§ 1115.20 Voluntary remedial actions.

As appropriate, the Commission will attempt to protect the public from substantial product hazards by seeking one or more of the following voluntary remedies:

(a) Corrective action plans. A corrective action plan is 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 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) Corrective action plans shall include, as appropriate:

(i) A statement of the nature of the alleged hazard associated with the product, including the nature of the alleged defect or noncompliance and
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[Text of the rule regarding corrective action plans is too long to fit on this page.]

(xii) Additional points of agreement, as appropriate.

(xiii) If desired by the subject firm, the following statement or its equivalent: “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.”

(xiv) An acknowledgment that the corrective action plan becomes effective only upon its final acceptance by the Commission.

(2) In determining whether to recommend to the Commission acceptance of a corrective action plan, the staff shall consider favorably both the promptness of the subject firm’s reporting and any remedial actions taken by the subject firm in the interest of public safety. The staff also shall consider, insofar as possible, prior involvement by the subject firm in corrective action plans and Commission orders if such involvement bears on the likelihood that the firm will comply fully with the terms of the corrective action plan.

(3) Upon receipt of a corrective action plan and staff recommendation, the Commission may:

(i) Approve the plan;

(ii) Reject the plan and issue a complaint (in which case an administrative and/or judicial proceeding will be commenced); or

(iii) Take any other action necessary to insure that the plan is adequate.

(4) When time permits and where practicable in the interest of protecting the public, a summary of the plan shall be published in the Commission’s Public Calendar. Those portions of the plan that are not restricted will be made available to the public in the Commission’s public reading room as much in advance of the Commission meeting as practicable. Any interested person wishing to comment on the plan must file a Notice of Intent to Comment at least forty-eight (48) hours prior to the commencement of the Commission meeting during which the plan will be discussed. If no notices of intent are received, the Commission may take final action on the plan. If such notice is received within the time limits detailed above, the plan will, if...
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practicable, be docketed for the following week's agenda. All comments must be in writing, and final written comments must be submitted at least forty-eight (48) hours before that session.

(b) Consent order agreements under section 15 of CPSA. The consent order agreement (agreement) is a document executed by a subject firm (Consenting Party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved.

(1) Consent order agreements shall include, as appropriate:

(i) An admission of all jurisdictional facts by the Consenting Party.

(ii) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps, including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

(iii) A statement that the agreement is in settlement of the staff's charges.

(iv) A statement that the Commission's Order is issued under section 15 of the CPSA (15 U.S.C. 2064) and that a violation is a prohibited act within the meaning of section 19(a)(5) of the CPSA (15 U.S.C. 2068(a)(5)) and may subject a violator to civil and/or criminal penalties under sections 20 and 21 of the CPSA (15 U.S.C. 2069 and 2070).

(v) An acknowledgment that the Commission reserves its right to seek sanctions for any violations of the reporting obligations of section 15(b) of CPSA (15 U.S.C. 2064(b)) and its right to take other appropriate legal action.

(vi) An acknowledgment that the agreement becomes effective only upon its final acceptance by the Commission and its service upon the Consenting Party.

(vii) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public.

(viii) A listing of the acts or practices from which the Consenting Party will refrain.

(ix) A statement that the Consenting Party shall perform certain acts and practices pursuant to the agreement.

(x) An acknowledgment that any interested person may bring an action pursuant to section 24 of the CPSA (15 U.S.C. 2073) in any U.S. district court for the district in which the Consenting Party is found or transacts business to enforce the order and to obtain appropriate injunctive relief.

(xi) A description of the alleged substantial product hazard.

(xii) If desired by the Consenting Party, the following statement or its equivalent: "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."

(xiii) The elements of a corrective action plan as set forth in §1115.20(a).

(2) At any time in the course of an investigation, the staff may propose to a subject firm which is being investigated that some or all of the allegations be resolved by a consent order agreement. Additionally, such a proposal may be made to the staff by a subject firm.

(3) Upon receiving an executed agreement, the Commission may:

(i) Provisionally accept it;

(ii) Reject it and issue a complaint (in which case an administrative and/or judicial proceeding will be commenced); or

(iii) Take such other action as it may deem appropriate.

