

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00-C0006]

Platt Electric Supply, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the *Federal Register* in accordance with the terms of 16 CFR 1115.20(b)(4). Published below is a provisionally-accepted Settlement Agreement with Platt Electric Supply, Inc., containing monetary payments totaling between \$1,000,000.00 and \$1,500,000.00.

DATES: Any interested person may ask the Commission not to accept this Agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 23, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to "Comment 00-C0006", Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626, ext. 1382.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Orders appears below.

Dated: March 3, 2000.

Sadye E. Dunn,
Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission (under authority delegated to the staff by the Commission) and Platt Electric Supply, Inc. ("Platt"), a domestic corporation, to settle allegations that Platt distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company ("Cadet"), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The "staff" is the staff of the Consumer Product Safety Commission

("the CPSC" or "the Commission"), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2053, as amended.

2. Respondent Platt is a domestic corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at 10605 SW Allen Boulevard, Beaverton, OR 97005. Platt is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names "Cadet" and "Encore." These include all models and variants within each model of the series FW (including models FW-051, FW-101, FW-122, FW-202, and FW-751), manufactured between 1978 and 1987; series FX (including models FX-051, FX-052, FX-071, FX-072, FX-101, FX-102, FX-122, FX-151, FX-152, FX-202, and FX-242), manufactured between 1985 and 1994; series LX (including models LX-242, LX-302, LX-402, and LX-482), manufactured between 1985 and 1994; series TK (including models TK-051, TK-071, TK-072, TK-101, TK-102, TK-151, and TK-152), manufactured between 1984 and 1998; series ZA (including models ZA-051, ZA-052, ZA-071, ZA-072, ZA-101, ZA-102, ZA-122, ZA-151, ZA-152, ZA-202, and ZA-242), manufactured between 1985 and 1994; series Z (including models Z-072, Z-101, Z-102, Z-151, Z-152, Z-202, and Z-208), manufactured between 1993 and 1999; and all series and models of the same of functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX-072, RX-101, RX-102, RX-151, RX-152, RX-202, and RX-242), manufactured between 1985 and 1994; series RLX (including models RLX-302, RLX-402, and RLX-482) manufactured between 1985 and 1994; series RK (including models RK-101 and RK-102), manufactured between 1984 and 1998; series RA (including models RA-101, RA-102, RA-151, RA-152, and RA-202), manufactured between 1985 and 1994; and series ZC (including models ZC-072, ZC-101, ZC-102, ZC-151, ZC-152, ZC-202, and ZC-208), manufactured between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found

after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1985, Platt has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire; and/or allows lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. CPSC has made no findings of fact or conclusions of law regarding these allegations. On July 30, 1999, the CPSC approved a Consent Agreement and Order ("the Cadet Order") between the Staff and Cadet which, *inter alia*, required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters ("the Cadet Corrective Action Plan" or "the Plan"), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the "Effective Date" of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of Platt (and each of Platt's predecessors, successors, assigns, parents, subsidiaries, affiliated entities,

agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) collectively "the Platt Releasees" under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of any alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Platt Releasees to the Commission for all other claims and causes of action relating to alleged defects in the Heaters, as described in paragraph 4 above. However, Platt is not released from any claims or causes of action based upon information knowingly withheld from or misrepresented to the CPSC staff by Platt. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 21 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Platt for replacement heaters. The staff has concluded that the Cadet Corrective Action Plan, and Platt's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of the public.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Platt or as evidence: (a) Of any violation of law or regulation by Platt; (b) of other wrongdoing by Platt; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Platt or with respect to the Heaters or the Cadet Corrective Action Plan. Platt does not admit the factual allegations or other statements, or any conclusions of law, as alleged or otherwise stated in the Complaint or this Consent Agreement and Order which relate to the heaters.

9. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that the Heaters are "consumer products" within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

10. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that Platt is a "distributor" of

"consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that the CPSC has jurisdiction over Platt and the Heaters under Section 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and § 2064.

12. For purposes of this settlement only, Platt agrees not to contest the staff's allegation that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Platt and CPSC knowingly, voluntarily, and completely waive and relinquish any past, present, and/or future right or rights in this matter: (a) To the issuance of a proposed complaint in accordance with 16 CFR § 1115.20(b); to an administrative or judicial hearing, and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (c) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (d) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21, 22 and 25 of this Consent Agreement; and (e) to file any claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d), and a violation of this Consent Agreement and Order 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 Platt to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. The parties agree to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power.

17. Platt acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in any United States

District Court in which Platt is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. For the length of its term, this Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Platt merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Platt shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Platt's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Platt and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Platt's assets, Platt shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Platt may disclose terms of this Consent Agreement and Order to the public.

20. The staff is entering into this Consent Agreement and Order upon reliance that Platt and Cadet have executed a settlement agreement dated January 31, 2000 that resolves issues surrounding the June 22, 1999 DIP Loan and Security Agreement between Cadet, Platt, and Consolidated Electrical Distributors, Inc. ("DIP Loan and Security Agreement").

