

Office of the Secretary
Consumer Product Safety Commission
Room 502
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Bethesda, Maryland 20814
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**Comments of Kids In Danger, Consumer Federation of America, Consumers Union, the Union of Concerned Scientists, National Research Center for Women & Families, and Public Citizen, to the U.S. Consumer Product Safety Commission on “Notice of Proposed Rulemaking on Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices,”
Docket No. CPSC– 2013-0040**

I. Introduction

Kids In Danger (KID), Consumer Federation of America (CFA), Consumers Union (CU), the Union of Concerned Scientists (UCS), National Research Center for Women & Families (NRCWF), and Public Citizen (PC) submit the following comments to the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) in the above-referenced matter.¹

II. Background

The U.S. Consumer Product Safety Commission (Commission or CPSC) has proposed 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 existing regulations provide for notice to the public of the corrective action that a firm agrees to undertake, but 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 that each notice should be tailored appropriately. The proposed rule also provides that corrective action plans may include compliance program-related requirements when appropriate. In addition, the proposed rule would make the corrective action plan agreed to by CPSC and the recalling party legally binding.

The CPSC’s main tool to protect consumers is the corrective action plan or recall. It is through these efforts that unsafe products are identified to the public with the goal of repairing, replacing, or removing them from use to avoid the hazard posed by the product. In reality, the majority of recalled products remain unaccounted for with most of the products presumably still in use. Unlike food recalls, where the product has often been consumed prior to the recall, consumer

¹ Notice of Proposed Rulemaking on Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices. Federal Register Vol. No. 225 page 69793 (November 21, 2013).

products remain in use for years after a recall, as the recent deaths² in a decades-old hope chest that was recalled³ in 1996 illustrate. More information presented clearly to consumers at the time of the recall, additional ways to deliver recall information, and a legally binding corrective action plan will help to reduce the number of dangerous products that remain in consumer hands after recall.

III. Discussion & Recommendations

This new rule on voluntary recalls and corrective action plans is warranted and will provide a new measure of safety for consumers. In particular, the new rule will allow the CPSC to use its years of experience in developing corrective action plans to make them more effective, will eliminate delays that currently occur when details that should not be negotiable take days, weeks, or months to negotiate, and will allow the CPSC and recalling firms to more effectively use new tools such as social media to reach consumers. By making the agreements legally binding, CPSC can better ensure that the plan will be carried out in a timely manner and in the manner that was negotiated. Our specific comment and recommendations are as follows:

A. Section 1115.20(a)—Legally Binding

Our organizations firmly support the CPSC's efforts to make corrective action plans legally binding. These plans are negotiated and agreed to by the recalling company, but without legally binding language, there is no pressure on recalcitrant companies to fully comply. Just as consumers are subject to binding contracts when they purchase products and services such as credit cards and internet service, among many others, companies should be subject to a binding agreement when they agree to a compliance plan regarding a recalled product. Any company that intends to comply with a corrective action plan should not object to this provision, as it simply gives CPSC enforcement authority over an agreement that the company presumably intends to honor.

Without meaningful enforcement authority, the CPSC has been limited in the ways that it can remove dangerous products from the market and from use by consumers. Making corrective action plans legally binding allows the CPSC to take action, as necessary, more promptly and without additional expense, to see that the plan is actually implemented.

In addition, this section highlights the CPSC's preferred remedies -- refunds, replacements or repairs -- and requires companies that propose different remedies to show that those other remedies will be equally successful. We would urge the CPSC to consider requiring only refunds or replacements in corrective action plans involving products that have caused death or severe injury. Leaving it in consumers' hands to repair a faulty, deadly product can often lead to delayed or poor repairs and additional injuries, as we saw with immobilization kits for drop-side cribs.

² <http://www.nbcnews.com/health/child-deaths-are-tragic-reminder-products-pose-risk-long-after-2D11939815>.

³ <http://www.cpsc.gov/en/Recalls/1996/CPSC-The-Lane-Furniture-Company-Announce-Recall-for-In-Home-Replacement-of-Locks-on-Cedar-Chests/>

B. Section 1115.20(a)(1)(xiii) and 1115.20(c)(1)(xii)- Admissions

We support the strengthening language in these sections.

C. Section 1115.20(a)(5)—Compliant Remedies

Our organizations support this requirement. The CPSC's sanctioned repairs should not leave consumers with products that don't comply with current safety standards. Such products could pose risks to consumers. In those instances, replacement or refund is a more appropriate remedy.

D. Section 1115.20(a)(1)(xv) and 1115.20(b)—Compliance Programs

This is one of the most important measures in the proposed rule. Too often, a lack of internal controls or systems leads to a potentially unsafe product that must be recalled. By announcing the recall without fixing the problem that led to it, additional problems with other products may follow. Especially in cases of repeat offenders, for those companies with multiple recalls, we support the implementation of an effective compliance program in the corrective action plan.

E. Section 1115.30- 1115.32 – Purpose, Applicability and Definitions

We support the language in these sections.

F. Section 1115.33 - Voluntary Recall Notice Principles

Our organizations support these changes which echo Section 16 CFR 1115.26. In particular, we support Section 1115.33(a)(5), which describes ways a voluntary recall should be publicized, noting web page use and additional means such as social media. We would also recommend that the CPSC consider broadening its own use of social media to convey recall notices. Consumers trust and respect the CPSC, and its notice postings on Twitter are often retweeted. Similar action on Facebook and other social media sites would increase the likelihood a consumer will learn of a recall and take action. Such social media use to improve consumer awareness of safety recalls is not, in our view, in any way legally limited by Section 6(b) of the CPSA, since it includes only publically available information. CPSC can put additional controls on its Facebook page, as many nonprofits and other entities do, to restrict postings from others there.

G. Section 1115.34—Voluntary Recall Notice Content Guidelines

Our organizations support this section, which is similar to the Section 16 CFR 1115.27 already in place for mandatory recalls. Recall notices should be written and disseminated in such a way that consumers will be motivated to take action and that other entities such as the media, nonprofit organizations, retailers and local community officials will be motivated to share in the dissemination of the information. These changes will enhance the ability of consumers to quickly and effectively gather pertinent information from recall notices to ascertain: whether

they have the product in question; what the safety risk is; how severe the risk is; and what they should do. In 2013, Kids In Danger conducted focus group research with parents, child care providers, and grandparents. The research showed that being able to make these determinations quickly is an important factor in how likely someone is to take the information seriously and take actions to remove the product from their home. We also support this section's premise that the existence of compliance programs agreed to in the corrective action plan should be communicated to the public.

IV. Conclusion

Our organizations strongly support the proposed rule and guidelines. These actions will strengthen recall effectiveness and will enable the use of additional resources to communicate the vital safety information in recall notices to the consumers using the products. In addition, we recommend that the CPSC expand its own use of social media to communicate recall and other safety information to consumers.

Respectfully submitted,

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