



Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

CPSC Docket No. CPSC-2013- 0040

Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Proposed Rulemaking.

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

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

ADDRESSES: Comments, identified by Docket No. CPSC-2013-0040, may be submitted electronically or in writing:

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

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

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

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number, CPSC 2013-0040, into the “Search” box, and follow the prompts.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

Although Section 214 applies only to mandatory recalls, the House Committee considering the legislation explicitly expressed an expectation that similar information would be provided, as applicable and to the greatest extent possible, in the notices issued in voluntary recalls. H.R. Rep. No. 110-501 at 40 (2008) (House Report). The Commission agrees with this statement, and believes that whether a product hazard is

addressed in the context of a mandatory recall or a voluntary recall, the need to inform and encourage affected consumers to act is similar.

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

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

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

II. Basis for Proposed Rule

The portion of the proposed rule regarding recall notices is based upon a recommendation from a House Report that voluntary recall notices should contain information similar to that required for mandatory recall notices (see H.R. Rep. No. 110-

501 at 40 (2008)) and upon many years of Commission experience with recalls and recall effectiveness. The proposal also is based on related agency expertise and on the information contained in agency recall guidance materials, including the Recall Handbook (<http://www.cpsc.gov/PageFiles/106141/8002.pdf>) and the requirements and guidelines for mandatory recall notices (16 CFR part 1115, subpart C).

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

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

Negotiated corrective actions give the Commission the opportunity to tailor remedies to a particular situation and the associated health and safety risks presented. The proposed rule would include language that would permit, in appropriate situations and at the Commission's discretion, the Commission to pursue compliance program requirements in the course of negotiating corrective action plans. The proposed rule contemplates that if appropriate, a corresponding reference to compliance program

requirements may be included in the related voluntary recall notice. Inclusion of compliance program requirements as an element of voluntary corrective action plans would echo compliance program requirements incorporated as part of recent civil penalty settlement agreements.

III. Description of the Proposed Rule

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

1. Proposed § 1115.20(a) – Legally Binding

The Commission proposes to revise § 1115.20(a) to state that, once a firm voluntarily agrees to undertake a corrective action plan, the firm is legally bound to fulfill the terms of the agreement. The Commission has the authority to order mandatory recalls of products, and, as noted earlier, the CPSIA increased the Commission’s ability to undertake mandatory recalls of defective or violative products. However, in the interests of the public and most importers, manufacturers, wholesalers, and retailers, almost all recalls overseen by the Commission are jointly conducted by firms and the Commission on a voluntary basis. Part of the process of a voluntary recall includes the Commission and the firm agreeing to a corrective action plan that details the steps the firm will take including, but not limited to, the type of remedy it will offer to the public. Currently, § 1115.20(a) defines a corrective action plan as “a document, signed by a subject firm, which sets forth the remedial action which the firm will voluntarily undertake to protect the public, but which has no legally binding effect.” The result is that the Commission is prohibited from enforcing the terms of a corrective action plan if a recalcitrant firm

violates the terms of its corrective action plan. In addition, the Commission has encountered firms that have deliberately and unnecessarily delayed the timely implementation of the provisions of their correction action plans. Accordingly, proposed § 1115.20(a) would provide the Commission with the necessary tools to compel a noncompliant or dilatory firm to carry out the terms of its voluntarily agreed upon corrective action plan.

In addition, amended § 1115.20(a) would make clear to firms wishing to conduct a voluntary recall that the Commission's preferred remedies are refunds, repairs and replacements, and that firms wishing to use other remedies shall have the burden of demonstrating that those alternatives will be as effective as the preferred remedies.

2. Proposed § 1115.20(a)(1)(xiii) – Admissions

Amended § 1115.20(a)(1)(xiii) would provide the Commission with additional flexibility concerning admissions in corrective action plans. Eliminating the phrase, "If desired by the subject firm," and revising the sentence to include the following language later in the sentence "if agreed to by all parties" facilitates an opportunity for the Commission to negotiate and agree to appropriate admissions in each particular corrective active plan.

3. Proposed § 1115.20(a)(5) – Compliant Remedies

Proposed § 1115.20(a)(5) would describe the Commission's intent that any remedial actions set forth in a corrective action plan be compliant with all applicable CPSC rules, regulations, standards, or bans. This revision is intended to make that expectation specific.

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

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

The proposed rule sets forth the types of enforcement actions in which the Commission may address violations of a voluntary compliance program agreement including, but not limited to: seeking an injunction or specific performance as well as pursuing all applicable sanctions under the CPSA.

