Negotiated corrective actions give the Commission the opportunity to tailor remedies to a particular situation and the associated health and safety risks presented. The proposed rule would include language that would permit, in appropriate situations and at the Commission's discretion, the Commission to pursue compliance program requirements in the course of negotiating corrective action plans. The proposed rule contemplates that if appropriate, a corresponding reference to compliance program requirements may be included in the related voluntary recall notice. Inclusion of compliance program requirements as an element of voluntary corrective action plans would echo compliance program requirements incorporated as part of recent civil penalty settlement agreements.

III. Description of the Proposed Rule

In general, the proposed rule would establish a new subpart D, titled, ''Principles and Guidelines for Voluntary Recall Notices,'' in part 1115 of title 16 of the Code of Federal Regulations and would add a new paragraph to 16 CFR 1115.20.

1. Proposed § 1115.20(a)—Legally Binding

The Commission proposes to revise § 1115.20(a) to state that, once a firm voluntarily agrees to undertake a corrective action plan, the firm is legally bound to fulfill the terms of the agreement. The Commission has the authority to order mandatory recalls of products, and, as noted earlier, the CPSIA increased the Commission's ability to undertake mandatory recalls of defective or violative products. However, in the interests of the public and most importers, manufacturers, wholesalers, and retailers, almost all recalls overseen by the Commission are jointly conducted by firms and the Commission on a voluntary basis. Part of the process of a voluntary recall includes the Commission and the firm agreeing to a corrective action plan that details the steps the firm will take including, but not limited to, the type of remedy it will offer to the public. Currently, § 1115.20(a) defines 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.'' The result is that the Commission is prohibited from enforcing the terms of a corrective action plan if a recalcitrant firm violates the terms of its corrective action plan. In addition, the Commission has encountered firms that have deliberately and unnecessarily delayed the timely implementation of the provisions of their correction action plans. Accordingly, proposed § 1115.20(a) would provide the Commission with the necessary tools to compel a noncompliant or dilatory firm to carry out the terms of its voluntarily agreed upon corrective action plan.

In addition, amended § 1115.20(a) would make clear to firms wishing to conduct a voluntary recall that the Commission's preferred remedies are refunds, repairs and replacements, and that firms wishing to use other remedies shall have the burden of demonstrating that those alternatives will be as effective as the preferred remedies.

2. Proposed § 1115.20(a)(1)(xiii)—Admissions

Amended § 1115.20(a)(1)(xiii) would provide the Commission with additional flexibility concerning admissions in corrective action plans. Eliminating the phrase, ''If desired by the subject firm,'' and revising the sentence to include the following language later in the sentence ''if agreed to by all parties'' facilitates an opportunity for the Commission to negotiate and agree to appropriate admissions in each particular corrective active plan.

3. Proposed § 1115.20(a)(5)—Compliant Remedies

Proposed § 1115.20(a)(5) would describe the Commission's intent that any remedial actions set forth in a corrective action plan be compliant with all applicable CPSC rules, regulations, standards, or bans. This revision is intended to make that expectation specific.

4. Proposed § 1115.20(a)(1)(xv) and § 1115.20(b)—Compliance Programs

Proposed § 1115.20(a)(1)(xv) would add compliance program-related requirements as possible components of a corrective action plan. Proposed § 1115.20(b) would provide examples of the types of circumstances that such compliance program-related requirements, in the Commission's discretion, may be proposed as appropriate elements of a voluntary corrective action plan. Such circumstances might include, but are not limited to: Multiple previous recalls and/or violations of CPSC requirements over a relatively short period of time; failure to timely report substantial product hazards on previous occasions; or evidence of insufficient or ineffectual procedures and controls for preventing the manufacturing, importation, and/or distribution of dangerously defective or violative products.

The proposed rule sets forth the types of enforcement actions in which the Commission may address violations of a voluntary compliance program agreement including, but not limited to: Seeking an injunction or specific performance as well as pursuing all applicable sanctions under the CPSA.

In addition, proposed § 1115.20(b) would provide examples of the types of provisions that may be included in a voluntary compliance program agreement including, but not limited to: Maintaining and enforcing a system of internal controls and procedures to ensure that a firm promptly, completely, and accurately reports required information about its products to the Commission; ensuring that information required to be disclosed by the firm to the Commission is recorded, processed, and reported, in accordance with applicable law; establishing an effective program to ensure the firm remains in compliance with safety statutes and regulations enforced by the Commission; providing firm employees with written standards and policies, compliance training, and the means to report compliance-related concerns confidentially; ensuring that prompt disclosure is made to the firm's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, the firm's ability to report to the Commission; providing the Commission with written documentation, upon request, of the firm's improvements, processes, and controls related to the firm's reporting procedures; or making available all information, materials, and personnel deemed necessary to the Commission to evaluate the firm's compliance with the terms of the agreement.

Current § 1115.20(b) regarding consent order agreements would be re-designated to § 1115.20(c).

5. Proposed § 1115.20(c)(1)(xii)—Admissions

Proposed § 1115.20(c)(1)(xii) would amend 16 CFR 1115.20(b)(1)(xii) to provide the Commission with additional flexibility concerning admissions in consent order agreements. Eliminating the phrase, ''If desired by the subject firm,'' and revising the sentence to include the following language later in the sentence ''if agreed to by all parties'' facilitates an opportunity for the Commission to negotiate and agree to appropriate admissions in each particular consent order agreement.''