

March 21, 2014

The Honorable Robert S. Adler
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Adler,

I write today to communicate serious reservations about the rulemaking being conducted by the Consumer Product Safety Commission (CPSC) regarding remedial actions and guidelines for voluntary recall notices. While framed as “interpretive” guidance, the CPSC’s proposed rule makes substantial changes to current practice surrounding voluntary recalls – changes that could result in significant compliance burdens for businesses wishing to voluntarily recall a product.

The CPSC currently has in place a highly successful “Fast Track” process that enables a company to make use of an expedited process, in consultation with the CPSC, to recall a defective product. This innovative program eases regulatory requirements and enables businesses to work with the CPSC to get defective products off store shelves within days, rather than the weeks and months a normal recall process might take. The “Fast Track” program demonstrates a smart blend of strong consumer protections and ease of business compliance, creating an environment that encourages businesses to report defective products and quickly remove them from circulation.

The proposed rule under consideration would make substantial changes to the “Fast Track” program and could threaten the incentives for businesses to undertake voluntary recalls, as well as substantially increase the cost of completing the process. Most significantly, the proposed rule makes the corrective action plans in voluntary recall agreements legally binding, which could dramatically shift the incentive structure for businesses to report incidences of defective products. Making a plan legally binding will slow down the voluntary recall process, leaving consumers at risk for a longer period of time as the plans will first need to be subject to detailed review by legal counsel.

The proposed rule would also allow the CPSC to require the adoption of a compliance program as a component of corrective action plans. This requirement – if not properly calibrated – could introduce further delays in the voluntary recall process, even when a business has no history of recalls or violations. Thus, in the midst of working with the CPSC on the parameters of a

voluntary recall agreement, a business might also have to negotiate the parameters of a compliance program and provide description of said program in the recall announcement.

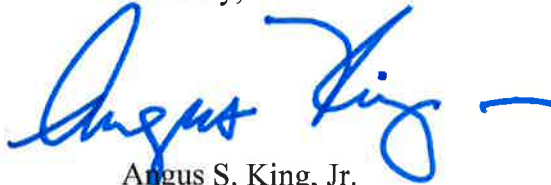
While Section 214 of the Consumer Product Safety Improvement Act of 2008 required the CPSC to establish requirements for mandatory recall notices, the statute bears no mention of establishing similar requirements for voluntary recalls. I understand that the CPSC bases its authority to establish guidelines from language in a House committee report, but I am not convinced that the proposed rule's sweeping changes to the existing voluntary recall process is congruent with either the intent of the statute or the language in the committee report.

Existing regulations require companies initiating a voluntary recall to propose and implement a formal corrective action plan, but these plans were never intended to be legally binding. Part 1115.20 of title 16 of the Code of Federal Regulations describes 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.” In effect, the regulations expressly prohibited the Commission from making these agreements legally binding in order to encourage – not deter – businesses to recall defective products. The CPSC's proposed rules may have the opposite of the intended effect – and, at the very least, could substantially delay the timely distribution of product safety information to the public.

Make no mistake: I have long been an advocate for strong regulations that protect public health, safety, and the environment. However, I also believe that we must regulate in a manner that is sensitive to the burdens placed on individuals and businesses. My opinion is that the CPSC's proposed rule may go too far – and may have the unintended consequence of delaying the recall process and extending the period of time in which defective items remain in circulation.

I urge the Commission to take my comments into consideration. The proposed rule could have a widespread and indiscriminate effect on voluntary recalls, and I ask the Commission to do its due diligence in fully vetting the impacts on businesses across the country, particularly for those wishing to initiate a voluntary recall as a precautionary measure. For large businesses, who already employ legal counsel and compliance officers, these new requirements will be substantial; for small businesses, they could be crippling.

Sincerely,

A handwritten signature in blue ink that reads "Angus King" with a horizontal line extending to the right.

Angus S. King, Jr.
United States Senator