In addition, proposed § 1115.20(b) would provide examples of the types of provisions that may be included in a voluntary compliance program agreement including, but not limited to: maintaining and enforcing a system of internal controls and procedures to ensure that a firm promptly, completely, and accurately reports required information about its products to the Commission; ensuring that information required to be disclosed by the firm to the Commission is recorded, processed, and reported, in accordance with applicable law; establishing an effective program to ensure the firm remains in compliance with safety statutes and regulations enforced by the Commission;

providing firm employees with written standards and policies, compliance training, and the means to report compliance-related concerns confidentially; ensuring that prompt disclosure is made to the firm's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, the firm's ability to report to the Commission; providing the Commission with written documentation, upon request, of the firm's improvements, processes, and controls related to the firm's reporting procedures; or making available all information, materials, and personnel deemed necessary to the Commission to evaluate the firm's compliance with the terms of the agreement.

Current § 1115.20(b) regarding consent order agreements would be re-designated to § 1115.20(c).

5. Proposed § 1115.20(c)(1)(xii) – Admissions

Proposed § 1115.20(c)(1)(xii) would amend 16 CFR 1115.20(b)(1)(xii) to provide the Commission with additional flexibility concerning admissions in consent order agreements. Eliminating the phrase, "If desired by the subject firm," and revising the sentence to include the following language later in the sentence "if agreed to by all parties" facilitates an opportunity for the Commission to negotiate and agree to appropriate admissions in each particular consent order agreement."

6. Proposed § 1115.30 – Purpose

Proposed § 1115.30 would describe the purpose for a new subpart D, "Principles and Guidelines for Voluntary Recall Notices," which is to see that every voluntary recall notice helps consumers and other affected persons identify the product to which a recall notice pertains, understand the actual or potential hazards presented by the product,

understand the remedies available to consumers concerning the product, and take appropriate action in response to the notice. The proposed rule would provide principles concerning the content and form of voluntary recall notices and guidelines concerning the expected content of all such recall notices, drafted by Commission staff and the recalling firm.

7. Proposed § 1115.31 – Applicability

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

8. Proposed § 1115.32 – Definitions

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

9. Proposed § 1115.33– Voluntary Recall Notice Principles

Proposed § 1115.33 would provide general principles and describe the Commission’s policies pertaining to recall notices. The proposed principles are similar to the guidelines for mandatory recall notices codified at 16 CFR 1115.26, with certain exceptions. In general, proposed § 1115.33(a) would state principles that are important for recall notices to be effective. For example, proposed § 1115.33(a)(1) would state that

a recall notice should provide information that enables consumers and other affected persons to identify the recalled product and take appropriate action.

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

Proposed § 1115.33 (a)(5) is similar to 16 CFR 1115.26(a)(5) but specifically identifies the methods to be used to publicize a voluntary recall notice. These methods are clearly listed as a press release or recall alert, a prominently displayed in-store poster, and a website posting, as well as two additional forms of publication from the subsequent list of voluntary recall notice forms delineated in § 1115.33 (b)(1)(i)-(vi). In an effort to provide clarity regarding the types of methods a firm should use, this proposed change describes the five preferred categories of methods for disseminating the voluntary recall information to broad audiences.

Proposed § 1115.33(b)(1) is similar to 16 CFR 1115.26(b)(1) but would include “electronic” and “electronic medium” as general forms for a voluntary recall notice and would identify additional specific forms of, and means for, communicating a voluntary

recall notice as acceptable, such as radio news release; video news release; b-roll package; YouTube; Instagram, or Vine video; and social media sites, such as Facebook, Google+, Twitter, Pinterest, Tumblr, Flickr, and blogs, as examples. Guidance from the Office of Management and Budget calls for agencies to format public communications for mobile platforms, such as smartphones, tablets, and similar devices. The reference to “electronic” and “electronic medium” forms of the press release is intended to promote the use of communications using digital and mobile platforms. In addition, this section seeks to reflect the common practice in recent years for CPSC staff to request that recalling firms use their own social media platforms to communicate directly with customers about voluntary recalls. This low-cost mechanism of informing customers is designed to enhance the likelihood that customers will learn about the recall and pursue the remedy offered and that these firms use video and other electronic media for this purpose.