21. The CPSC, upon reasonable notice to the staff and Platt, may void, suspend, or rescind all, or any part, of this Consent Agreement and Order if it reasonably concludes that: (a) Platt has made knowing and material misrepresentations regarding its financial condition as of the date of this Consent Agreement and Order; (b) in Platt's submission to the staff dated March 19, 1999, Platt knowingly and materially misrepresented the quantity of Heaters it sold; or (c) Platt and Cadet

have not executed the Platt/Cadet settlement agreement referred to in Paragraph 20 of this Consent Agreement. The CPSC may exercise its rights under this Paragraph 21 within, and not later than, 30 months from the Effective Date of the Cadet Order or the termination of this Consent Agreement and Order pursuant to paragraph 33, whichever occurs first. Any CPSC determination under this paragraph shall be subject to the dispute resolution procedures set forth in Paragraph 25.

22. If any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC reasonably determines, after providing Platt with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

23. This Consent Agreement and Order have been negotiated by the parties. Platt is not relying on the advice of the staff, nor anyone associated with the staff, except as otherwise set forth in this Consent Agreement and Order or in the letter from CPSC staff to Andrew S. Krulwich, Esq. dated February 8, 2000.

24. The provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

25. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve alleged claims by the CPSC against Platt with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the

American Arbitration Association then in effect. The CPSC and Platt shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and Platt are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitration Association. Either party may institute an action, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District of Columbia. Notwithstanding the foregoing, neither the arbitrators nor the CPSC shall have the authority to resolve disputes arising under the Platt/Cadet Settlement Agreement, nor may any rights or obligations arising out of the Platt/Cadet Settlement Agreement be enforced through this Consent Agreement and Order.

26. The existence of a dispute between the staff and Platt over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation or deadline imposed upon Platt under this Consent Agreement and Order, other than the specific provision in dispute.

27. This Consent Agreement and Order shall not be waived, changed, amended, modified or otherwise altered, except in writing executed by the parties and approved by the CPSC.

28. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

29. Platt makes the monetary payments described in Paragraphs 4 and 5 of the Order solely to fund the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Platt and the staff consent to the entry of the Order attached hereto.

31. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the

twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1115.20(b)(5).

32. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Platt.

33. Platt's Obligations under this Consent Agreement and Order shall terminate when Platt makes the final payment required under Paragraphs 4 and 5 of the Order.

34. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: February 9, 2000.

Howard N. Tarnoff,

Trial Attorney.

Margaret H. Plank,

Trial Attorney.

Eric L. Stone,

Director, Legal Division.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: (301) 504-0626, Facsimile: (301) 504-0359.

Harvey J. Platt,

Chairman & CEO, Platt Electric Supply, Inc., 10605 SW Allen Boulevard, Beaverton, OR 97005-4896; Telephone: (503) 526-2332, Facsimile: (503) 350-5579.

Order

Upon consideration of the Consent Agreement entered into between Respondent Platt Electric Supply, Inc. ("Platt") and the staff of the Consumer Product Safety Commission ("the staff") (collectively "the parties"); and

The Consumer Product Safety Commission ("the CPSC" or "the Commission") having jurisdiction over the subject matter and Platt;

It is hereby ordered that:

1. The Consent Agreement between Platt and the staff is incorporated herein by reference and accepted, and Platt shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet Manufacturing Company's ("Cadet's") series FW, FX, LX, TK, ZA and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet

under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. Platt shall immediately cease and despite offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Platt-owned distribution centers, or any other persons or entities over whom Platt has control.

4. Platt shall pay into an escrow account (Chase Manhattan Trust Company, National Association, Account #76609060682) established by the staff and Cadet for the purpose of remediating the Heaters ("the Escrow Account"), the sum of ONE MILLION DOLLARS (\$1,000,000) upon the CPSC's final acceptance of this Order.

5. Platt shall pay into the Escrow Account contingent contributions of an additional TWO-DOLLARS AND FIFTY CENTS (\$2.50) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 ("the Cadet Order"); provided that the sum total of Platt's contingent contributions shall be capped at FIVE HUNDRED THOUSAND DOLLARS (\$500,000). Platt shall pay contingent contributions within thirty (30) days of Platt's receipt of quarterly written notice from the staff specifying the number of replacement heaters in excess of 250,000 ordered by consumers within twenty-four (24) months after the Effective Date of the Cadet Order issued by CPSC on July 30, 1999.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above to offset any expenses directly related to Cadet's CPSC-approved Corrective Action Plan. Should Cadet fail in its obligations under the Corrective Action Plan, CPSC may authorize the distribution of the monetary payments in paragraphs 4 and 5 above to otherwise remedy the alleged hazard posed by the Heaters; however, no such failure on the part of Cadet shall change the amount or schedule of payments due under this Order or change the rights and duties of Platt under the Consent Agreement.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Platt fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Platt shall be liable for additional contributions to the Escrow Account consisting of the following:

a. Interest at the percentage rate established by the Department of the

Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the contribution is not made within thirty (30) days after the due date.

Provisionally accepted and Provisional Order issued on the 3rd day of March, 2000.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00-5671 Filed 3-7-00; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0076]

Proposed Collection; Comment Request Entitled Novation/Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/Change of Name Requirements. This OMB clearance expires on May 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. **DATES:** Comments may be submitted on or before May 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden,

should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,000.

Responses per respondent: 1.

Total responses: 1,000.

Preparation hours per response: .458.

Total burden hours: 458.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRs), Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 9000-0076, Novation/Change of Name Requirements, in all correspondence.

Dated: March 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00-5612 Filed 3-7-00; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0147]

Proposed Collection; Comment Request Entitled Pollution Prevention and Right-To-Know Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0147).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44