

# Proposed Rules

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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](mailto: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.

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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 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.

(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

(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]

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## **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