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

Because firms often lack specific contact information, most recall notices are disseminated to broad audiences. In contrast, a direct recall notice is sent directly to specific, identifiable consumers of the recalled product. In most instances, these consumers are the purchasers of the recalled product. In other instances, the purchasers

may have given the product to other consumers, as a gift, for example. In the latter case, if the purchaser received the recall notice, the purchaser will generally know to whom the purchaser gave the product and could contact the recipient about the recall notice. In either case, the persons exposed to the product and its hazard will be more likely to receive and respond to a direct recall notice than a broadly disseminated recall notice. The proposed rule reflects the Commission's expectation that firms will take reasonable steps to obtain direct customer contact information from third parties for purposes of issuing direct voluntary recall notices, rather than rely solely on information contained in the firm's own records.

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

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

10. Proposed § 1115.34 – Voluntary Recall Notice Content Guidelines

Proposed § 1115.34 is similar to 16 CFR 1115.27 and would set forth guidelines for the content of voluntary recall notices. The objectives of a recall include locating the recalled products, removing the recalled products from the distribution chain and from consumers, and communicating information to the public about the recalled product and the remedy offered to consumers. A voluntary recall notice should motivate firms and media to publicize the recall information widely, and the notice should motivate consumers to act on the recall for the sake of safety.

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

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

Proposed § 1115.34(c) sets forth the content for voluntary recall notice headlines and does not correspond to any provision in 16 CFR 1115.27. A protocol for drafting

voluntary recall notice headlines will support the Commission's efforts to achieve fairness, accuracy, and newsworthiness of recall press releases.

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

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

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

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

Proposed § 1115.34(f) is similar to 16 CFR 1115.27(e) and would provide that the voluntary recall notice should state the approximate number of units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce. This information communicates to the consumer whether the product was widely produced and distributed or sold only in limited numbers.

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

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

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

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

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

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

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

nationwide and regional retailers are likely to be more familiar to consumers than retailers that have only a limited physical presence.

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

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

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

Proposed § 1115.34(l) is similar to 16 CFR 1115.27(k) and would provide that the voluntary recall notice should state the month and year in which the manufacture of the product began and ended and the month and year in which the retail sales began and

ended for each make and model of the product covered by the recall notice to assist consumers in determining whether they have the product at issue.

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

Proposed § 1115.34(n), which is similar to 16 CFR 1115.27(m), addresses the description in the voluntary recall notice of all incidents, injuries, and deaths associated with the product conditions or circumstances giving rise to the recall. The notice should provide the ages and states of residence of persons killed. This section also provides for prompt conveyance to the Commission of information relating to any product-related fatality or a significant number of additional product-related incidents that a firm receives after the initial recall notice. In addition, this section provides that the information should be reflected promptly in an update to the notice on the firm's website and the Commission's website.

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

inclusion in the voluntary recall notice, the notice should refer customers to the recalling firm's website or call center.

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

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

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

11. Proposed § 1115.35 – Multiple Products or Models

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

IV. Administrative Procedure Act

The Administrative Procedure Act (APA) requires publication of a general notice of proposed rulemaking for most rules. 5 U.S.C. 553(b). However, this requirement does not apply to interpretive rules and general statements of policy. *Id.* 553(b)(A). This

proposed rule would provide guidance about the content of voluntary recall notices, and amend 16 CFR 1115.20 of the Commission's existing interpretive rule regarding corrective action plans to provide that, where appropriate, a corrective action plan may include compliance program-related requirements. The proposed rule would not establish any mandatory requirements.

Because both corrective action plans and related voluntary recall notices require agency and firm consensus, notice and comment could provide valuable feedback to improve the efficacy and usefulness of the guidance to be contained in the rule. As proposed, the rule reflects agency experience and practice; and is intended to help address product hazards and promote the timely, accurate, and complete disclosure of information necessary to protect public health and safety. Additional information regarding stakeholder experience in framing and communicating corrective action plans and related voluntary recall notices could assist CPSC in refining related interpretive rule guidance, with a goal of protecting public health and safety.

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

V. Effective Date

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

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

VI. Regulatory Flexibility Act

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

VII. Paperwork Reduction Act

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

VIII. Environmental Considerations

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

List of Subjects

16 CFR Part 1115

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

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

PART 1115 – SUBSTANTIAL PRODUCT HAZARD REPORTS

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

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079, and 2084.

2. In § 1115.20 revise paragraphs (a) and (a)(1)(xiii); add paragraphs (a)(1)(xv) and (a)(5); redesignate paragraph (b) as paragraph (c) and add new paragraph (b); and revise newly redesignated paragraph (c)(1)(xii) to read as follows:

§ 1115.20 Voluntary remedial actions.

