



we wear® compliance

February 4, 2014

Office of the Secretary
Consumer Product Safety Commission
Room 820
4330 East West Highway
Bethesda, MD 20814

**RE: NOTICE OF PROPOSED RULEMAKING; VOLUNTARY
REMEDIAL ACTIONS AND GUIDELINES FOR VOLUNTARY
RECALL NOTICES (DOCKET NO. CPSC-2013-00400)**

On the behalf of the American Apparel & Footwear Association (AAFA), I am writing in response to the request for comments by the Consumer Product Safety Commission's (CPSC) notice of proposed rulemaking that would establish standards for voluntary product recalls.

AAFA is the national trade association representing the apparel and footwear industry including its suppliers, manufacturers, retailers and service providers. Our members produce and sell products that touch every American- clothing and shoes. Our industry accounts for more than four million U.S. employees and more than \$ 350 billion in retail sales each year.

BACKGROUND

According to the CPSC, the basis for proposed rule lies in the Commission's belief 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."¹

Based on the above objectives, AAFA believes the proposed rule undermines the Commission's goals and may have significant unintended consequences on the effectiveness of the current voluntary recall process, thus increasing the risk of harm to consumers.

The AAFA and its members are committed to consumer product safety and working as partners with the CPSC on furtherance of shared goals of risk reduction and hazard avoidance. As such we offer the following comments.

A. Voluntary Corrective Action Plans Should Not be Legally Binding

¹ <http://www.gpo.gov/fdsys/pkg/FR-2013-11-21/pdf/2013-27656.pdf>

1601 North Kent Street
Suite 1200
Arlington, VA 22209

(703) 524-1864
(800) 520-2262
(703) 522-6741 fax
www.wewear.org

Under the current voluntary regulatory framework, corrective action plans are expressly not legally binding.² The lone exception, to date, has been a legally binding voluntary agreement containing a corrective action plan in the form of a consent order.³

The original voluntary recall rule promulgated in 1975 distinguished between the voluntary, non-binding corrective action plan and the binding consent agreement, explaining that the consent agreement should only be used where there was **"a lack of full confidence that the company would comply with a non-binding Corrective Action Plan"** based on the staff's prior experience with the firm.⁴ The non-binding corrective action plan was established specifically "as an expeditious means of protecting the public from a substantial product hazard," in contrast to having to take time to go through the process of securing a consent order.

AAFA believes the Commission's proposal to make corrective action plans legally binding is a serious departure from the original intent of the rule, and we urge the Commission to consider the likely unintended consequences such as:

- Potential significant delays in the voluntary recall process so that terms can be negotiated, vetted, and finalized, thereby undercutting the streamlining benefits of the Fast Track program;
- Shifting of CPSC resources away from getting unsafe products out of the hands of consumers toward negotiating and enforcing corrective action plan agreements; and
- Erosion of the cooperative relationship between industry and the Commission. Firms that previously inclined to err on the side of corrective action may be forced to re-evaluate such action due to the risk of litigation, liability, and disclosure.

As such, AAFA and its members strongly urge to Commission to withdraw the amendment that voluntary corrective action plans become legally binding.

B. Compliance Programs Should Not Be Included in Corrective Action Plans

The proposed rule to include a "compliance program-related requirement" in corrective action plans would also have unintended consequences and is not authorized by any of the statutes that the CPSC enforces. Section 15 of the CPSA allows the CPSC to order recalls and notices; it does not give the agency authority to tell firms how to structure their businesses or internal procedures. As demonstrated, the expertise of the Commission's compliance staff is in negotiating recalls. The CPSC's staff should not become enmeshed in attempting to design a company's compliance program as part of that company's product recall corrective action plan. There are many reasons why a company may recall one of its products that would in no way justify the CPSC imposing some broad compliance program on that company.

² 16 CFR § 1115.20(a).

³ 16 CFR § 1115.20(b).

⁴ 40 Fed. Reg. 30,938 (July 24, 1975).

As such, AAFA and its members strongly encourage the Commission to withdraw the “compliance program-related requirement.

C. Additional Concerns

AAFA members have also raised concerns over the following additions that the proposal seeks to add to the recall notice:

1. *Foreign Manufacturer Name, City and Country when not the importer.* This is usually considered proprietary information and disclosed only in confidence to CPSC. Moreover, including this information in recall notices, only clutter such notices with information that the consumer cannot use.
2. *State of Residence of all Fatalities:* Such information strikes as confusing and further clutters recall notices. We see no clear rationale as to the benefit of its inclusion.
3. *Dates of Manufacture (rather than dates sold):* This information may confuse consumers and may actually discourage consumers from thinking their product is covered by a recall.

CONCLUSION

The proposed rule marks a significant change in the Commission's approach to voluntary recalls. In attempting to alter the system that has been in place and working for decades, the Commission is jeopardizing its ability to effectively respond to product safety issues. We believe the numerous and serious concerns that we and many other raise regarding the proposed rule should give the Commission pause before proceeding to a final rule. Accordingly, the AAFA encourages the CPSC to remove from any final interpretive rule the portions of the draft rule that propose to make a corrective action plan legally binding and which purport to give the CPSC the power to order a company to develop an omnibus company-wide compliance program as part of a product-specific recall corrective action plan.

Thank you for your time and consideration in this matter. Please contact Danielle Abdul of my staff at 703.797.9039 or by email at dabdul@wewear.org if you have any questions or would like additional information.

Sincerely,



Steve Lamar
Executive Vice President