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## Letter to CPSC in Response to Comments on Stop-sale Policy and Fast Track Program

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Tuesday, July 7, 2015

The [comments submitted by the Consumer Product Safety Commission \(CPSC\)](#) in their earlier article are appreciated, but they unfortunately do not address [the concern raised by the original article](#).

CPSC is correct that they have a general stop-sale policy for products subject to recall, including those involved in the Fast Track Program.

The problem my article addressed is the current practice of insisting that a Firm stop sale of a product even before the Firm's proposed remedy has been approved by CPSC. This abrupt, up-front application of the "stop sale" requirement is new in my experience, and it has been applied to multiple different clients over the past few weeks, to their great surprise.

Why does this matter? Certain remedies (such as repair or component replacement) may be acceptable to Firms; others (such as entire product replacement or refund) may not be.

The remedy that the Firm originally proposes may be rejected the Commission Staff, sometimes only after lengthy consideration. If the remedy is rejected, the Firm may elect not to participate in the Fast Track program at all, or even reconsider whether the product is a potential hazard in the first place.

It is neither fair nor, in my experience, common practice for the CPSC to insist on a stop-sale of a product up front, before the Firm's proposed remedy has been ruled upon. Yet, CPSC's Fast Track process is now doing just that. This is the "stop sale" policy shift that I reference in my article. Others can debate whether this is a shift in actual policy or merely one of enforcement, and it is understandable why the agency wishes to be clear on the issue of what constitutes "policy," but the distinction makes little difference to Firms engaged in the Fast Track process.

For the reasons [I discussed at length](#), this approach is undesirable and has the potential both to deter participation in, and reduce the effectiveness of CPSC's Fast Track Program. All Firms should of course stop sale of affected products once a remedy is agreed upon; but until the parties have reached agreement on the course and scope of the recall, it is unreasonable to ask a manufacturer to shut down a product line that is often essential to its business.

CPSC's comments state that "there is no logical reason why any Firm should continue to allow the sale of more defective products into commerce only to be soon recalled." This statement is concerning, and does not acknowledge the proactivity which often underlies Fast Track applications. Often, Fast Track applicants have no actual incidents of harm to report and the concerns they express are largely theoretical. "Defectiveness" is a continuum, and uncertain, more speculative harms are less worthy of repair, particularly expensive repair, than concrete, actual harms that have manifested themselves in the field. If CPSC wishes for Firms to err on the side of caution, it is counter-productive to make preemptive stop-sale demands that could discourage Firms from being proactive.

*The foregoing represents the views of Jonathan Judge, and not Schiff Hardin LLP or any of its clients.*

[To read the CPSC's response to the original post, please click here.](#)



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