(4) If the consent order agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the Commission's public calendar and in the FEDERAL REGISTER. Any interested person may request the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Such written request must be received in the Office of the Secretary no later than the close of business of the fifteenth (15th) calendar day following the date of announcement in the FEDERAL REGISTER.

(5) If the Commission does not receive any requests not to accept the agreement within the time period specified above, the consent order agreement shall be deemed finally accepted by the Commission on the twentieth (20th) calendar day after the date of announcement in the FEDERAL REGISTER.
unless the Commission determines otherwise. However, if the Commission does receive a request not to accept the consent order agreement, then it will consider such request and vote on the acceptability of such agreement or the desirability of further action. After the consent order agreement is finally accepted, the Commission may then issue its complaint and order in such form as the circumstances may require. The order is a final order in disposition of the proceeding and is effective immediately upon its service upon the Consenting Party pursuant to the Commission’s Rules of Practice for Adjudicative Proceedings (16 CFR part 1025). The Consenting Party shall thereafter be bound by and take immediate action in accordance with such final order.

(6) If the Commission does not accept the consent order agreement on a final basis, it shall so notify the Consenting Party. Such notification constitutes withdrawal of the Commission’s provisional acceptance unless the Commission orders otherwise. The Commission then may:

(i) Issue a complaint, in which case an administrative and/or judicial proceeding will be commenced;

(ii) Order further investigation; or

(iii) Take such other action as it may deem appropriate.

§ 1115.21 Compulsory remedial actions.

As appropriate, the Commission will attempt to protect the public from hazards presented by consumer products by seeking one or more of the following:

(a) Adjudicated Commission Order. An adjudicated Commission Order under section 15(c) or (d) of the CPSA may be issued after parties and interested persons have had an opportunity for a hearing in accordance with section 554 of title 5, United States Code, and with section 15(f) of the CPSA. This hearing is governed by the Commission’s Rules of Practice for Adjudicative Proceedings (16 CFR part 1025).

(b) Injunctive relief. The Commission may apply to a U.S. district court in accordance with the provisions of section 15(g) of the CPSA for a preliminary injunction to restrain the distribution in commerce of a product it has reason to believe presents a substantial product hazard. The Commission may seek enforcement of its orders issued under sections 15(c) and (d) of the CPSA in accordance with provisions of sections 22 and 27(b)(7) of the CPSA (15 U.S.C. 2071 and 2076(b)(7)).

(c) Judicial determination of imminent hazard. The Commission may file a complaint in a U.S. district court in accordance with the provisions of section 12 of the CPSA (15 U.S.C. 2061).

(d) Orders of the Secretary of the Treasury. The Commission staff may inform the Secretary of the Treasury that a consumer product offered for importation into the customs territory of the United States fails to comply with an applicable consumer product safety rule and/or has a product defect which constitutes a substantial product hazard. The Commission may request the Secretary of the Treasury under section 17 of the CPSA (15 U.S.C. 2066) to refuse admission to any such consumer product.

§ 1115.22 Prohibited acts and sanctions.

(a) Statements generally. Whoever knowingly and willfully falsifies, or conceals a material fact in a report under the CPSA and rules thereunder, is subject to criminal penalties under 18 U.S.C. 1001.

(b) Timeliness and adequacy of reporting. A failure to inform the Commission immediately and adequately, as required by section 15(b) of the CPSA, is a prohibited act within section 19(a)(4) of the CPSA (15 U.S.C. 2068(a)(4)).

(c) Failure to make reports. The failure or refusal to make reports or provide information as required under the CPSA is a prohibited act within the meaning of section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)).

(d) Noncomplying products. The manufacture for sale, offering for sale, distribution in commerce, and/or importation into the United States of a consumer product which is not in conformity with an applicable consumer product safety rule under CPSA is a prohibited act within the meaning of sections 19(a)(1) and (a)(2) of the CPSA (15 U.S.C. 2068 (a)(1) and (a)(2)).