* * * * *

(a) *Corrective action plans.* A corrective action plan is a document, signed by a subject firm, which is legally binding and sets forth the remedial action which the firm will voluntarily undertake to protect the public. Refunds, repairs and replacements are preferred remedies. Firms that wish to use other remedies shall have the burden of demonstrating that those alternatives will be as effective as the preferred remedies. The Commission reserves the right to seek broader corrective action if it becomes aware of new facts or if the corrective action plan does not sufficiently protect the public.

(1) * * *

(xiii) The following statement or its equivalent, if agreed to by all parties: “The submission of this corrective action plan does not constitute an admission by (the subject firm) that either reportable information or a substantial product hazard exists.”

* * * * *

(xv) Compliance program-related requirements.

* * * * *

(5) All remedial actions undertaken pursuant to a corrective action plan shall be compliant with all applicable CPSC rules, regulations, standards, or bans.

(b) *Voluntary compliance program agreements under section 15 of CPSA.* A voluntary compliance program agreement is a provision in a voluntary corrective action

plan (or a separate agreement, as appropriate) executed by a subject firm and the Commission that incorporates a specific written plan for future steps to be taken by the firm to assure that it meets the requirements of the agency's laws and regulations. Violation of a voluntary compliance program agreement may result in a formal Commission enforcement action, including all applicable sanctions set forth in the Consumer Product Safety Act. A violation may also result in legal action by the Commission to enforce the terms of a compliance agreement such as seeking an injunction or specific performance, as appropriate.

(1) The Commission always retains broad discretion to seek a voluntary compliance program agreement. Under certain circumstances, it may be appropriate for the Commission to seek agreements with firms to implement a compliance program, including but not limited to, the following:

(i) Multiple previous recalls and/or violations of Commission requirements over a relatively short period of time;

(ii) Failure to timely report substantial product hazards on previous occasions; or

(iii) Evidence of insufficient or ineffectual procedures and controls for preventing the manufacturing, importation, and/or distribution of dangerously defective or violative products.

(2) The provisions in a voluntary compliance program agreement may vary depending on the nature and circumstances of a firm's behavior that led the Commission to determine that such an agreement is in the public interest. The following provisions, among others as appropriate, may be included in a written voluntary compliance program agreement:

(i) Maintain and enforce a system of internal controls and procedures to ensure that the firm promptly, completely, and accurately reports required information about its products to the Commission;

(ii) Ensure that information required to be disclosed by the firm to the Commission is recorded, processed, and reported, in accordance with applicable law;

(iii) Establish an effective program to ensure the firm remains in compliance with safety statutes and regulations enforced by the Commission;

(iv) Provide firm employees with written standards and policies, compliance training, and the means to report compliance-related concerns confidentially;

(v) Ensure that prompt disclosure is made to the firm's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, the firm's ability to report to the Commission;

(vi) Provide the Commission with written documentation, upon request, of the firm's improvements, processes, and controls related to the firm's reporting procedures;
or

(vii) Make available all information, materials, and personnel deemed necessary to the Commission to evaluate the firm's compliance with the terms of the agreement.

(c) *Consent order agreements under section 15 of CPSA.*

* * * * *

(1) * * *

(xii) The following statement or its equivalent, if agreed to by all parties: "The signing of this consent order agreement does not constitute an admission by (the

Consenting Party) that either reportable information or a substantial product hazard exists.”

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

Subpart D -- Voluntary Recall Notices

Secs.

1115.30 Purpose.

1115.31 Applicability.

1115.32 Definitions.

1115.33 Voluntary recall notice principles.

1115.34 Voluntary recall notice content guidelines.

1115.35 Multiple products or mode

Subpart D -- Voluntary Recall Notices

§ 1115.30 Purpose.

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

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

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

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

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

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

§ 1115.31 Applicability.

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

§ 1115.32 Definitions.

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

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

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

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

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

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

§ 1115.33 Voluntary recall notice principles.

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

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

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

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

(5) Voluntary recall notices should be made using:

- (i) a press release or Recall Alert;
- (ii) a prominently displayed in-store poster;
- (iii) a website posting; and
- (iv) at least two additional methods of publication not included in (i) through (iii)

above from the voluntary recall notice forms provided in Subsection (b) of this section.

