it from similar products. The information must enable consumers to readily determine whether or not they have, or may be exposed to, the product. To the extent applicable to a product, descriptive information that must appear on a recall notice includes, but is not limited to:

(1) The product's names, including informal and abbreviated names, by which consumers 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 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. A firm must provide photographs. Each photograph must be electronic or digital, in color, of high resolution and quality, and in a format readily transferable with high quality to a Web site or other appropriate medium. As needed for effective notification, multiple photographs and photograph angles may be required.

(d) *Description of action being taken.* A recall notice must 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 return and provide a refund.

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

(f) *Description of substantial product hazard.* A recall notice must contain a clear and concise description of the product's actual or potential hazards that result from the product condition or circumstances giving rise to the recall. The description must enable consumers and other

persons to readily identify the reasons that a firm is conducting a recall. The description must 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 must 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.

(g) *Identification of recalling firm.* A recall notice must identify the firm conducting the recall by stating the firm's legal name and commonly known trade name, and the city and state of its headquarters. The notice must state whether the recalling firm is a manufacturer (including importer), retailer, or distributor.

(h) *Identification of manufacturers.* A 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 United States, a recall notice must identify the foreign manufacturer and the United States 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 foreign manufacturer's legal name and the city and country of its headquarters.

(i) *Identification of significant retailers.* A recall notice must identify each significant retailer of the product. A recall notice must 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 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 United States 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.

(j) *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, must be provided.

(k) *Dates of manufacture and sale.* A 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.

(l) *Price.* A recall notice must state the approximate retail price or price range of the product.

(m) *Description of incidents, injuries, and deaths.* A recall notice must 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 must enable consumers and other persons to readily understand the nature and extent of the incidents and injuries. A recall notice must state the ages of all persons injured and killed. A recall notice must state the dates or range of dates on which the Commission received information about injuries and deaths.

(n) *Description of remedy.* A recall notice must 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, returning part or all of the product, or removing or disabling part of the product.

(3) All specific information that a consumer needs in order 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 numbers, e-mail address, and Web site address); whether telephone calls will be toll-free or collect; and telephone number days and hours of operation including time zone.

(o) *Other information.* A recall notice must contain such other information as 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

United States district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), deems appropriate and orders.

§ 1115.28 Multiple products or models.

For each product or model covered by a recall notice, the notice must meet the requirements of this subpart.

§ 1115.29 Final determination regarding form and content.

(a) *Commission or court discretion.* The recall notice content required by this subpart must be included in a recall notice whether or not the firm admits the existence of a defect or of an actual or potential hazard, and whether or not the firm concedes the accuracy or applicability of all of the information contained in the recall notice. The Commission will make the final determination as to the form and content of the recall notice for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), and a United States district court will make the final determination as to the form and content of a recall notice for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061).

(b) *Recall notice exceptions.* 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 United States district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), may determine that one or more of the recall notice requirements set forth in this subpart is not required, and will not be included, in a recall notice.

(c) *Commission approval.* Before a firm may publish, broadcast, or otherwise disseminate a recall notice to be issued pursuant to an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), the Commission must review and agree in writing to all aspects of the notice.

Dated: _____, 2009.

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Todd A. Stevenson, Secretary,

United States Consumer Product Safety Commission.

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