

Ann Brown

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May 30, 2014

The Honorable Fred S. Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Minority Member Waxman,

I had the privilege of serving as Chairman of the U.S. Consumer Product Safety Commission from March 1994 until November 1, 2001. During my time as Chairman, we prevented numerous deaths and injuries through enforcement actions, product recalls and working with consumers, consumer groups and firms regulated by the Commission. Product safety is best accomplished when government, industry and consumers work together.

Under the Consumer Product Safety Act (CPSA), manufacturers, distributors, and retailers of consumer products must report certain potential product hazards to the Commission. They must report immediately if they obtain information which reasonably supports the conclusion that a product (1) fails to comply with certain mandatory or voluntary standards, (2) contains a defect which could create a substantial product hazard, or (3) creates an unreasonable risk of serious injury or death.

If the Commission believes that a product presents a substantial product hazard to the public, it may pursue corrective action. Early in my Chairmanship, I learned that some number of companies were offering to conduct product recalls but because of entrenched procedures, those firms were not allowed to proceed with a recall until the CPSC staff performed a technical evaluation of the product involved, agreed that there was a product safety problem by making a "Preliminary Determination" (PD) of hazard, and then sent a letter to the firm advising it of the preliminary determination of hazard and requesting a product recall.

This process could and often did take many months-months without a recall, months where consumers were at risk, even though the firm was ready, willing and able to proceed with a recall at the time of its report. We changed this bureaucratic process early in my tenure as Chairman by creating the Fast Track Product Recall program in August 1995.

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Originally called the "No PD" program, firms who reported to CPSC, identified a product safety problem, agreed to and initiated a recall within 20 working days of their report, no longer required a staff technical evaluation of the problem reported. Rather than performing a technical evaluation to confirm the product problem reported upon, the CPSC staff evaluated the remedy proposed to assure that it adequately addressed the problem identified and spent time working with the firm on conducting the product recall.

The Commission made this Fast Track program permanent on March 27, 1997, and it has been hugely successful. More than one-half of all CPSC recalls are now conducted through the Fast Track Program. Recalls conducted through this program benefit consumers, the recalling firm and the CPSC. Recalls are announced faster better protecting consumers from injury. Recalling firms do not receive a letter stating that the CPSC staff has preliminarily determined their product is a substantial product hazard. And the government spend less resources investigating a product that a company has already agreed should be recalled.

The CPSC staff received a "Hammer" Award from Vice President Albert Gore's National Partnership for Reinventing Government for the Fast Track Product Recall Program. This award honored federal employees for significant improvements to customer service and for making the government work more efficiently. Also in 1998, the Fast Track Program was named a winner of the prestigious Innovations in American Government award, an awards program of the Ford Foundation and Harvard University, administered by Harvard University's John F. Kennedy School of Government in partnership with the Council for Excellence in Government.

Now this award winning program appears to face the risk of being unintentionally undermined by a rule proposed by the CPSC in November 2013 that is intended to enhance voluntary recalls by setting forth principles and guidelines for the content and form of voluntary recall notices that firms provide as part of corrective action plans. One of the CPSC's proposals is to prohibit firms desiring to conduct a voluntary recall from disclaiming that there is a hazard presented by their product unless the Commission agrees to the disclaimer. I am concerned that this proposal if adopted could undermine the efficacy of the Fast Track program. Another proposal would classify a voluntary Corrective Action Plan (CAP) as "legally binding" thus transforming a CAP into a Consent Decree, potentially delaying an otherwise effective recall weeks or even months due to haggling over legalities. A Fast Track procedure would be rendered impossible under these circumstances.

CPSC urges firms to err on the side of caution by reporting potential product safety problems and conducting recalls. It is my understanding that virtually every firm that reports under the CPSC mandatory reporting requirement and requests to participate in a Fast Track recall, asserts that their product does not present a substantial product hazard, but nonetheless they wish to conduct a recall. If reporting firms are not allowed to make this disclaimer, they have no incentive to participate in the Fast Track Program.

Not making the disclaimer may be perceived in product liability litigation as akin to admitting that the product reported on is a substantial product hazard. If so, reporting firms might just as well report to CPSC, not offer to conduct a recall, and take the chance that the CPSC staff might conclude their product is not a substantial product hazard and that no recall is necessary.

If this occurs, recalls would be delayed, CPSC would be required to use substantial technical resources to evaluate products so that the staff can determine whether to make a preliminary determination of hazard, and consumers are left unprotected potentially for many months.

I respectfully request that the Committee urge the Commission to consider its proposed rule carefully and to assure that it does not adversely affect CPSC's Fast Track Product Recall Program.

Sincerely,

A handwritten signature in black ink that reads "Ann Brown". The signature is written in a cursive, slightly slanted style.

Ann Brown

CC:

The Honorable Lee R. Terry, Chairman
Subcommittee on Commerce, Manufacturing and Trade

The Honorable Jan Schakowsky, Ranking Member
Subcommittee on Commerce Manufacturing and Trade

The Honorable John D. Dingell
Member of Congress

The Honorable Robert A. (Bob) Adler, Chairman
U.S. Consumer Product Safety Commission

The Honorable Marietta S. Robinson, Commissioner
U.S. Consumer Product Safety Commission

The Honorable Ann Marie Buerkle, Commissioner
U.S. Consumer Product Safety Commission