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

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

(2) *Direct voluntary recall notice.* A direct voluntary recall notice shall be used for each consumer for whom a firm has direct contact information, or when such information is reasonably obtainable from third parties, such as retailers, or from the firm's internal records, regardless of whether the information was collected for product registration, sales records, catalog orders, billing records, marketing purposes, warranty

information, loyal purchaser clubs, or other such purposes. Direct contact information includes, but is not limited to: name and address, telephone number, and electronic mail address. Direct voluntary recall notices may be transmitted using an electronic medium and in hard copy form. Direct voluntary recall notices should include in a readily-apparent location, a prominent and conspicuous statement (*e.g.*, by using large, bold, red typeface), which includes the term “Safety Recall,” and which otherwise highlights the importance of the communication.

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

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

(c) *Languages.* All voluntary recall notices should be in the English language. In addition, a voluntary recall notice should be translated into additional languages, if, in the Commission’s discretion, such translations are necessary or appropriate to adequately inform consumers or the public. Such voluntary recall notice translations should be transmitted in the same manner as, and along with, the English language voluntary recall notice. In circumstances requiring voluntary recall notice translations, the recalling firm should provide consumer recall support (such as call center scripts, in-store posters and other communications) in both English and the applicable translation. Where Spanish, in addition to English, is the appropriate language for a voluntary recall notice, the recalling

firm should use the Commission's Spanish translation of the recall press release on its website and other agreed-upon locations.

§ 1115.34 Voluntary recall notice content guidelines.

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

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

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

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

(d) *Description of product.* A voluntary recall notice should include a clear and concise statement of the information that will enable consumers and other persons to readily and accurately identify the specific product and distinguish the product from similar products. The information should allow consumers to determine readily whether they have, or may have been exposed to the product. To the extent applicable to a product, descriptive information that should appear on a voluntary recall notice should include, but not be limited to:

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

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

(3) The product's colors and sizes;

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

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

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

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

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

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

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

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

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

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

(i) *Identification of manufacturer.* A voluntary recall notice should identify each manufacturer (including importer) of the product and the country of manufacture. Under the definition in section 3(a)(11) of the CPSA (15 U.S.C. 2052(a)(11)), a “manufacturer”

means “any person who manufactures or imports a consumer product.” If a product has been manufactured outside of the United States, a voluntary recall notice should identify the foreign manufacturer and the United States importer. A voluntary recall notice should identify the manufacturer by stating the manufacturer’s legal name and the city and state of its headquarters, or, if a foreign manufacturer, the foreign manufacturer’s legal name and the city and country of its headquarters.

(j) *Identification of significant retailers.* A voluntary recall notice should identify each significant retailer of the product. A recall notice should identify such a retailer by stating the retailer’s commonly known trade name. Under the definition in Section 3(a)(13) of the CPSA (15 U.S.C. 2052(a)(13)), a “retailer” means “a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.” A product’s retailer is “significant” if, upon the Commission’s information and belief, any one or more of the circumstances set forth below is present (the Commission may request manufacturers (including importers), retailers and distributors to provide information relating to these circumstances):

- (1) The retailer was the exclusive retailer of the product;
- (2) The retailer was an importer of the product;
- (3) The retailer has multiple stores nationwide or regionally;
- (4) The retailer sold, or held for purposes of sale or distribution in commerce, a significant number of the total manufactured, imported, or distributed units of the product; or;
- (5) Identification of the retailer is in the public interest.

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

(l) *Dates of manufacture and sale.* A voluntary recall notice should state the month and year in which the manufacture of the product began and ended, and the month and year in which the retail sales of the product began and ended. These dates should be included for each make and model of the product.

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

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

(1) If, after the issuance of the voluntary recall notice, the firm receives information that a significant number of additional incidents, or one or more fatalities associated with the product have occurred, such information should be reflected in an update to the notice on the firm's website.

(2) The firm should immediately notify the Commission of all newly reported injuries and/or fatalities in order to permit the issuance of an updated voluntary recall notice.

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

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

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

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

(4) If, after the issuance of the voluntary recall notice, the firm intends to change the process or nature of the remedy, this information should be promptly communicated

to the Commission. Changes to the process or nature of the remedy should be reflected in an update to the voluntary recall notice agreed to by the Commission and the firm. The updated voluntary recall notice should be posted promptly on the firm's website and the Commission's website and otherwise transmitted to consumers in a manner consistent with the communication of the initial voluntary recall notice.

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

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

§ 1115.35 Multiple products or mode

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

Dated: November 14, 2013

Todd A. Stevenson
Secretary, Consumer Product Safety Commission

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